

Child Sexual Abuse in India under POCSO Act, 2012: A Critical Analysis

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KEYWORDS	ABSTRACT
Child Sexual Abuse, Child Abuse, Sexual Activity, POCSO Act, Children struggles in the society.	When an adult or a more mature child or adolescent engages in sexual behaviour with a youngster, this is considered sexual abuse. On the other hand, the POCSO Act defines a "child" as anyone under the age of 18. Abuse of a kid can be defined as any action or inaction that causes injury to, or places a child at danger of harm from, another person. Abuse of children can take many forms, including sexual, emotional, and physical. Failure to meet a child's basic requirements constitutes neglect, another kind of maltreatment. Children who have been abused typically experience more severe emotional harm than physical harm. Depression is a common symptom of child maltreatment. It's possible he or she will retreat, entertain suicidal thoughts, or snap. A child who has reached adulthood may experiment with drugs or alcohol, attempt to run away, or abuse others. Abuse of children is a terrible issue. Call the authorities or your state's child welfare department if you have any reason to believe a child is being mistreated or neglected. The prevention of child sexual abuse is the focus of this paper, as are recent amendments to the POCSO Act and related provisions.

Introduction

Child Sexually abused Children who are below 18 years of age meet any struggles in the society. They will be remembering that incident every day. So they get into the dark life because of this, their mind and soul gets affected and meets with suicide or they enter into the wrong field (Prostitution). In recent research, India has the largest number when compared to other countries that Child Sexual Abuse cases but only few cases of this are coming to our knowledge why because the affected children hesitate to share what happened to them with their elder persons. The affected child will think like, others will have a bad image on them when they share their incident. There are many other reasons for which the affected child does not open themselves about the incident to others due to this; there are many issues in our country. The main reason behind the silence of affected child is, the person who abuses the child will be a known person or neighbor or the parents of that child will leave them to a caretaker for a whole day all these are the persons who tend to abuse the children sexually due to this only, the affected child hesitates to share the problem. Here the sympathy comes in mind for the affected child so they hide the incident and keep that within themselves without sharing. Almost 34% of India's total populations are children below "18 years of age again, 95% of children" in that 34% are sexually abused/ affected. All these assaults made for children are happening unknowingly for them other than this, research says that every day 110 children are sexually abused but we only hear a few cases that are telecasted in the news channels. The reason is those cases are made to hide or the affected children are not willing to complain about the incident. Ministry of Women Child and Development took an interview for 12, 0000 girl children below 18 years in that, more than half of the children were reporting that they were sexually abused also, 20% in that was severely abused but no one has said the person who abused them to overcome all these problems, the Government gave a solution that is the POCSO Act this act was released in 2012 but with very liberal punishment were given for the assaulters and the case which is filed that has to be closed within a year by giving justice to affected child but, this

gave another chance for the assaulters to escape easily from the case. In 2019, this act was improved with strict rules and severe punishments children below 18 those who are abused by someone can report and file a case under the POCSO Act. Parents of those children can also file a case instead the police should not say any reason like case does not come under their jurisdiction. If this happens, action will be taken on that police officer and this case should be solved within 3 months and the justice must be given to the affected child.

What is Child Sexual Abuse?

"Child sexual abuse is the involvement of a kid in sexual behaviour that he or she does not completely comprehend, cannot provide informed permission to, or for which the child is not developmentally equipped and cannot offer consent, or that violates laws or social taboos"¹.

Dynamics of Child Sexual Abuse

- "It differs from adult Child Sexual Abuse
- Physical Violence is not common
- Psychological Trauma is common
- Child Sexual Abuse occurs over may weeks or even years
- Abuser is usually a known and trusted caregiver
- Child Sexual Abuse occurs in the background of inducement, coercion, threat, exploitation, silence, manipulation, physical violence and abuse
- Repeated episodes of abuse starts and become more invasive with time
- Incest/interfamilial abuse accounts for about one third
- Disclosure of Child Sexual Abuse occurs in installments (Over a period of time)
- Involve the counselors in early stage/ if you suspect the abuse
- Do not hesitate to seek help"

3. What all is Criminalised

- Penetrative Sexual Assault on a Child (Section 3): requests that a child participate in, or engages in, the insertion of a penis, object,

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or other bodily part into the child's vagina, urethra, anus, or mouth².

- Sexual Assault (Section 7): When someone touches a youngster, or forces the child to touch them or another person³.
- Section 11 addresses sexually explicit language, physical or audible sexual expression, and child pornography as forms of sexual harassment.
- Aggravated Sexual Assault (Section 9): The nature of the victim's relationship with the perpetrator determines whether or not the act is considered aggravated. That depends on the specifics of the assault and the extent to which it caused harm⁴.

4. Key Features under POCSO Act

- Reports of child abuse must always be filed as a "First Information Report" (FIR).
- There is flexibility in where a kid's statement is recorded; it can take place at home or anywhere the youngster choose.
- A female police officer of at least sub-inspector rank should take the statement.
- Assisting in the commission of a crime or attempting to commit one is punishable by the terms of this act.
- If the crime is not reported, the perpetrator might face up to 6 months in jail and/or fines.
- The act mandates the establishment of specialised courts to hear these cases, and stipulates that this process must be finalised within a year.
- There is no requirement for the kid to repeat their evidence, and they can testify through video conference if they like⁵.
- Neither the minor nor his or her identity should be revealed to the accused during the inquiry or trial.
- The defence must submit all questions to the court and may not be combative in their delivery. It is possible for the minor to be assisted in court by an interpreter, translator, special educator, or other expert.
- Loss of educational and occupational opportunities, in addition to disability, disease, or pregnancy brought on by the abuse, are also grounds for compensation by the special court.
- The previous age of consent was 16, however it has now been raised to 18. Regardless of whether or not consent was given, any adult or minor who engages in sexual activity with a minor is subject to criminal prosecution.

5. Amendments

Offence	POCSO ACT, 2012	The POCSO (Amendment) Act, 2019
Penetrative Sexual Assault	7 years to imprisonment for life	"Below 16 years of age, punished with imprisonment up to 20 years, which might extend to life imprisonment as well as fine".
Aggravated Penetrative Sexual Assault	10 years to imprisonment for life.	Ten years to 20 years, death sentence for "a person in a position of authority- which includes police officers, members of the armed forces and public servants".
Use of Child for Pornographic purpose	5 years and in case of subsequent conviction, 7 years.	5 years, with fine.

6. Bail under POCSO Possible?

- ❖ Name of applicant present?
- ❖ What is the time and date of incident and whether it is the date and time of F.I.R
- ❖ Whether any delay in filing F.I.R? if yes, whether the reason is mentioned in F.I.R or not

- ❖ Place of occurrence mentioned in the F.I.R and whether it is?
- ❖ What is the age of victim mentioned in the F.I.R as per section 161 & 164 Cr.p.c.⁶.
- ❖ What is the relation of the victim with the accused?
- ❖ Whether there was any protest or alarm raised by the victim and whether the incident was reported to someone immediately.
- ❖ Whether victim resisted or denied for medical examination?

Various other facts like statements of victim or accused distinctly decides the probability of the bail under POCSO case.

7. Mandatory Reporting of Child Sexual Abuse under POCSO Act

Any person, (Parents, Doctors, School Personnel, Children or any Citizen) who suspects or knows that a violation of this Act has been or is being committed, and who reports this to the Special Juvenile Police Unit or the Police. The worry that the child is fibbing stems from uncertainty or doubt. So, what do we do now? Report According to subsection (7) of subsection (19) of the POCSO Act, "no person shall incur any liability, civil or criminal, for providing information in good faith for the purpose of reporting child sexual abuse"⁷.

Either in the course of performing professional obligations or through a confidential relationship, the POCSO Act, 2012 makes it plain that the need to report exists.

Why Mandatory Reporting?

- The abuser does not abuse other children.
- To make sure that abuser is punished.
- The child is not caught in the vicious cycle of abuse.
- Treatment is provided.
- Child may not be able to report abuse.
- This involves shifting the onus of reporting away from the youngster and onto a nearby adult who may be in a better position to provide assistance.
- Mandatory reporters are not required by law to notify minors or their guardians of their reporting responsibilities.
- Although it is standard procedure to inform them of this upcoming chore.

What to Report?

- Name of the Child
- Age & Gender
- Name of the Parents
- Contact details
- Nature and Extend of Injuries
- Address
- Other Children in the family
- Identity of the abuser
- Any other information that may be helpful
- • If you don't know everything, report what you do know.
- Please share all the information at your disposal.
- The reporter or complaint is not responsible for conducting their own investigation; that task is instead delegated to the appropriate law enforcement or other investigative bodies.

When to report?

- Legislation does not lay down any time frame to report.
- Time of reporting dependence on:
 - ✓ Severity of the abuse
 - ✓ Need for emergency
 - ✓ Who is the abuser?
 - ✓ Child's safety
 - ✓ Other children safety

What is the Punishment for failure to report?

Section 21(1) of the POCSO Act says "that any person, who fails to report the commission of an offence, shall be punished with imprisonment of either description which may extend to six months or with fine or with both"⁸.

Section 21(2) of the POCSO Act says "that any person, being in-charge

of any company or an institution who fails to report the commission of an offence in respect of subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine”.

Reporting False Information:

Section 22 of the POCSO Act, 2012 “makes it an offence to report false information when such report is made other than in good faith. It states that any person, who makes false complaint or provide false information against any person, solely with the intention to humiliate, extort or threaten or defame him, shall be punished with imprisonment for a term which may extend to six months or with fine or with both”⁹.

8. Mental and Physical Health Impact of Child Sexual Abuse

Grooming Occurs in Six Steps:

1. Targeting: Abuser target vulnerable people. Someone’s legal status, income level, family life and past abuse are all possible vulnerabilities.
 - Unaccompanied Children
 - Single parent home/broken homes
 - Children in foster care
 - Adopted Children
 - Physically or Mentally handicapped children
 - Poverty
 - Social isolated family
 - Parents with mental illness
 - Parents with alcohol or drug dependency
2. Gain Trust: Abusers learn information about their victim so that they can gain their trust.
 - Abuser shows interest in child
 - Spends time with the child
 - Gather information of child’s background
 - Learn about the child’s need
 - Gain emotional support
 - Become friend
3. Fill a Need: Perpetrators seek to meet emotional or physical needs or desires like food, money, entertainment. Meeting needs is like a bribe that cements trust and the idea of a debt being owed to the abuser.
 - Abuser provides Child’s need such as food, chocolate, toys, gadgets, iphone/ipad to use, games, entertainment and so on.
 - Abuser provides emotional support
 - Abuser introduce promise, secrecy, no one should know and prepare the child for next step
4. Isolation: The abuser isolates their victim, making them physically and emotionally alone and vulnerable to abuse.
 - Child is told not to go with other kids/friends
 - Time is spent in fulfilling the child’s need
 - Secrecy and promise is further strengthened
 - Praising the child
 - Child is objectified
5. Maintain Control: Perpetrators use secrecy, blame, threats and even violence to maintain control over their victim and keep their crime from being discovered.
 - Child’s nude photos are taken
 - Threat, Coercion, Exploitation, violence and sexual abuse continues
 - Periodically Child Sexual Abuse
 - Child accommodates the abusers demand

Child do not Disclose:

1. “He/ She is embarrassed.
2. He/ She does not know if what is happening to them is normal or not.

3. He/ She do not have the words to speak out/ unable to express the abuse.
4. The abuser is a known person, and the child does not want to get them in trouble.
5. The abuser told the child to keep it a secret.
6. The child is afraid that no one will believe him/ her.
7. The abuser bribes or threatens the child.
8. He/ She think you already know.
9. Blackmail”

Physical & Mental Health Impact

Physical Impact (Short-Term):

- Physical Injuries
- Sexually transmitted diseases
- Complaints of pain, or itching in the genital area
- Difficulty in walking or sitting
- Pain during defecation/ micturition
- Frequent genital infection

Mental Health Impact (Short- Term):

- Abrupt changes in behavior
- Self-harm, attempt to suicide, suicide
- Reluctance to go home
- Wearing many layers of clothing regardless of the weather
- Fearfulness/Anxiety
- Sudden onset of fear of darkness
- Disturbed sleep pattern
- Behavior problems
- Regressive behavior like bed-wetting, clinging behavior, thumb sucking, excessive crying

Physical Health Impact (Long Term):

- HIV/AIDS
- Sexually transmitted disorders
- Physical injury related complications
- Pregnancy & Childbirth related issues

Mental Health Impact (Long Term):

- Substance abuse like smoking, volatile substance use alcohol etc.
- An increase in irritability or temper tantrums
- Fears of a particular person or object or place
- Aggression towards others
- Academic Decline

Impact on Family:

- Grief (Shock, denial, anger, bargain, depression, acceptance)
- Family discord/ fights/ blame
- Family guilt (not protecting or trusting the abuser)
- Overprotective family (Over-involved)
- Family becomes withdrawn (Stigma)
- Economic issues (Treatment, loss of job/ wages, litigation)
- Divorce (if abuser is spouse)
- One of the family member may develop depression/ anxiety (Excessive worry about the future of the child)
- Family stress and poor coping

9. Case Laws Analysis:

- In the case of **Kathua’s Gangrape**¹⁰, On June 10 of last year, the Special Court handed down death sentences to three individuals responsible for the horrific act that rocked the nation. Sanji Ram was the architect and January’s Temple keeper. Criminal conspiracy, murder, kidnapping, gang rape, destroying evidence, drugging the victim, and common intention were all found to have been committed by the three who received life sentences, as per the provisions of the Ranbir Penal Code (RPC) under which they were convicted.

- In the case of **Harpal Singh vs. State of Himachal Pradesh**¹¹, the Supreme Court severely condoned the filing of the FIR related to the rape case of a 16 years old girl. It was also mentioned that the family members took time to decide whether the intervention of the court is needed since the family honor was involved. The court also held that since the girls was below 16 years of age, her consent was immaterial. Additional, it was ruled that delay in reporting the case will have no cause on the case provided a logical justification is given.

10. Conclusion and Suggestions:

All the parents should be a secret and a close observer/ friend to their child observe them when they return from school/collage/tuition have a look on their reactions everyday also silently observe their whatsapp/ facebook/instagram in a friendly manner be sportive of what they speak with their friends, but if you notice there is a suspicious chat among them ask them politely about that chat and share you have thoughts warn them for their behaviour. After this the children will share everything with you without any hesitate. You should also say that, I will not scold for what you have done, say the truth of the incident which you involved with like this you parents have to handle your child, in a friendly manner so that the child will not have any hesitation of sharing everything with you or else they will share their incidents with their friends/ strangers, those persons will threaten/ blackmail the affected child in return by saying the incident to others or taking advantage of that incident. Sex education is really important unfortunately, your child is abused by some other person known/ stranger. How will the little child say what happened to them and explain the incident with you (parent) so you must educate them with proper words so that they feel easy to communicate. Educating like male/ female reproductive system penis/ vagina, then chest. If they know these words, will fluently communicate with you (parents) regarding the incident (abuse) which happened to them and you (parents) can also understand well what they are trying to say. All these words are used as bad words in our regional languages but it will be effective if you (parents) educate them in English. The next thing, teach the power of No the word 'No' has the greatest meaning if you reply with No for any request claimed by someone, that's the world which defines your interest. Consent of No is so important. Let's take a simple situation my classmate/ friend requests me for a pen if I have a pair of pen I will surely share with the person or else I will reply with, No I do not have and will say to ask others or, I am willing to share my pen I will but when coming to sexual abuse situations if any person tries to touch you in a wrong manner, without your permission strongly say

No to them, or say do not touch/ stay away from me. This has to be taught to your children and make this as a habit by doing this, the person who behaves wrong to your children will have a fear after that, and they will maintain a safe distance from your child. This No is not only for children, also applies for adults.

Endnotes

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