

**A LEGAL STUDY OF OFFENCES AGAINST CHILDREN WITH  
REFERENCE TO THE POCSO ACT**

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**CRIMINAL AND SECURITY LAW BRANCH**

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**CERTIFICATE**

This is to certify that the dissertation titled “**A legal study of Offences against children with reference to the POCSO Act**” is the work done by **Ms. Apurva Singh** under guidance and supervision for the partial fulfillment of the requirement for the Degree of **Master of Law** in School of Legal Studies Babu Banarsi Das University, Lucknow, Uttar Praesh.

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### **ABBREVIATIONS**

AIDS: Acquired Immune Deficiency Syndrome

AIHRC: Afghanistan Independent Human Rights Commission

ADJ: Allahabad Daily Judgments

Bom.CR: Bombay Cases Reporter

BNWLA: Bangladesh National Women Lawyers Association

BPL: Below Poverty Line

CARA: Central Adoption & Resources Agency

CEDAW: Convention on the Elimination of All Forms of Discrimination against Women

CIF: Childline India Foundation

Comp.LJ: Company Law Journal

CPAN: Child Protection Action Network (Afghanistan)

CSA: Child Sexual Abuse

CSEC: Commercial Sexual Exploitation of Children

CWC: Child Welfare Commissioner

CWIN: Child Workers in Nepal

ECPAT: End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes

ESCAPE: Eradicating Sexual Child Abuse, Prostitution and Exploitation (Sri Lanka)

HIV: Human Immunodeficiency Virus

HTTA: Human Trafficking and Transportation (Control) Act 2007 (Nepal)

HRW: Human Rights Watch

IAWGCP: Inter-Agency Working Group on Children's Participation

ICDS: Integrated Child Development Services

ICPS: Integrated Child Protection Scheme

ILO: International Labour Organization

IMA: Indian Medical Association

INCIDIN: Integrated Community and Industrial Development Initiatives (Bangladesh)

IOM: International Organization for Migration

IPC: India Penal Code

IPOA: Integrated Plan of Action to Prevent and Combat Human

Trafficking, with Special Focus on Children and Women (India)

IRWPA: Indecent Representation of Women (Prohibition) Act 1986 (India)

ITPA: Immoral Traffic Prevention Act 1956 (India)

JCC: Journal of Criminal Cases

LEADS: Lanka Evangelical Alliance Development Service (Sri Lanka)

LHRLA: Lawyers for Human Rights and Legal Aid (Pakistan)

LTTE: Liberation Tigers of Tamil Eelam (Sri Lanka)

MANU: [www.Manupatra.com](http://www.Manupatra.com)

MoHFW: Ministry of Health & Family Welfare

MLC: Medico Legal Case

MWCA: Ministry of Women's and Children's Affairs (Bangladesh)

NCCWD: National Commission for Child Welfare and Development (Pakistan)

NCERT: National Council for Education, Research & Training

NCPA: National Child Protection Authority (Sri Lanka)



## **CHAPTER 1**

### **INTRODUCTION**

The Protection of Children from Sexual Offense. (POCSO) Act, 2012. 'the Act has come into power with impact from fourteenth November, 2012 alongside the Rules outlined there under.

The POCSO Act, 2012 is far reaching law to accommodate the security of youngsters from the offenses of rape, inappropriate behavior and porn, while shielding the interests of kid at each phase of the legal cycles by fusing Childe-accommodating instruments for announcing, recording of proof, examination and expedient preliminary of offenses through assigned Special Courts.

The said Act characterizes a kid any individual under eighteen years old, and characterizes various types of sexual maltreatment, including penetrative and no penetrative, attack just as lewd behavior and erotic entertainment, and considers a rape to be "disturbed" in specific situations, for example, when the mishandled youngster is commonly sick or when the maltreatment is submitted by an individual in a place of trust or authority obsethis the kid, similar to a relative, cop, instructor, or specialist. Individuals who following kids for sexual designs are likewise culpable under. the arrangements identifying with abetment in the said Act. The said Act endorse "Severe discipline reviewed according to the gravity of the offense, with a most extreme term of thorough detainment forever, and fine demise. With regards to the best worldwide kid insurance norms, the said Act likewise accommodates wandering, detailing of sexual offenses. This Casts a lawful obligation upon an individual who has information that a kid has been physically manhandled to report the offense; on the off chance that he neglects to do as such, he might be rebuffed with half year impressments and additionally fine.

The said Act additionally projects the police in the job of youngster defenders during the insightful cycle. 'in this way, the police faculty getting a report of sexual maltreatment of a Childe curve given the obligation of making critical courses of action for the consideration and assurance of the kid, for example, acquiring crisis clinical treatment for the kid and putting the kid in a haven home, should the need emerge. The police are likewise needed to carry the make a difference to the consideration of the Child Welfare Committee (MC) inside 24 hours of getting the report. so the CWC: may then continue where needed to make further plans for the wellbeing and security of the youngster.

The said act is to be executed with the dynamic support of the State Governments. Under Section 39 of the said Act, the State Government is needed to outline rules for the utilization of people including non-legislative association, experts and specialists or people prepared in and knowing about brain research, social work, actual wellbeing, emotional well-being and youngster advancement to help the kid at the preliminary and pre-preliminary stage. The accompanying rules are Model Guidelines formed by the Central Government, in view of which the State Governments would then be able to outline more broad and explicit rules according to their particular requirements.

For the most part, the offenses carried out against youngsters or the violations in which kids are the casualties are considered as wrongdoings against kids. The wrongdoings against kids are not obscure in our country. It has been common in our country since old occasions. In the cutting edge time of a government assistance State, there is acceptable number of enactments, which manages the avoidance of wrongdoings against kids. The Constitution of India accommodates the general government assistance of the youngsters and which likewise incorporates anticipation of wrongdoings against kids. Be that as it may, these sacred and authoritative arrangements have demonstrated less and the violations against youngsters are on the ascent. However, severe disciplines are given under the Indian Penal Code and other 'Uncommon and Local Laws which are for the assurance and anticipation of wrongdoings against kids in India yet the hard the truth is that violations against kids are rising step by step in India and particularly

## **LEGAL DEFINITIONS OF CHILD**

- (i) Oxford Dictionary of English defines the term 'Child' as a young human being below the age of full physical development.
- (ii) The U.N. Convention on the Rights of the Child, 1989 defines that term 'Child' means any human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.
- (iii) The Indian Christian Marriage Act, 1872 does not define the term 'Child'. Instead it defines the term 'Minor' which means a person who has not completed the age of twenty-one years and who is not a widower or a widow.
- (iv) The Majority Act, 1875 does not define the term 'Child.' It defines that every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before.
- (v) The Guardians and Wards Act, 1890 also does not define the term 'Child'. It defines that 'Minor' which means a person who, under the provisions of the Indian Majority Act, 1875, is to be deemed not to have attained his majority.
- (vi) The Reformatory Schools Act, 1897 also does not define the term 'Child'. It defines that 'Youthful Offender' means any boy who has been convicted of any offence punishable with transportation or imprisonment and who, at the time of such conviction, was under the age of fifteen years.
- (vii) The Indian Succession Act, 1925 does not define the term 'Child'. It defines that 'Minor' means any person subject to the Indian Majority Act, 1875 who has not attained his majority within the meaning of that Act and any other person who has not completed the age of eighteen years.
- (viii) The Child Marriage Restraint Act, 1929 defines that 'Child' means a person who, if male, has not completed twenty-one years of age and, if a female, has not completed eighteen years of age.

## **What are Offences against children?<sup>1</sup>**

Prior to finding out about different types of offenses against adolescents, we should initially recognize ourselves with the idea of offenses against adolescents.

Such youthful people, for the reasons for legitimate thought, going from a recently conceived child to an individual underneath the age of 18 years. The youngster, thusly, for legitimate security and thought is considered any individual of any sex matured between 0 to 18 years old.

Any offense or offenses, submitted against a kid or youngsters is/are viewed as offenses against kids or adolescents.

Offenses for being considered as offenses against adolescents need not be crimes like capturing, murder, assault, or constrained beggary; yet additionally verbal, physical, or mental maltreatment dispensed upon kids.

### **Mercilessness**

Anyway, what comprises a coldblooded act? is it simply tormenting somebody actually?

Indeed, savagery is any demonstration or exclusion which dispenses mental or actual mischief upon an individual, regardless old enough, sex, intellectual ability, and so on

Remorselessness to a youngster can incorporate anything from beating the person in question, or simply making mental pressing factor by undermining with actual mischief. (Area 351 of IPC Talks about the attack)

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<sup>1</sup> Indian Penal Code, 1860.



In Indian culture, individuals have minimal thought of kid mercilessness. In any event, hollering at a youngster for terrifying that person can add up to brutality. Individuals in our general public feel that 'spare the pole will ruin a kid'. In easier words, our general public has the feeling that except if a gatekeeper/parent acts like a martinet with a kid, such kid will never be equipped for being focused throughout everyday life. Aside from guardians, instructive establishments likewise have the feeling that actual discipline for botches is the sole method of instigating discipline inside a kid. In this way, remorselessness towards youngsters has become an acknowledged thought.

Lately, in any case, kid mercilessness in instructive foundations have seen a decay because of exacting administrative institutions. However, homegrown maltreatment of youngsters yet goes unaddressed on the grounds that kids without anyone else are uninformed of their privileges.

Aside from instructive foundations and home, youngsters can be inclined to mercilessness even from their friends, i.e different kids or another kid more seasoned in the age through harassing. Harassing implies mishandling and abusing somebody helpless by somebody more grounded, or all the more impressive, and so on

### **Use of Child For Begging**

Recollect Oliver Twist by Charles Dickens? Where the head of a kid asking racket named Faggin would prepare the devastated and stranded kids the specialty of asking, pickpocketing, and taking.

Next time you give some aid to any kid, be it's anything but a bus station or walkway or a rail line stage, asking before you for some cash utilizing phrases like 'they have not eaten anything for as far back as couple of days', attempt to be somewhat wary. That youngster can be an individual from some racket where they are constrained into asking. The very cash you are giving to the child so the person in question can have some food may ultimately wind up into the pockets of some racket chief who is utilizing that child to agitate your feelings and make a pay through that child.

Work of kids as poor people exists on a worldwide scale, regardless of a country's financial situation, you may feel that imagine a scenario where that youngster was truly ravenous and isn't identified with any such racket. Do one thing next time when a youngster approaches you requesting donations then, at that point simply get him some food all things being equal on the off chance that you truly mean to help. By doing this you will, on one hand, help the youngster and on the other guarantee that the cash doesn't wind up in the possession of some racket.

Here and there, a kid can be utilized by his own folks to ask for contributions. The cash for this situation likewise winds up with the individuals who discover a youngster as an advantageous wellspring of acquiring.

### **Inebriating a Child**

As of now referenced previously, the offerings you give to a youngster who claims himself to be eager can wind up in the possession of some racket chief. In any case, now and then it might likewise wind up for the utilization of intoxicants like cigarettes, liquor, drugs, and so forth There are merchants who for their covetousness of gains, offer these inebriating substances to the youngsters.

As racket pioneers additionally will in general inebriate the child so it gets simpler for them to control them with the goal that the kids don't flee or dissent.

Racket pioneers, yet kids may likewise be presented to substance maltreatment by their relatives who are or are substance victimizers themselves.

Once more, post inebriation, a kid may be grabbed with the end goal of offer and acquisition.

## **Capturing and Abduction**

In spite of the fact that capturing and kidnapping are utilized interchangeably for alluding to a similar reason, there exists a slim differential line between the two. The hijacking typically alludes to the expulsion of a minor from the legitimate care of the guardians or gatekeepers, while snatching alludes to the strong diverting of a grown-up individual. On account of hijacking, the assent of the abducted minor is irrelevant. Notwithstanding, on account of kidnapping, the assent of the grown-up so snatched can be a decent guard for the denounced during a criminal continuing.

Here, be that as it may, we will manage the capturing of youngsters which is an arising issue in contemporary society.

### **A seizing may occur for an assortment of reasons:**

- For requesting ransoms: In this situation, a youngster is being abducted so the ruffian can coerce some cash from his/her folks or gatekeepers.
- For the reason for selling and obtainment: Here, the youngster so captured is being offered to human dealers who further sell the kid for various purposes.
- Parental Child snatching: This mostly occurs on account of separated or isolated guardians who grab the youngster for keeping such a kid with him/her.
- For the reason for unlawful selection: Sometimes youngsters are seized and offered to reception offices bringing about illicit appropriation of such kids.
- Murder: Sometimes kids are seized for blackmailing buy-off and after the sum is gotten, they are killed by the Kidnappers with the goal that such youngsters can give observers against the ruffians. Once more, now and then kids are hijacked for different reasons like a family quarrel, individual retribution, and so forth

### **Deal and acquisition**

The deal and acquisition of youngsters is an arising and dangerous issue in the contemporary time span.

Youngsters subsequent to being captured are sold through illegal exploitation rackets and are utilized for various purposes which include:

1. For utilizing them in the beggary.
2. To constrain them for enjoying youngster prostitution.
3. To recruit them as house assistants.
4. To constrain them towards unlawful relationships or illegal connections.

### **Different offenses**

#### **Child Prostitution**

Prostitution alludes to conveying sexual administrations in return for cash or money related advantage. Kid prostitution is illicit all over the place. In spite of the fact that, there may be contrasts in the consensual age contingent on the country. For eg: In Italy, the time of assent is 14 years. By and by, illegal exploitation, abducting, and any remaining youngster related offenses generally combine or identify with kid prostitution. In spite of severe enactment all throughout the planet, kid prostitution figures out how to win because of enormous quantities of pedophiles in the public arena.

### **Child Pornography**

Kid erotic entertainment alludes to the instigating or constraining a kid for enjoying physically express demonstrations and recording them. Such actuating acts should be possible by enticing a minor through financial, or different methods. Youngster porn is restricted in every one of the countries and obscene sites are stringently coordinated for expulsion or sifting through any physically express substance including a kid from the sites.

### **Child attack and assault**

Attacks and assaults are not exclusively limited to any sexual orientation as of now. A youngster regardless of its sex can be presented to sexual attack or assault. Such offenses may be focused on a youngster by a relative, family companion, teacher or janitor or even his companions, house help, and so on

Normally, a youngster neglects to grasp the seriousness and results of such demonstrations because of an absence of information and development. Or on the other hand possibly remains quiet because of dangers from the culprits. Once in a while their family encourages them to keep up mystery to keep up the so-called family honor.

Whatever be the situation, there has been an increment in sexual offenses against a youngster and most of cases don't get revealed.

The arrangements for the discipline of the offenses referenced above discover their place in different legal authorizations.

## **OBJECTIVE OF STUDY**

Scientist is of the view that wrongdoing is inescapable in any general public and we can't think about a general public which is sans wrongdoing. Wrongdoing takes it offensive structure when it is carried out against kids since youngsters succumb to survivor of wrongdoing because of their youthfulness, honesty and reliance. Further, sanctioning of enactment and foundation of framework for its authorization isn't adequate to accomplish the ideal objective to secure youngsters against violations. Object of the examination is to realize the main driver of the expanding pace of violations against kids notwithstanding having plenty of laws at worldwide and public level for insurance of youngsters against wrongdoings. Unique accentuation is laid upon the State of Punjab on the grounds that being a prosperous State of India the wrongdoing diagram against youngsters in the State of Punjab rising step by step. It is with this view that the current examination work was attempted.

## **RESEARCH HYPOTHESIS**

Examination speculation is that disregarding adequate quantities of worldwide and public laws including the Constitution of India for the security of youngsters from violations the wrongdoings against kids are on the ascent in India and particularly in the State of Punjab. In this way, the legitimate perspective can't be the only one to kill the violations against youngsters however friendly parts of the issue ought to be investigated. Along these lines, a consolidated socio-legitimate investigation is important for this reason.

Youngsters are the establishment of human culture. The state of future human culture will be dictated by their psychological and actual prosperity. Similarly as the character of a grown-up is implicit their crude years, the advancement of a country is dictated by the need given to his kid. The youngsters are the incomparable resources of the country; subsequently in public arrangement kid's consideration ought to possess the most noticeable spot. Explicit consideration should be taken that kids grow up to become nimble residents, in great shape, intellectually strong and alert and socially and ethically sound. Yet, shockingly, notwithstanding there being various goals and laws both at public and worldwide level, the state of youngsters is a long way from agreeable. History is the observer that this honest and powerless animal has been dependent upon assortment of misuse.

## **RESEARCH METHODOLOGY**

A simply hypothetical investigation of wrongdoings against kids can't demonstrate advantageous except if an observational examination is acted to recognize the grass root issues. Consequently, observational investigation was directed in the State of Punjab to find out the developing rates of wrongdoings against kids in the State. One of the significant strides in any exploration interaction is to choose the strategy for information assortment. Specialist here utilized the survey strategy for information assortment. To complete experimental investigation information was gathered from different layers of society, which are engaged with any route with this issue. Following are the classifications of subjects which were incorporated to gather information for study

## **STATEMENT OF PROBLEM**

With the continued line of sexual maltreatment or assault of youngsters being accounted for the country over and a public clamor seething on the roads like liquid magma streaming uncontrolled from a blasting spring of gushing lava, the defrauded and mishandled kid endures peacefully. Damaged, sad and stunned relatives of shocking casualties get themselves defenseless, befuddled and unfit to adapt up to the offensive wrongdoing. Despite the fact that on 22 May 2012, the Parliament passed the Protection of Children against Sexual Offences Act, 2012 (POCSO) and which came into power on 14 November 2012, this uncommon law to shield kids from offenses of rape, inappropriate behavior and porn, stays a unimplemented law, obscure to most and past information or data of the individuals who need to apply it. Tragically, the outcome is that POCSO, an Act, which is a need in India where, as per enumeration 2011 in excess of 440 million kids checked under 18 years old comprising 37% of the complete populace of the country. Over 53% of kids supposedly overviewed in 2007 expressed that they had encountered at least one types of sexual maltreatment, isn't consented to regardless of being on the rule book. Way of talking requests solid punishments, speedy new laws and quick track courts little understanding that POCSO, as a healthy law as of now says everything. The scientist issue depends on specific downsides in the POCSO law around the accompanying issues which will be explicitly engaged which sabotages the viability of existing enactment.

## **CHAPTRAISSION ON THIS TOPIC**

**Chapter 1** – Introduction of this topic, Objective, Research Methodology

**Chapter 2-** Review of Literature

**Chapter 3-** Conceptualization of Child Sexual Offence In India And Its Types

**Chapter- 4**International legal frame work and Standards for the protection of Children from sexual offences

**Chapter 5** The Protection of Children from Sexual Offences Act (Pocso Act) 2012: A Critical

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Analysis

**a)Recent Amendment regarding the Pocso Act b)Judicial trend and recent development c)supporting cases related to the Pocso Act**

**Chapter 6** Juvenile Justice Vis-À-Vis Pocso Act 2012

- a) Conclusions
- b) Suggestions

## **CHAPTER 2**

### **LITERATURE REVIEW**

This literature review is not a meta-analysis (a synthesis of research results from various statistical methods to retrieve, select, and combine results from previous studies), it is a comprehensive review of the available literature. The aim of this thesis, which is based on secondary research involving analyzing a range of books, journal articles, Government publication, newspaper articles, internet, is to examine the occurrence of Offences against children.

REVIEW RESEARCH PAPER -THE PROBLEM OF CHILD SEXUAL ABUSE IN INDIA, - LAWS, LEGAL LACUNA AND THE BILL – PCSOB-2011 (Indian Acad. Forensic Med. April-June 2012, Vol. 34, No. 2 ISSN 0971-0973)

In the following article the authors interpreted and defined the term ‘child abuse’ together with the causes, statistics and shocking facts related to it. Authors have also analyzed the Indian scenario in this matter along with the prevailing laws related to it as well as the legal loopholes related to child sexual abuse. The POCSO bill has been discussed as well as recommendations are given for the improvement of the laws related to child abuse.

REVIEWING INDIA’S PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT

THREE YEARS ON – by Srishti Agnihotri and Minakshi Das  
(blogs.lse.ac.uk/southasia/2015/12/18/reviewing-indias-protection-of-children-from-sexualoffences-act-threeyears-on).

In this research paper, the authors assess the effectiveness of the act, identify the implementation gaps, and suggest policy recommendations to fill these gaps by providing a three-pronged analysis of the progress of the POCSO Act so far from legislative, judicial and administrative perspective.

CHILD SEXUAL ABUSE: THE UNHEARD HUE AND CRY OF A CHILD (WITH SPECIAL REFERENCE TO POCSO ACT) by- Dakshita Khanna & Wagisha [ISSN: -2394-5044] [THE WORLD JOURNAL ON JURISTIC POLITY, MAY 2017]

The authors in the present article have defined the meaning of child abuse, its elements, and laws before and after the enactment of POCSO Act, its introduction and evolution, etc. Authors have also analyzed the guidelines and laws established under the act with further scope of studies and its improvement.

**Study on Child abuse: India 2007** A National Study on Child Abuse, released by the Ministry of Women and Child Development in India with the support of UNICEF, Save the Children and Prayas. The study, which covers 13 states in India and a sample size of 12,447 children, looks at the extent and characteristics of child abuse and girl neglect in India. The purpose of the study was to develop a dependable and comprehensive understanding of the phenomenon of child abuse, with a view to facilitate the formulation of appropriate policies and programmes meant to effectively curb and control the problem of child abuse in India. Findings show that children on the street, children at work and children in institutional care reported the highest incidence of sexual assault, while the majority of abuse cases take place within the family environment, the perpetrators being close family relatives. The study has provided revealing statistics on the extent and magnitude of various forms of child abuse and has generated data on variations among different age groups, gender variations, state variations and variations within evidence groups. The findings will help strengthen the understanding of all stakeholders including

families, communities, civil society organizations and the state, and pave the way for more informed.

‘India’s Hell Holes: Child Sexual Assault in Juvenile Justice Homes’, brought out by the Asian Centre for Human Rights (ACHR). The 56-page report has been presented to RashidaManjoo, U.N. Special Rapporteur on Violence Against Women. Among the States, Madhya Pradesh recorded the highest number of child rape cases at 9,465 from 2001 to 2011, followed by Maharashtra with 6,868 cases, Uttar Pradesh 5,949, Andhra Pradesh 3,977 and Chhattisgarh 3,688.

Even Delhi reported 2,909 cases. Rajasthan had 2,776, Kerala 2,101, Tamil Nadu 1,486, Haryana

1,081, Punjab 1,068, Gujarat 999, West Bengal 744 and Odisha 736. Juvenile Justice in South Asia a report, which was commissioned by the UNICEF Regional Office for South Asia to chart progress being made by countries against their obligations under the CRC, proposes some concrete steps that can be taken to promote a more child centred, restorative system of justice for children. It is hoped that this report will mobilize all those concerned with justice in the region to prevent practices that are wasteful, harmful and an affront to child rights.

Breaking the Silence Child Sexual Abuse in India a report published by the Human Right Watch states that India’s central and state governments should ensure that the perpetrators of sexual abuse of children are brought to justice. All victims should be provided with the support they need for full physical and psychological recovery and social reintegration.

Sexual abuse and exploitation of children in West and Central Africa a report by UNICEF states that Sexual exploitation is a fundamental violation of children’s rights. It is an attack on human dignity and inhibits the social and economic development of a country: destroying a child’s life through sexual exploitation also destroys his or her chances of integrating into society.

Primary source of collection of data are acts and legislations passed by the legislature in order to curb this evil such as The Protection of children from sexual offences Act, 2012. (POCSO), The Child labor (Prohibition and Regulation) Act 1986, The Children’s Act 1960., The Constitution of India, The Immoral Traffic Prevention Act, 1986, The Indian Penal Code, 1860, The Juvenile

Justice (Care and Protection) Act 2000, The Pre-natal Diagnostic techniques (Regulation and Prevention of Misuse) Act 1994, The Prohibition of Child Marriage Act 2006., The Commission of protection of Child Rights Act 2005, The Factory Act 1948, The Right to Children to Free and Compulsory Education Act 2009, The Code of Criminal Procedure 1973, The Criminal Amendment Act 2013.

A Book by Pinki Virani, 'Child Sexual Abuse in India' highlights the problem faced by the children in India. Sunita Krishnan, and Jose Verticattil, 2001, a Situation Report: Trafficking for Commercial Sexual Exploitation, India. SANLAAP, 1997, A Study on Child Prostitution in West Bengal: The Velvet Blouse, Kolkatta etc.

To do this, research identified the most relevant, methodologically and while we focus our examination on articles published between 2010 and 2015, we also include a number of strong articles published prior to 2010 that we consider to make important contributions to this area of study. To examine what is known about the important facts about childhood sexual abuse and its various forms, we identified a number of studies that analyze the association between childhood sexual abuse and outcomes known to be significantly associated with the experience of so many bad effects of this problem. An analytically-sound articles we could find that address our research questions. Many books have been referred to study about this problem and its effects. This literature review examining the relationship between childhood sexual abuse and its various forms is important for a number of reasons. First, to identified childhood sexual abuse and its effect on child as a critical issue in the field of Childhood abuse prevention and reproductive health, and this report provides up-to-date information on the current state of the research. Second, the attention is given to various forms of child Sexual abuse in Institutions, and for the Child Sexual Abuse for commercial purpose, factors is of key importance because they represent potential areas of intervention for programs. Finally, we summarize what we do not know about this issue and provide possible directions for future research.

## **CHAPTER 3**

### **CONCEPTUALIZATION OF CHILD SEXUAL OFFENCE IN INDIA AND ITS TYPES**

Kid sexual maltreatment has been essential for history for quite a long time however it has not generally been a worthy subject of public discussion. For quite a long time, it was untouchable in the public arena to examine any upsetting cozy subtleties of day to day life and public information about sexual maltreatment was insignificant. A great many people, on the off chance that they knew the slightest bit about youngster sexual maltreatment, imagined that it just occurred among poor people and ethnic minorities. Mindfulness and public talk about CSA didn't happen until the late twentieth century. Individuals began to talk straightforwardly about youngster sexual maltreatment and make a coordinated move against it. CSA was first broadly uncovered in the public eye in the mid 1970s when women's activists drove an enemy of assault development and utilized kid sexual maltreatment as one illustration of an oppressive man centric culture. Well known people and other non-women's activists before long participated in the battle against CSA during the 1970s and 1980s. Legislators assumed control over issue to attempt to make government strategy to ensure kids. Part of the inspiration for lawmakers to make a move was to acquire positive public consideration, yet political and public interest in the issue of CSA gradually diminished. Women's activist associations were as yet the innovators in the development to construct attention to CSA during the 1980s and furthermore required another mission procedure that expressed the maltreatment so casualties could recount their accounts and let go of the agony. The definite and frightening stories of the casualties for the most part affected society and grabbed the eye of a wide range of broad communications. Papers, TV slots, magazines and radio broadcasts began covering numerous reports of youth sexual maltreatment, something they had since a long time ago stayed away from. The vast majority who recounted their accounts were grown-ups and were examining violations that were submitted numerous years, even many years, before in their childhoods. The inclusion of the media about this subject made it a current public concern on the grounds that the accounts delineated that youngster sexual maltreatment was available in all parts of society—not simply

among low financial gatherings. The individual stories made sexual maltreatment a genuine worry for the public since it reverberated with numerous individuals; urging them to engage in making approaches to secure youngsters. This new mindfulness has prompted broad exploration nearby and an improved information base about its causes and potential medicines.

The subject of youngster sexual maltreatment is as yet an untouchable in India. There is a connivance of quietness around the subject and an enormous level of individuals feel that this is a generally western issue and that youngster sexual maltreatment doesn't occur in India. A piece of the explanation obviously lies in a customary moderate family and local area structure that doesn't discuss sex and sexuality by any means. Guardians don't address kids about sexuality just as physical and passionate changes that occur during their developing years. Thus, all types of sexual maltreatment that a kid faces don't get answered to anybody. The young lady, whose mother has not addressed her even about a fundamental issue like period, can't reveal to her mom about the uncle or neighbor who has made lewd gestures towards her. This quiet energizes the victimizer with the goal that he is encouraged to proceed with the maltreatment and to take advantage of his upper hand to expose the kid to more extreme types of sexual maltreatment. All the time kids don't understand that they are being mishandled. In an examination on Women's Experiences of Incest and Childhood Sexual Abuse led by RAHI,<sup>3</sup> a portion of the respondents have expressed that till the survey was managed to them they didn't understand that they had been mishandled as kids.

They had covered the occurrence as an excruciating and disgraceful one not to be at any point advised to anybody. Some profound situated dread has consistently moved Indian families to keep their young ladies and their 'virginity' protected and numerous sorts of social and social practices have been worked around guaranteeing this. This shows that there is information on the way that a young lady youngster is hazardous however no one discussions about it. Notwithstanding, this dread is just around young ladies and the wellbeing net is by and large not reached out to young men. There is proof from this just as different examinations that young men are similarly in danger.

Ordinarily, we can't forestall 'sexual misuse' in light of the straightforward explanation that we can't understand what precisely sexual maltreatment is.

### **American Psychological Association characterizes sexual maltreatment as-**

Sexual maltreatment is undesirable sexual movement, with culprits utilizing power, conveying intimidations or exploiting casualties not ready to give assent. Most casualties and culprits know one another. Quick responses to sexual maltreatment incorporate stun, dread or skepticism. Long haul indications incorporate tension, dread or posttraumatic stress issue. While endeavors to treat sex guilty parties remain foreboding, mental intercessions for survivors particularly bunch treatment seems compelling.

### **The WHO' characterizes kid sexual maltreatment as –**

Kid sexual maltreatment is the association of a youngster in sexual action that the person in question doesn't completely appreciate, can't give educated assent, or for which the kid isn't formatively ready and can't give assent, or that disregards the laws or social restrictions of society. Youngster sexual maltreatment is confirmed by this action between a kid and a grown-up or another kid who by age or improvement is seeing someone duty, trust or force, the movement being proposed to delight or fulfill the requirements of the other individual. This may incorporate yet isn't restricted to-

- the instigation or pressure of a youngster to take part in any unlawful sexual movement;
- the shady utilization of a kid in prostitution or other unlawful sexual practices;
- the shady utilization of youngsters in obscene execution and materials.

### **ELEMENTS OF CHILD SEXUAL ABUSE**

The sexual maltreatment of kids is a special wonder; the elements are frequently totally different to that of grown-up sexual maltreatment and subsequently maltreatment of this nature can't be taken care of similarly. Highlights that portray youngster sexual maltreatment include:

- Physical power/brutality is infrequently utilized; rather the culprit attempts to control the kid's trust and conceal the maltreatment.
- The culprit is ordinarily a known and confided in guardian.
- Child sexual maltreatment frequently happens over numerous weeks or even years.
- The sexual maltreatment of kids regularly happens as rehashed scenes that become more obtrusive with time. Culprits normally connect with the kid in a progressive cycle of sexualizing the relationship after some time (for example preparing).
- Incest/intra familial maltreatment represents around 33% of all kid sexual maltreatment cases.

Pedophiles are people who lean toward sexual contact with kids to grown-ups. They are typically gifted at arranging and executing methodologies to include themselves with youngsters. There is proof to propose that pedophiles may share their data about youngsters (for example kid porn). This can happen at a worldwide level, especially using the Internet.

### **HAZARD FACTORS FOR VICTIMIZATION**

Various elements that make singular kids helpless against sexual maltreatment have been recognized:

Female sex (however in some non-industrial nations male youngsters establish a huge extent of kid casualties);

- Unaccompanied youngsters;
- Children in child care, received kids, stepchildren;
- Physically or intellectually debilitated kids;
- History of past misuse;



- Poverty;
- War/furnished clash;
- Psychological or intellectual weakness;
- Single parent homes/broken homes;
- Social disconnection (for example without a passionate encouraging group of people);
- Parents with psychological sickness, or liquor or medication reliance.

#### **PHYSICAL AND BEHAVIOURAL INDICATORS OF CHILD SEXUAL ABUSE**

•Sexualized practices incorporate such exercises as kissing with one 's tongue push into the other individual 's mouth, caressing some 's own individual 's bosoms or privates, masturbation, and musical pelvic pushing. Recognizing improper from formatively proper, for example typical, sexual practices is regularly troublesome. As a rule, sexualized conduct in youngsters could be characterized as risky when

- It happens at a more prominent recurrence or at a significantly sooner stage than would be formatively fitting (for example a 10-year-old kid versus a 2-year-old kid playing with his penis out in the open, or a 6-year-old young lady jerking off over and again in school);
- It meddles with the youngster 's advancement (for example a youngster figuring out how to utilize sexual practices as a method of drawing in with others);
- It is joined by the utilization of pressure, terrorizing or power (for example one 4-year-old constraining another to participate in shared petting of the privates or an impersonation of intercourse);
- It is related with enthusiastic pain (for example eating or dozing aggravations, forceful or removed practices);

- It reoccurs in mystery after intercession via guardians.

## **TYPES OF CHILD SEXUAL ABUSE**

### **Actual Abuse**

Actual maltreatment is the compelling of actual injury upon a kid. This may incorporate consuming, hitting, punching, shaking, kicking, beating or in any case hurting a kid. The parent or guardian might not have proposed to hurt the youngster. It might, nonetheless, be the aftereffect of over discipline or actual discipline that is in proper to the kid's age .

### **Sexual Abuse**

Sexual maltreatment is unseemly sexual conduct with a youngster. It's anything but a youngster's private parts, causing the kid to caress the grown-up's privates, intercourse, interbreeding, assault, homosexuality, exhibitionism and sexual abuse. To be considered '\_child misuse ', these demonstrations must be submitted by an individual answerable for the consideration of a kid (for instance a sitter, a parent, or a childcare supplier), or related to the kid. In the event that an outsider carries out these demonstrations, it would be viewed as rape and dealt with exclusively by the police and criminal courts .

## **CHAPTER- 4**

### **INTERNATIONAL LEGAL FRAME WORK AND STANDARDS FOR THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES**

**There can be no keener revelation of a society's soul than the way in which it treats its children.**

Nelson Mandela'<sup>2</sup>

When the considerable privileges of kids and the insurance of such rights were perceived by human social orders, States parties chose to pass differential laws in their homegrown purview and at the worldwide level. Global instruments are without a doubt among the main assets of basic liberties that perceive fundamental rights and opportunities.

In light of their degree and the security they give to people, worldwide instruments can be delegated general and exceptional instruments. General instruments, similar to the Universal Declaration of Human Rights (1948), don't address the privileges of extraordinary gatherings and for the most part cover the privileges of all people paying little heed to sexual orientation, religion, ethnicity, and so forth Conversely, extraordinary instruments cover exceptional gatherings including ladies, evacuees, kids, and so forth Every one of these instruments is especially huge at the global level and each tends to certain general or exceptional standards and privileges of people.

The current section portrays various significant worldwide instruments including Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and International Covenant on Economic, Social and Cultural Rights. Likewise, significant unique

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<sup>2</sup> Nelson Rolihlahla Mandela was a South African anti-apartheid revolutionary, political leader, and philanthropist, who served as President of South Africa from 1994 to 1999.

instruments will be examined, remembering Declaration for the Rights of the Child (1924), the Declaration on the Rights of Child (1959), United Nations Convention on the Rights of the Child (1989), the Optional Protocols to the UN Convention on the Rights of the Child on Sex Trafficking, and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts.

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**GENERAL INTERNATIONAL INSTRUMENTS**

## **Universal Declaration of Human Rights**

The Universal Declaration of Human Rights was endorsed on December 10, 1948 to check a huge occasion in mankind's set of experiences. Around then, the world was all the while experiencing the debacles brought about constantly World War and the slaughters and different violations executed by the Nazi system. The countries would not endure atrocities dependent on ridiculous appearances; nor could they overlook the way that large number of individuals had kicked the bucket because of the conflicts going on the ground. In an uncommon arrangement, the States parties from one side of the planet to the other announced that basic liberties should at this point don't be terribly disregarded considering the world responsible for any type of infringement of such rights .

Delegates of 48 nations assembled at the United Nations base camp in Paris to examine the fundamental privileges of individuals; a conversation which drove, on December 10, 1948, to setting up the last form of the Declaration which contained these fundamental rights considering the world answerable for furnishing all people with these rights. The 30 articles contained in the Declaration reflects understanding of the marking countries on the need to notice fundamental standards as far as various parts of human existence including significant rights (e.g., life, security of the individual, opportunity); social liberties and freedoms (e.g., opportunity of assessment and articulation); rights to approach treatment (e.g., the option to be liberated from segregation); financial rights (e.g., the option to reasonable wages and safe working conditions); social rights (e.g., admittance to schooling and sufficient medical services); and social rights (e.g., the option to communicate in your local language and practice your way of life) .

In the Declaration, kids were viewed as weak creatures who should get unique insurance, better instruction, and a day to day existence alongside the wellbeing of the youngster.

It ought to be noted anyway that the Declaration doesn't establish a legitimately restricting instrument by its own doing and the state signatories can't be expected to take responsibility for breaking commitments set out in the Declaration. In any case, since the Declaration is viewed as perhaps the most fundamental and principal worldwide instruments on perceiving basic freedoms, the States gatherings can depend on the Declaration to pass homegrown laws needed to ensure basic liberties.

### **International Covenant on Civil and Political Rights**

By 1948, when the Declaration was passed, many actors at the international level believed that the Declaration had to be transformed into a legally binding instrument in the form of one or more treaties.<sup>15</sup> This led to the adoption of the International Covenant on Civil and Political Rights (ICCPR) by the United Nations General Assembly on 16 December 1966, which later became enforceable on 23 March 1976 to guarantee such rights<sup>3</sup>.

The Covenant requires State gatherings to regard the equivalent privileges of people to appreciate every one of the common and political rights contained in the Covenant inside their region and subject to their ward, paying little mind to race, shading, sex, language, religion, political or other assessment, public or social beginning, property, birth or other status. It focuses on the part of the family as the normal and central gathering unit of society which is "qualified for security by society and the state. The kid has been characterized as a "minor" in the ICCPR and will appreciate specific rights paying little mind to race, shading, sex, language, religion, public or social beginning, property or birth, with respect to his family, society and the state. The ICCPR additionally underscores the child's rights to personality, including the option to "birth enlistment, to a name and to get an ethnicity. Notwithstanding, the ICCPR doesn't straightforwardly accommodate participatory rights for kids, for example, their entitlement to be engaged with choices that straightforwardly influence them .

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<sup>3</sup> *ibid*

The Human Rights Committee is the substance liable for checking the appropriate execution of the ICCPR by exploring the reports presented by State parties which are needed to remember for their reports the actions they have received to carry out the ICCPR just as challenges they encountered in carrying out the ICCPR and by giving closing comments which determine qualities and shortcomings in the execution of the ICCPR and suggestions for likely cures.

The Committee additionally indicates the issues connected, regardless of whether straightforwardly or by implication, to one side to wellbeing and makes ideas on how the State gathering should address the shortcomings saw in the execution of the ICCPR. For example, the Committee, in its overall remarks, may underline the requirement for the evacuation of sexual orientation based disparity in admittance to the rights set out in the ICCPR, require State gatherings to portray their actions for ensuring equivalent treatment of the two sexes as far as equivalent rights to instruction, food, and medical care administrations, or feature the requirement for end of those practices which disintegrate opportunity and prosperity of young ladies, through enactment and some other suitable measures. India acquiesced to the Convention on 10 April 1979.

### **The International Covenant on Economic, Social and Cultural Rights**

It was around 20 years after the reception of the Declaration that conversations prompted the entry of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR) by the United Nations General Assembly on December 16, 1966 and their implementation on January 3, 1976.

Taking everything into account, each individual should be given admittance to the assets important for their individual business. As per Article 12, ICESCR, the right of everybody to the pleasure in the most elevated achievable norm of physical and psychological well-being ought to be secured. The article prescribes to the States parties a few stages: decrease in the quantity of stillbirths and baby mortality; arrangement of required assets for solid advancement of kids just

as community to medical care administrations; upgrade of natural wellbeing and improvement in mechanical cleanliness; anticipation and therapy of sicknesses. Moreover, the Committee underscores the right to wellbeing as a huge right which ought to be went with admittance to drinkable water, safe food and lodging, hazardless word related and natural conditions, instruction about wellbeing and related data like data about sexual and conceptive wellbeing safe occupation, sensible working hours especially for perinatal period, and uncommon assurance of kids against financial and social abuse and dangers to enthusiastic wellbeing. The right to instruction is especially ensured by the arrangements of Articles 13 and 14 of the Covenant. Additionally, United Nations Educational, Scientific, and Cultural Organization (UNESCO) is needed by Article 18 to request that its agents partake in meetings held by the board of trustees, figure proposals about finishing up perceptions, get ready reports reflecting accomplishments made in satisfying the commitments set out by the Covenant, and add to the standard setting system under Article 13.36 UNESCOs interest in molding and arranging the right to schooling determined by the ICESCR has come about - from a certain point of view - in appropriate insurance of all ESCRs.

India has not marked the ICESCR Optional Protocol and has additionally not endorsed ICESCR however has marked it.

### **SPECIAL INTERNATIONAL INSTRUMENT**



### **The Declaration on the Rights of the Child (1924)**

In 1924, that is 24 years before the appropriation of the Universal Declaration of Human Rights, the League of Nations passed another revelation known as the Declaration on the Rights of the Child as the primary worldwide assertion on basic freedoms and the first of its sort only securing the privileges of youngsters. Otherwise called the Geneva Declaration, it expects individuals to meet monetary, social, and mental necessities of youngsters. The Declaration explicitly underlines government assistance of kids as weak creatures by expecting grown-ups to notice certain moral standards in the treatment of youngsters yet without determining specific legitimate qualifications for kids.

There were just five standards about the right of the kid contained in the Declaration, clearly demonstrating the focal point of the Declaration on the requirements of kids in oppressed networks, the need of stranded and deserted kids for cover (Article 4), and youngsters encountering remarkable conditions like conflict or other public crises (Article 3) .Another significant highlight note is that these five standards make no reference to organic guardians or the family as people committed by these provisions. Thus, the Declaration was not a work to consolidate predominant standards on kid security into a lawful system that ought to be trailed by State parties.

### **The Declaration on the Rights of the Child (1959)**

The subsequent global instrument to address explicitly the privileges of the youngster, similar to the 1924 Declaration, was worried about kid exploitation, this time because of exploitations of kids in furnished contentions in the period following WW II . The United Nations International Children's Emergency Fund (UNICEF) was made in 1946 dependent on the arrangements of a goal of the United Nations General Assembly. The unique target sought after by UNICEF was to help youngsters exploited straightforwardly or by implication by WWII, however later it's anything but an element to manage the most un-created nations of the world.<sup>47</sup>A number of associations were engaged with drafting another Declaration on the Rights of the Child in 1950. At last, in 1957, a clear cut venture was dined by the Commission on Human Rights to draft a Declaration as the principal worldwide instrument committed to youngsters' privileges.

A supposition expressing that youngsters could and ought to depend upon the restrictive security of grown-ups to guarantee the activity of their privileges has been supported by the 1959 Declaration and a few different instruments endorsed during the 1960s and the decade that followed. The tendency dependent on a dream that sees youngsters as articles in global law is clear in these writings, especially in Principle 8 of the Declaration, which specifies the kid will in all conditions be among quick to get insurance and help.

The extension covered by the 1959 Declaration has an all-encompassing degree contrasted with the comparative recently received instruments. In spite of the accentuation made by the Declaration as to debilitated youngsters or different kids that need specific consideration, it's anything but a more extensive degree contrasted with its 1924 partner as the previous is to a great extent worried about ordinary youth circumstances.

The Declaration made two unmistakable references to the wellbeing of the youngster when it alludes to enactment on issues related with adolescence and furthermore when it makes references to rules that can be utilized as a reason for the child's schooling and direction (Principle 7).<sup>33</sup> likewise, the Declaration not just accommodates some broad commitments to determine major problems focusing on kids however it's anything but various standards dependent on which kids can be furnished with a more joyful encounter of their youth. Be that as it may, the Declaration doesn't make any reference to parent-kids relations and how this relationship is influenced by parental power.

### **The United Nations Convention on the Rights of the Child (1989)**

No arrangement on basic liberties is all the more internationally notable that the CRC as a critical instrument received by 192 States parties.

It is by and large accepted by States parties that youngsters are more helpless against misuse, exploitation and the infringement of their privileges contrasted with grown-ups. Furthermore, youngsters, as citizenry with restricted psychological, enthusiastic, social turn of events, and admittance to political force, need extraordinary types of help to help them manage their circumstance.

All kids, paying little mind to their degree of capacities, family conditions, race, identity, and ethnicity are secured by the arrangements of the CRC and its four crucial standards (i.e., the wellbeing of the kid instead of those of guardians, appreciating the right of the youngster in a segregation free way, approaching essential rights which incorporate right to life, endurance, improvement, regarding the right to cooperation and approaching continuing or hearings fondness them), which in a vital way to deal with the right of the kid consolidates common, political, financial, social, and social rights.

The previous years anyway experienced maltreatment, disregard, misuse, and victimization kids notwithstanding the entry of the CRC as a result of a few reasons including the way that the CRC may not abrogate homegrown laws since it doesn't comprise a rule whose execution can be observed by any worldwide component other than a necessity for States gatherings to intermittently give the United Nations Committee on the Rights of the Child with reports in regards to the degree to which their enactment and strategy meet the insurances illustrated in the CRC, however there is no impressive assent for this interaction and thusly the CRC has become a just emblematic instrument.

Albeit the CRC hosts been received by numerous States gatherings, appraisal of its execution has been doled out to elements which are additionally liable for giving training, wellbeing and social consideration .

Joining of the CRC standards into homegrown enactment is futile if powerful systems for bringing issues to light are not set up.

Albeit all individuals from the CRC are needed to join its standards into their authoritative Acts and practices, no specific methodology has been endorsed with respect to its execution.

### **The Optional Protocols to the UN Convention on the Rights of the Child on Sex Trafficking**

Child trafficking occurs as a million-dollar business around the world for a number of reasons such as sexual exploitation, forced labor, armed conflicts, marriage, and organ trade. According to UNICEF, two million children per year are trafficked into prostitution or for other illegal purposes worldwide.

To provide children with greater protection, to battle against the worst forms of human rights abuses against children, and to more effectively deal with sex trafficking, child prostitution, child pornography, and child victimization by some prohibited practices,<sup>125</sup> the United Nations, on May 25, 2000, adopted two Optional Protocols to the United Nations Convention on the CRC: the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Sale of children is prohibited by this Protocol, which calls for preventing certain Acts through proper legislation and regulations. The additional Protocols are also an attempt to introduce stronger protection of children in armed conflicts<sup>35</sup>. Regarding prevention of child trafficking India ratify the Protocol on 16th August 2005.

### **The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts**

The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts (Child Soldiers Protocol) stipulates that Children under the age of eighteen may not be employed in armed conflicts, and those who are sixteen or seventeen can be recruited on voluntary basis, since children, particularly those with poor families, far from home, living in war-affected areas, or without access to education, are regarded by this Protocol as immaturity and highly vulnerable beings to violence which expose them to serious injury and death, as well as disease, physical assault, and rape<sup>36</sup>.

Children must not be employed as from line soldiers or for suicide missions and atrocities against their own family and neighbors or receive drugs to increase their courage and dull their sensitivity to pain. Casualty rates and instances of permanent disability blindness, and psychological disorders caused by horrific events are often higher among children, compared to adults, since they lack the required experience and training. India signed the Protocol on 15th November 2004, and ratified on 30 Nov, 2005.

### **The Hague Convention on Adoption**

The drafting of the CRC and the speed by which the settlement went into power prompted the worldwide local area looking at the global laws on kids from a youngster rights viewpoint. From the mid 1980's reevaluation happened in various explicit regions including appropriation and cultivating and kid equity. Likewise norms were brought up in the youngster insurance, arrangement and counteraction regions.

Because of different claims of appropriation manhandles and the states of shelters around the world, expanded insurance for kids was an extraordinary concern. This turned out to be especially evident when Ceausescu's standard in Romania finished, and the state of Romanian halfway houses was communicated around the world, a main impetus in the formation of the CRC. Following the making of the CRC in 1989, the Hague Convention on Adoption was created in 1993. This settlement, *entomb alia*, gives detail on how the youngster's agree to reception is to be given uninhibitedly and genuinely.

The Hague Convention remembers the formation of a focal expert for every part country that manages all receptions, works with certifying organizations, and guarantees that selection offices and families adhere to the norms involved in the settlement. The subsidiarity rule, which teaches Focal Authorities to initially look for "appropriate" family situation locally prior to opening the kid's dossier to between country selection, is one of the critical precepts of the Hague Convention.

The Convention's homegrown execution by in excess of eighty nations addresses exceptional advancement in worldwide law.

### **CHILD SEXUAL ABUSE IN THE UNITED KINGDOM**

One in 20 children in the UK have been sexually abused. Operation Hydrant, is handling reports passed on by the Goddard inquiry. Justice Lowell Goddard is in charge of 13 investigations involving a number of institutions, including the Church, Westminster, the borough of

Lambeth and a detention centre in Durham, along with allegations of child sexual exploitation in Rochdale, Devon, Cornwall, Oxford and Rotherham<sup>4</sup>.

### **Features of Sexual Offences Act 2003**

1. Applies to Northern Ireland, Wales and England.
2. Sets the age of a "child" at 18, amending the Protection of Children Act 1978, and provides a defence for all sexual offences when the child is 16 or over and the relationship is consensual.
3. Classifies any sexual intercourse with a child aged 12 or younger as rape.

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4. Establishes a draft of new criminal offences including crimes involving familial sexual abuse, offences involving adult relatives and offences designed to give protection to persons with a mental disorder.
5. Re-enacts the offences of abuse of a position of trust towards a child. This prohibits sexual contact between adults and children under 18 in schools, colleges and residential care.
6. Creates a number of offences related to "intent" including a new offence targeting drinks spiking.
7. Makes it an offence to give someone a substance without their consent and with the intention of stupefying or overpowering them so that any kind of sexual activity can take place. Two other "intent" offences cover situations where a person commits any offence with the intention of committing a sexual offence or where a person is a trespasser, he intends to commit a sexual offence on the premises and he knows that he is a trespasser,
8. Creates several new initiatives to protect children and the general public from sex offenders. The act allows dual criminality, meaning notification orders can

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<sup>4</sup> We've been ignoring an epidemic of child sex abuse in Britain, available at: <http://www.telegraph.co.uk/women/life/weve-been-ignoring-an-epidemic-of-child-sex-abuse-in-britain/> accessed on 18/03/2017

be extended to those convicted abroad, and creates a civil order, the sexual offences prevention order, which combines sex offender orders (Crime and Disorder Act 1998) and restraining orders (Sex Offenders Act 1997).

9. Introduces risk of sexual harm orders, specifically designed to protect children, and also creates foreign travel orders, which can be used to prevent an offender with a conviction for a sex offence against a child from travelling to countries where he is at risk of abusing children.
10. A new offence of voyeurism relating to those who observe others doing private acts without their knowledge for sexual gratification.
11. Decriminalises a series of sexual acts including the offences of gross indecency, buggery and soliciting by men (cruising).
12. Makes necrophilia and bestiality crimes.

The previously mentioned enactment doesn't apply to Scotland yet The Sexual Offences (Scotland) Act 2009, does. The Sexual Offences (Scotland) Act 2009 has altered the law identifying with assault and other sexual offenses in various manners. In the first place, it's anything but a more extensive, legal meaning of assault; Second, it characterizes assent and gets rid of the Morgan defence<sup>77</sup> lastly, it resolves the issue of liquor and medication use by casualties.

The Sexual Offences (Scotland) Act 2009 is a significant advance in the change of the law identifying with sexual offenses. It moves the accentuation away from the conduct of the grumbler back onto that of the charged person which is similarly as it ought to be; the whiner isn't the one being investigated. The issue of considering the grumbler to likewise be capable somehow or another is one that plagues our general public and is without a doubt a contributing element to the low detailing and conviction rates in Scotland. Lamentably, the issue of bringing the foundation of the grumbler into the casing is one which actually stands and isn't managed by the 2009 Act. A stunning measurement from Scottish Government Social Research showed that seven out of ten whiners were addressed in court on their sexual history .



## **Child Pornography: Legal Perspective**

### **(i) Protection of Children Act 1978**

The main piece of legislation that deals with child pornography offences in England and Wales is the Protection of Children Act 1978. It has been amended and updated several times since 1978. In its amended form, it covers the offences of taking, making and distributing child pornography. As will be explained below, the possession of indecent photographs of children was not criminalized until 1988. The 1978 Act was enacted in response to the problem of child pornography following calls by Mary Whitehouse, Chairwoman of the National Viewers and Listeners Association in 1977.

Since then the 1978 Act has been amended four times: by the Criminal Justice Act 1988 to introduce the possession offence, as the original version of the 1978 Act only criminalized taking indecent photographs of children and distributing such photographs; by the Criminal Justice and Public Order Act 1994 (CJPOA 1994) to introduce the concept of computer generated pseudophotographs; by the Criminal Justice and Court Services Act 2000 (CJCSA 2000) to extend the

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maximum imprisonment sentences for child pornography related offences; and by the Sexual Offences Act 2003 to amend the definition of a child to bring it into line with international law.

### **(ii) Emerging trends of Pseudo Photograph<sup>39</sup>**

With the amendments made by the CJPOA 1994, both the 1978 and 1988 legislation criminalize a new form of child pornography known as computer generated child pornography. The amended version of the 1978 Act made it an offence to make indecent pseudo-photographs of children. According to section 7(7) as introduced by the CJPOA 1994, pseudo photograph means an image, whether made by computer-graphics or otherwise, which appears to be a

photograph. According to section 7(8) of the 1978 Act deals with the impression conveyed by Pseudophotograph.

## **CHILD SEXUAL ABUSE IN USA**

The Child Abuse Prevention and Treatment Act (CAPTA) defines child abuse and neglect as: Any recent act or failure to act on the part of a parent or caretaker which results in death, serious physical or emotional harm, sexual abuse or exploitation; or an act or failure to act, which presents an imminent risk of serious harm.

### **Historical Background**

#### **1. CAPTA (1974): In 1974, Congress passed the first Child Abuse Prevention and Treatment Act (CAPTA). Some features of this landmark legislation are as follows:**

- Authorized programs and services for child maltreatment programs, including funding for states meeting CAPTA requirements
- Created the National Center on Child Abuse and Neglect and the National Clearinghouse on Child Abuse and Neglect Information (NCCANI).
- Mandates state to provide data on the number and sources of child abuse and neglect reports, investigation dispositions, types of maltreatment and related information.
- Provides for reporting of the National Incidence Study of Child Abuse and Neglect (last published in 2008). This report includes data from more than 5,600 community professionals who have had contact with maltreated children.

#### **2. Indian Child Welfare Act (ICWA)**

In 1978, the Indian Child Welfare Act (ICWA) was added to CAPTA. This act was designed to protect Native American children in the child welfare system.

#### **CAPTA (2010)**

CAPTA has been amended several times and was most recently amended and reauthorized on December 20, 2010, by the CAPTA Reauthorization Act of 2010. In addition to CAPTA, there

are a number of other national and local policies that support child welfare. These include:

a. Social Security Act

- b. PROTECT Act (Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003)
- c. Foster Care Independence Act
- d. Promoting Safe and Stable Families Act
- e. Keeping Children and Families Safe Act (2003)
- f. Adoption Promotion Act (2003)

**4. Preventing Sex Trafficking and Strengthening Families Act (2014):**

This act ensures that states implement mechanisms for reporting and collecting data on sex trafficking and identifying children who may be at risk of becoming victims of sex trafficking. Additionally the law strengthens existing laws related to adoption incentives and the provision of services to foster parents<sup>40</sup>.

**Development of Pornography Law in United States**

Child pornography has been a serious concern in the United States, as in England and Wales and other Western societies. The United States has, however, witnessed a major constitutional challenge to child pornography laws at the Supreme Court level following the amendments introduced by the Child Pornography Prevention Act 1996. The Act introduced the concept of computer-generated images and criminalized content that depicts children engaging in sexually explicit conduct whether or not the content in question involved real children. The Constitutional challenge involved these provisions and, as will be detailed below, the Supreme Court<sup>5</sup> struck down two of the three provisions of the 1996 Act relating to virtual child pornography decision in April 2002.

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<sup>5</sup> Ashcroft, Attorney General, et al. v. Free Speech Coalition et al., 535 U.S. 234 (US

<sup>42</sup> Miller v. California 413 U.S. 15 (1973)

### **Child Pornography Prevention Act 1996**

Physically express pseudo-photos just as PC produced pictures including kids were not covered by US enactment until October 1996. Such foul pseudo-photos were dependent upon the Miller foulness test<sup>42</sup> and other government laws managing indecency yet not viewed as kid sexual entertainment.

The Child Pornography Prevention Act 1996 („CPPA“) was acquainted with condemn material that portrays youngsters participating in physically unequivocal direct whether the substance being referred to included genuine kids. The new methodology moved from characterizing youngster sexual entertainment as far as the damage caused upon genuine kids to an assurance that kid porn was abhorrent all by itself, if it included genuine kids.

In June 1996 the Bill was the subject of extraordinary discussion, and it was incorporated as a feature of a broadspending Omnibus Consolidated Appropriations Act 1996 which was endorsed into law by President Bill Clinton. It passed the US Senate on 30 September 1996.

The CPPA 1996 extended the government denial on youngster erotic entertainment to incorporate not just obscene pictures made utilizing real kids as in 18 U.S.C. 2256(8)(A), yet in addition to any visual portrayal, including any photo, film, video, picture, or PC or computergenerated picture or picture that is, or gives off an impression of being, of a minor taking part in physically unequivocal conduct“, through the recently presented area 2256(8)(B).

The CPPA 1996 likewise added area 2256(8)(D) which expresses that any physically unequivocal picture that is publicized, advanced, introduced, portrayed, or disseminated in such a way that passes on the impression portrays a minor participating in physically express lead. Along these lines segment 2256(8)(B) restricted a scope of physically express pictures, alluded to as virtual kid sexual entertainment or foul pseudo photos that seem to portray minors however were created by implies other than utilizing genuine (real) youngsters, for example, using energetic looking grown-ups or PC imaging innovation.

The American Civil Liberties Union (ACLU) scrutinized the 1996 Act contending that the new definitions and arrangements were plainly unlawful on the grounds that they condemned pictures delivered without the contribution of a genuine youngster. The ACLU contended that its view was upheld by the choice in *Ferber*, where the Supreme Court clarified that limitations on youngster porn were reasonable on the grounds that the public authority had a convincing interest in forestalling the physical and mental maltreatment of kids who are compelled to participate in sexual action for business purposes. The ACLU alluded explicitly to the view communicated by the Supreme Court that youngster porn needs First Amendment assurance on the grounds that genuine portrayals of kid misuse and misuse influence the government assistance of kids occupied with its creation. On this premise, the ACLU contended that it was obvious from *Ferber* that the public authority's advantage depended on shielding kids from real mischief, and not safeguarding the overall population from such pictures. Besides, it guaranteed that „the bill would have a serious chilling impact on unavoidably ensured articulation.

The US Judiciary Committee dismissed the contentions raised by the ACLU and expressed that the Government had a premium in precluding PC created kid explicit portrayals on account of the real or conceivable future mischief to youngsters.

### **Protect Act, 2003**

In the PROTECT Act (Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today), Congress attacked pandering and solicitation of child pornography, and the law applied regardless of whether the material consisted of computer-generated images or even of adults who looked like children, or even if the material was fraudulent or did not exist at all.

The Protect Act was enacted in April 2003 partly in response to the Supreme Court decision in *Ashcroft v. Free Speech Coalition*. It was introduced in the US Senate in January 2003, and passed the Senate by a vote of 84 to zero in February 2003. The House of Representatives later moved to introduce a related bill entitled the Child Obscenity and Pornography Prevention Bill of 2003 in March 2003. The Bill passed by a vote of 410 to 14. A compromised version of the 2003 Protect Bill, with its amended sentencing provisions, was introduced, and passed the

House on 10 April 2003 by a vote of 400–25 and the Senate by 98–0. The President signed the bill into law on 30 April 2003, declaring:

The new law confronts an evil that is too often a cause of child abuse and abduction in America – the evil of child pornography. In the past, prosecutors have been hindered by not having all the tools needed to prosecute criminals who create child pornography. Under the Protect Act, we've seen images of children, even those created with computer technology, will now be illegal, giving prosecutors an important new tool. Obscene images of children, no matter how they are made, incite abuse, raise the dangers to children and will not be tolerated in America.

## **CANADA**

In 2001 the lawfulness of the Canadian ownership of kid sexual entertainment offense was tested at the Supreme Court level in Sharpe. This choice significantly affects banter and the advancement of laws in Canada with specific worry on the court's way to deal with composed material. In spite of the fact that there were various endeavors at enactment, there was no particular law in Canada condemning youngster porn until 1993. In 1993 the Canadian Parliament made various offenses identified with youngster sexual entertainment by presenting area 163.1 of the

Criminal Code. By authorizing these new arrangements, Parliament's aim was to forestall damage to youngsters by forbidding the creation, distribution, importation, dispersion, deal and ownership of kid porn, and by sending a harsh message to Canadians that kids should be shielded from the hurtful impacts of kid sexual maltreatment and misuse and are not suitable sexual accomplices. It ought to be noticed that not at all like the arrangements of the Protection of Children Act 1978 in England and Wales, the Canadian Criminal Code utilizes the words „child pornography“ inside segment 163.1(1).

All things considered, a kid is characterized as younger than 18 in accordance with the UN Optional Protocol to the Convention on the Rights of the Child on the offer of kids, kid prostitution and youngster erotic entertainment. It could be noticed that the above definition given by the Canadian administrators is more extensive than the definition utilized in the Protection of Children Act 1978 which manages foul photos and revolting pseudo-photos of kids in England and Wales.

The Canadian rendition remembers composed material for expansion to visual portrayals. Consequently text based substance, for example, works also as drawings could be viewed as youngster porn if different conditions inside area 163.1 of the Canadian Criminal Code are fulfilled.

As far as the offenses, under segment 163.1(2), each individual who makes, prints, distributes or has with the end goal of distribution any youngster erotic entertainment is blameworthy of an indictable offense and at risk to detainment for a term not surpassing ten years; or an offense culpable on rundown conviction. As per area 163.1(5), a blamed won't depend on a protection to a charge under segment 163.1(2) on the off chance that he accepts that an individual displayed in a visual portrayal that is affirmed to comprise youngster sexual entertainment was or was portrayed as being 18 years old or more, except if the denounced found a way all sensible ways to determine the age of that individual and found a way all sensible ways to guarantee that, where the individual was 18 years old or more, the portrayal didn't portray that individual younger than 18 years.

Under segment 163.1(3), each individual who imports, conveys, sells or has with the end goal of circulation or deal any kid porn is liable of an indictable offense and at risk for detainment for a term not surpassing ten years; or an offense culpable on rundown conviction. Essentially, under segment 163.1(4), each individual who has any kid sexual entertainment is liable of an indictable offense and at risk to detainment for a term not surpassing five years; or an offense culpable on outline conviction.

As per segment 163.1(6), where the denounced is accused of an offense under subsection (2), (3) or (4), the court will see the blamed not as liable if the portrayal or composed material that is affirmed to establish kid erotic entertainment has imaginative legitimacy or an instructive, logical or clinical reason. The previously mentioned arrangements of area 163.1 are investigated underneath considering the choice of the Canadian Supreme Court in *R v. Sharpe*. This significant case outlines expected difficulties on security and free-discourse grounds to offenses including the „private ownership of youngster erotic entertainment.



### **Amendments to Canadian Law after Sharpe's decision**

A prompt response to the Supreme Court choice in Sharpe came from the Canadian Parliament with the acquaintance of Bill C-15A with change the kid erotic entertainment arrangements of the Canadian Criminal Code. The Minister of Justice and Attorney General of Canada, the Honorable Martin Cauchon, expressed:

While the Internet permits us numerous positive chances, we realize that hoodlums utilize the Internet to target weak youngsters. These laws better prepare us to successfully ensure Canadian youth from the individuals who use innovation to mislead them ... Law requirement offices will have more suitable apparatuses to deal with guilty parties and keep future offenses from happening .

Bill C-15A got Royal Assent in June 2002. Aside from changing the current arrangements on kid erotic entertainment, the new Bill likewise presented new offenses of getting to kid porn, and speaking with kids by means of a PC framework to work with or submitting certain sexual offenses, for example, kid baiting or snatching.

After the Bill C-15A alterations were made, Bill C-255 – an Act to revise the Criminal Code (insurance of kids and other weak people) – and the Canada Evidence Act were presented in the House of Commons of Canada on 8 October 2004. Bill C-257 was intended to revise further the kid porn arrangements of the Canadian Criminal Code.

After the Bill C-15A alterations were made, Bill C-255 – an Act to correct the Criminal Code (assurance of youngsters and other weak people) – and the Canada Evidence Act were presented in the House of Commons of Canada on 8 October 2004. Bill C-257 was intended to revise further the kid erotic entertainment arrangements of the Canadian Criminal Code.

The changes were set off by misery with respect to the idea of kid porn laws following the *R v. Sharpe* judgment of the Supreme Court and its application by the courts in Canada, just as being because of the commitments emerging after the sanction of the United

Countries Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography by the Canadian government. Bill C-2 was authorized on 20 July 2005 and it corrected the kid porn arrangements concerning the sort of composed and sound material that establishes youngster porn, and as for the kid porn offenses, guards and punishments. Following the establishment of Bill C-2, Canada sanctioned the United Nations Optional Protocol in September 2005. Bill C-2 expanded the punishments from a half year to a limit of year and a half for making of kid erotic entertainment under segment 163.1(2)(b); appropriation of kid porn under 163.1(3)(b); ownership of kid porn under area 163.1(4)(b); and for getting to kid porn under segment 163.1(4.1)(b).

Bill C-2 changes, in a real sense known as the „Robin Sharpe revisions, the Canadian administrators nullified and eliminated the guard of imaginative legitimacy from area 163.1(6). The new form of the safeguard presented by Bill C-2 actually gives a restricted authentic reason identified with workmanship protection under the new subsection 163.1(6)(a). This restricted guard is important for a twoprongeddefence which must be brought up if the substance being referred to has an authentic reason identified with the organization of equity or to science, medication, schooling or workmanship and doesn't represent an excessive danger of mischief to people younger than 18 years. As per Department of Justice Canada, the changes limit and explain the test for the kid sexual entertainment guard. The Department of Justice Canada contended, „this single real reason guard fuses the damage based standard utilized by the Supreme Court of Canada in maintaining the current youngster porn arrangements in 2001.

### **COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN AFRICA**

Since the First World Congress held in Stockholm in 1996, the term business sexual misuse has produced a lot of discussion. Information on the degree of youngster misuse must be gauges. Misuse is constantly secret thus arranging exact figures is almost outlandish. As indicated by the United Nations (UN), the quantity of youngsters dealt yearly inside and remotely in Africa is around 1.2 million. An unmistakable comprehension of the idea of the issue across Africa is required to handle the issue and, in light of a genuine comprehension of the size of the issue, screen the advancement towards destroying kid sexual abuse.

Perceive the different push-pull factors that encourage kid association in business sexual misuse. First and foremost there is request. In the midst of developing industrialism both in created and agricultural nations, youngsters are in danger of being viewed as simply one more ware to be purchased and sold. The development of the erotic entertainment industry including, most as of late, on the web has prompted expanded resistance of and interest for sexual pictures including those of kids. Besides there is supply. The accessibility of kids for sex work is straightforwardly identified with family destitution. There might be not many elective kinds of revenue.

Destitution is the most successive clarification referred to yet neediness alone doesn't represent the enormous number of youngsters enlisted into the sex business.

Other amazing clarifications of the business sexual abuse of kids (CSEC) incorporate pedophilia, simple entry, loosened up legitimate authorization conditions, obligation subjugation, intergenerational prostitution, and the high settlements got by kid shipping off sex touristreceiving nations. Different clarifications which have been less completely contemplated incorporate local area crumbling, social and social degrading of kids, and global wrongdoing associations with trans-public transportation and monetary abilities.

The cycles whereby kids are selected into sexual abuse are differed and are mind boggling. They almost consistently include grown-up accessories including guardians and more seasoned kin.

Others are enrolled into "sex work" through constrained kidnapping, by pressure from their folks, and through beguiling arrangements among guardians and dealers, including undetected agents of wrongdoing rings. When selected, these kids normally are taken or travel to work locales found huge spans from their place of beginning. Seclusion from their families and companions is the standard. Few can set up new associations with people other than the individuals who are dealing with their exploitation. Viciousness, constrained medication use and dangers to the mark of death are just important for the every day maltreatment to which most of these youngsters and youth are oppressed.

The United Nations Convention on the Rights of the Child (UNCRC) and African Charter on the Rights and Welfare of the Child (ACRWC) challenge the generally „unquestionable“ control guardians apply over their youngsters and the customary practices inside families that hurt kids like early marriage. By and large, laws that restrict early marriage have confronted solid obstruction from social and strict gatherings and youngster marriage keeps on being an issue in various African nations. Most homegrown laborers are young ladies who come from helpless families. Misuses submitted by businesses and work specialists incorporate physical, mental, and sexual maltreatment; constrained control in the working environment; non-installment of wages; and, unreasonably long working hours with no rest days. In the most exceedingly awful circumstances, ladies and young ladies are caught in circumstances of constrained work or have been dealt into constrained homegrown work in conditions likened to bondage.

Moreover, HIV/AIDS is both a reason for and a contributing variable in the sexual misuse of kids. Kids occupied with prostitution are more in danger of physically communicated illnesses and HIV contamination, as assurance is seldom given and every day endurance a really squeezing concern.

Stranded kids are significantly more reasonable than non-vagrants to be working in business agribusiness, homegrown help, business sex and as road merchants. Kids who live on the roads are defenseless against business misuse as a methods for endurance. They are additionally powerless against pimps and dealers.

The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts 2000 doesn't explicitly talk about the sexual abuse of kids yet forbids the obligatory enlistment into military for every one of those under 18. Ladies and kids have been recruited as „sex slaves“ and compelled to offer sexual types of assistance to military.

### **Africa's International and Regional Commitments**

African governments have made a number of commitments to protect the rights of children from sexual exploitation. At the international level, there has been a growing recognition and emphasis amongst governments of the importance of children's rights and the call for more effective implementation of international legal instruments on children. International and

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regional instruments on children must be translated into national legislation, policies and programmes in order to have value and adequately protect children from sexual exploitation.

Sexual exploitation of children is the focus of a number of international laws and treaties.

### **The United Nations Convention on the Rights of the Child (UNCRC)**

Article 34 of the Convention calls for inter-disciplinary measures aimed at preventing the inducement or coercion of a child to engage in unlawful sexual activity, the exploitative use of children in prostitution and/or other forms of unlawful sexual practices, the exploitative use of children in pornographic performances and materials.

- Article 35 of the Convention also calls for a variety of measures to prevent the abduction of, the sale of or traffic in children for any purpose or any form.
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)
- The Trafficking Protocol supplements the UN Convention against Transitional Organized Crime and is the first universal instrument to address all aspects of human trafficking.
- The Trafficking Protocol (sometimes referred to as the Palermo Protocol) defines trafficking as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force, or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.
- In addition, the Protocol mandates States to provide physical, psychological and social recovery of child victims of trafficking.
- State parties are also mandated to establish comprehensive policies that prevent children from re-victimization.
- The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000)

- The Optional Protocol requires States to criminalize the sale of children, prostitution and trafficking.

### **Selected National Legal Frameworks**

Legislation and law enforcement play an integral role in the protection of children from commercial sexual exploitation. The Agenda of Action against Commercial Sexual Exploitation of children provides a detailed framework and categories of action to be taken by governments in partnership with civil society organization for combating sexual crimes perpetrated on children. These include prevention mechanisms; protection within laws; recovery, rehabilitation and reintegration; and child participation.

There have been various national legislative reform efforts on the continent to address the sexual exploitation of children. In general, the countries studied have utilized several approaches in their law reform initiatives: (i) enacting consolidated children's acts; (ii) amending the criminal law and revising the penal code; and (iii) enacting legislation which prohibits specific offences and/or a combination of these approaches. However, the complex patchwork of existing legislation relating to children's rights poses significant barriers to the effective harmonization of national laws with international norms and standards. This is further compounded by the pluralist nature of legal systems on the continent, where common and civil law coexist with customary and religious law.

### **Ethiopia**

The Ethiopian criminal law pertaining to the sexual exploitation of children was reviewed and amended in 2004 to provide enhanced protection to children from sexual exploitation. Also, notable, the Constitution of the Federal Democratic Republic of Ethiopia 1994, Article 18 (2) prohibits human trafficking for any purpose.<sup>6</sup> In Ethiopia, the revised penal code provides:

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<sup>6</sup> See Constitution of the Federal Democratic Republic of Ethiopia 1994, Article 18 (2)

It is an offence to procure a minor for prostitution, even if he/she consents, or to keep a minor in a brothel for the sake of prostitution.<sup>106</sup> If convicted, this crime carries a prison term of five years<sup>7</sup> rigorous imprisonment and a fine of up to 10,000 Birr (approx. USD 1,125);

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Abducting a minor with the intent to use him/her for prostitution is an aggravated crime punishable by ten to twenty-five years imprisonment<sup>7</sup>;

It is illegal to have sexual relations with children and there is enhanced punishment where the child is under 13;

The trafficking of children or women for gain or to “gratify the passions of another” by enticing, inducing or procuring a child or a woman for prostitution<sup>8</sup> or, arranging or providing for the procurement of trafficked children is unlawful.

Boys and girls should be recognized as social agents with the right and capacity to be consulted on matters that affect them, to express their opinions freely and have those opinions taken into account, and to seek, receive and impart information. Children have to be given the opportunity to influence social policies and measures that address sexual abuse and exploitation. Listening to children and learning from their experiences and recommendations are key to designing and implementing effective preventive and protective mechanisms.

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<sup>7</sup> Criminal Code of the Federal Democratic Republic of Ethiopia, Articles 635. Ibid. Articles 589, 590 (1) (a) and 590 (2) (e)

<sup>8</sup> See Article 636 (a). Offenders may be punished with up to 25 years rigorous imprisonment, a fine of up to 10,



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## CHAPTER 5

### **The Protection Of Children From Sexual Offences Act (Pocso Act) 2012: A Critical Analysis**

India, with the world's second biggest youngster populace, has a perplexing system of rights and ensures that have been made for kids across a huge swath of lawful authorizations going from the Constitution from one perspective to the Indian Penal Code and other legal arrangements on the other. The Constitution of India makes an exemption for the general standard of equity by empowering the State to make uncommon arrangements for youngsters . A new alteration to the Constitution further gives youngsters between the ages of six and fourteen the crucial right to free and mandatory training. Various arrangements in the Chapter on Fundamental Rights have likewise been given to forestalling the dealing of youngsters and their work in perilous occupations. The sacred system for the assurance of the kid is, notwithstanding, not restricted in structure to negative certifications enforceable against the State alone. Other than the public system, India is a signatory to the United Nations Convention on the Rights of the Child, 1989. This solid global and sacred command for securing the privileges of a kid has shockingly, nonetheless, not been borne out by different institutions of the Indian governing body. A valid example is the nation's superb criminal statute the Indian Penal Code obvious hesitance on youngster sexual maltreatment.

Inferable from the disappointment of the Code to unequivocally perceive kid sexual maltreatment as an unmistakable criminal offense, examiners and courts are frequently compelled to depend on other summed up arrangements which are regularly unreasonably unprepared to manage a few examples of misuse. It is just young lady youngsters who have been exposed to peno-vaginal infiltration that can be covered under the ambit of assault as characterized under the resolution. Different types of sexual maltreatment including exhibitionism, contacting, penileanal infiltration, penile-oral entrance and item vaginal infiltration are left unpunished by the arrangement . Such different types of infiltration are covered by another arrangement of \_outraging the humility of ladies' which accompanies its own things.

Given that the humility of ladies has been the subject of extraordinary legal understanding by the Hon'ble Supreme Court, youngsters may regularly get themselves unequipped for having such humility. It might additionally be seen that if an instance of youngster misuse is tried to be arraigned under Section 3547, the most extreme quantum of discipline is decreased to two years instead of at least seven years in instances of assault. What is maybe far more terrible is that neither of these arrangements could be depended on if the survivor of youngster misuse turns out to be a kid. The just applicable genderneutral arrangement in the Code is maybe its most questionable one unnatural offenses. While it perceives the chance of sexual maltreatment of young men, its high benchmark of the meaning of the word penetration<sup>1</sup> leaves attack of young men unaddressed.

Such glaring lacunae in India's criminal law have prompted an upheaval of shock by youngster rights activists who accept that a different law planned only to battle kid sexual maltreatment is the need of great importance. To adequately address the shocking violations of sexual maltreatment and sexual abuse of youngsters through not so much equivocal but rather more tough lawful arrangements, the Ministry of Women and Child Development advocated the presentation of the Protection of Children from Sexual Offences Act, 2012. The Act is a welcome piece of enactment, in that it perceives pretty much every known type of sexual maltreatment against kids as culpable offenses, generally ruling out vagueness in its translation. Further, by accommodating a kid agreeable legal interaction, the Act empowers kids who have been casualties of sexual maltreatment to carry their guilty party to book and look for change for their torment, just as to acquire help with conquering their injury. It makes the various offices of the State, like the police, legal executive and youngster insurance hardware, partners in getting equity for a physically manhandled kid.

### **NATIONAL CRIME RECORDS BUREAU (NCRB) FOR 2015: DATA ANALYSIS**

According to data compiled by the National Crime Records Bureau (NCRB) for 2015, 8,800 cases of rape on children were registered across the country under the Protection of Children against Sexual Offences Act (POCSO). In 2,227 cases, or 25.3 per cent, the offenders were

found to be employers or co-workers. This is the first time that NCRB has tabulated data in terms of the relationship of the victim and the accused in cases involving rape.

## **SURVEY OF MINISTRY OF WOMEN AND CHILD DEVELOPMENT**

In year 2007, an administration appointed review has tracked down that over 53% of kids in India are exposed to sexual maltreatment, yet most don't report the attacks to anybody . The review covered various types of youngster misuse: physical, sexual and passionate just as female kid disregard, tracked down that two out of each three kids have been actually manhandled.

Guardians and family members, people known to the kid or in a place of trust and duty were generally discovered to be the culprits of youngster sexual maltreatment in the country. As indicated by the ladies and kid advancement service supported report, which expects more prominent importance in the background of the Nithari killings that brought into center the issue of kids' wellbeing, those in the age gathering of 5-12 years revealed more elevated levels of misuse .

While delivering the study, then, at that point ladies and kid improvement serve RenukaChowdhary said, "Youngster misuse is covered in mystery and there is a connivance of quietness around the whole subject. The service is dealing with another law for insurance of kids' privileges by unmistakably determining offenses against youngsters and solidifying disciplines.

The study, done across 13 states and with an example size of 12,447, uncovered that 53.22% of kids announced having confronted at least one types of sexual maltreatment, with Andhra Pradesh, Bihar, Assam and Delhi revealing the most noteworthy level of such occurrences. In half of kid misuse cases, the victimizers were known to the youngster or were in a place of trust and obligation and most kids didn't report the make a difference to anybody.

The study, supported by WCD service and did by the NGO Prayas in relationship with UNICEF and Save the Children, tracked down that more than half youngsters were exposed to either type of actual maltreatment and a bigger number of young men than young ladies were mishandled truly. The first-historically speaking review on kid maltreatment in the nation uncovered that almost 65% of schoolchildren revealed confronting whipping \_beatings by instructors' for the most part in government school. Of youngsters truly manhandled in families, in 88.6% of the cases, it was the guardians who were the culprits. Over half had been physically mishandled in manners that went from extreme, for example, assault or caressing to milder types of attack that included coercive kissing.

The investigation likewise met 2,324 youthful grown-ups between the ages of 18 and 24, practically 50% of whom detailed being actually or physically manhandled as kids. With regards to psychological mistreatment, consistently youngster was exposed to enthusiastic attack and in 83% of the cases, guardians were the abusers. The point of the investigation was to foster an extensive comprehension of the wonder of kid misuse, so as to work with the plan of proper strategies and projects intended to adequately check and control the issue of kid maltreatment in India .

## **POCSO ACT**

The POCSO Act was enacted on 14 November 2012 throughout India, except the state of Jammu and Kashmir. The Act was enacted to protect children from offences of sexual assault, sexual harassment and pornography and to provide a child friendly system for the trial of these offences. It also intends to protect the child through all stages of judicial process and gives paramount importance to the principle of best interest of the child.

## **Before POSCO**

In State Vs Pankaj Chaudhary<sup>54</sup>

In this case the question for consideration is, as to what was the exact nature of the act committed by the Appellant. Whether it was an offence of rape and carnal intercourse against

the order of nature or it was an attempt to rape/or attempt to have a sexual intercourse against the order of nature or it was merely an indecent assault within the meaning of Section 354 IPC.

The court held that the Appellant's conviction under Section 376/511 and 377/511 IPC is set aside, instead, he is convicted for the offence punishable under Section 354 IPC. He is sentenced to undergo Rigorous Imprisonment for two years and to pay fine of Rs. 2,000/- or in default of payment of fine to undergo further RI for three months. The conviction and sentence under Section 506 IPC needs no interference, the same is accordingly maintained. It goes without saying that the Appellant shall be given benefit under Section 428 Code of Criminal Procedure. The case clearly reveals the trauma that child victims faced, where the accused had inserted his fingers inside the vagina and anus of a five-year-old girl, and he was accused of outraging the

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modesty of a woman as there was no concept of penetration with fingers in Indian law. The defence had won in this case.

### **After POSCO**

#### **Nishu Vs Commissioner of Police, Delhi and Ors<sup>9</sup>.**

Petitioner is a minor who was kidnapped on 25.10.2013 by a group of nine persons who had kept her confined up to 8.11.2013. The accused persons, in different combinations, had repeatedly raped her and that one of the accused, named, Pradeep is a constable in Haryana Police. After being recovered, medical examination of the girl was done, but neither the copy of the report was not furnished nor any FIR under Section 376 D of the Indian Penal Code or the provisions of the POCSO Act registered against the accused persons.

Petition under Article 32 has been filed seeking directions from the Court for registration of FIR under above mentioned sections; for the arrest of the accused. Appropriate action against the officers of the Delhi and Haryana police by way of departmental proceedings for their

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<sup>9</sup> (2014) 12 SCC 546

refusal/failure to register the FIR under the aforesaid sections of the Indian Penal Code as well as the provisions of POCSO.

In view of the arguments asserted by the counsels of both the respondents, court held that no order or direction to the first Respondent would be justified in view of the fact that the case has been registered by the Haryana Police and has been investigated by the authorities of the State of Haryana. The Hon<sup>ble</sup> Court also find out that as the charge sheet has been filed against all the nine accused and the trial has commenced in the meantime it will be wholly inappropriate to exercise our jurisdiction under Article 32 of the Constitution. Thus the case is an example to show the changed scenario of child victim after legislation of POCSO Act.

### **SALIENT FEATURES OF POCSO ACT**

1. Gender neutral: Meaning thereby crimes of such nature done to male or female child will be dealt with, by this act only.
2. Burden of proof: The rule under this act is guilty until proved innocent<sup>||</sup> instead of the general rule innocent until proved guilty<sup>||</sup> and to prevent misuse of law, punishment has been provided for false complaints or false information with malicious intent.
3. It makes the recording of abuse mandatory: This act also states that it is mandatory for the police to register an FIR in all cases of child abuse. A child's statement can be recorded even at the child's residence or a place of his choice and should be preferably done by a female police officer not below the rank of sub-inspector.
4. It lists all known types of sexual offences towards a minor: It punishes penetrative sexual assault, aggravated penetrative sexual assault, non-penetrative sexual assault, aggravated non-penetrative sexual assault, sexual harassment, use of minor for pornographic purposes, attempt or abetment of offence and even failure to report an offence, i.e., if there is an apprehension of such offence to be committed, then the same should be immediately reported. Failure to report will attract imprisonment of 6 months or fine or both.



5. It provides for the protection of minors during the judicial process.

i) For speedy trial, the evidence of the child is to be recorded within a period of 30 days<sup>10</sup>.

ii) Special courts have been set up to conduct trials, which should be completed within one year<sup>11</sup>.

These courts must ensure that, the minor is not exposed in any way to the accused during the recording of evidence and his identity is not disclosed at any time during the investigation or trial<sup>12</sup>. The minor is not made to repeat his/her testimony in court, and that he/she can give the testimony using a video link. The defence routes all questions through the judge and is not allowed to ask them in an aggressive manner. An interpreter, translator, special educator or any other expert is present in court for the minor's assistance. There is a defined criteria for awarding compensation by the Special Court that includes, loss of educational and employment opportunities along with disability, disease or pregnancy as the consequence of the abuse.

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It has raised the age of consensual sex from 16 years as per Indian Penal Code, 1860 to 18 years.<sup>24</sup> This means that

- Any person (including a child) can be prosecuted for engaging in a sexual act with a child irrespective of whether the latter consented.
- A husband or wife can be prosecuted for engaging in a sexual act with his or her spouse under the age of eighteen years.

7. People who traffic children for sexual purposes are also punishable under the provisions relating to abetment in the Act.

8. In keeping with the best international child protection standards, the Act also casts a legal duty upon a person who has knowledge that a child has been sexually abused to report the offence; if he fails to do so, he may be punished with six months' imprisonment and/ or a fine.

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<sup>10</sup> Section 35 of the POCSO Act 2012

<sup>11</sup> Supra note 9

<sup>12</sup> Section 24(3) of the POCSO Act 2012

9.The Act stipulates that a case of child sexual abuse must be disposed of within one year from the date the offence is reported.

**TYPES OF SEXUAL OFFENCES AND PUNISHMENTS**

S.No	Offence and Description	Punishment
1	<b>1 Section 3</b> Penetrative Sexual Assault Inserting body part or object in a child, or making a child does this with another.	<b>Section 4</b> Not less than seven years of imprisonment which may extend to imprisonment for life, and fine
2	<b>Section 5</b> <b>Aggravated Penetrative Sexual Assault</b> Penetrative sexual assault by a police officer, member of armed forces, public servant, staff of remand home, jail, hospital or school. It includes penetrative sexual assault committed by any other person through gang penetrative assault, penetrative sexual assault using deadly weapons, fire, heated substance or corrosive	<b>Section 6</b> Not less than ten years of imprisonment which may extend to imprisonment for life, and fine

	<p>substance, penetrative sexual assault which physically incapacitates the child or causes child to become mentally ill, causing grievous hurt or bodily harm and injury to the sexual organs of the child, making girl child pregnant, inflicting child with HIV or any other life threatening disease, penetrative sexual assault more than once, penetrative sexual assault on a child younger than 12 years, by a relative, owner / manager or staff of any institution providing services to the child, by a person in a position of trust or authority over the child, committing penetrative sexual assault knowing the child is pregnant, attempts to murder the child, by a person previously convicted for a sexual offence, penetrative sexual assault in the course of communal or sectarian violence, penetrative sexual assault and making the child strip or parade naked in public.`</p>	
<p>3</p>	<p><b>Section 7</b> <b>Sexual Assault</b> With sexual intent touching the private parts of a child</p>	<p><b>Section 8</b> Not less than three years of imprisonment which may extend to five years, and fine</p>
<p>4</p>	<p><b>Section 9</b> <b>Aggravated Sexual Assault</b> Sexual assault by a police officer, member of armed forces, public servant, staff of remand home/jail/hospital/school, etc, and other acts of sexual assault by any person as mentioned in the second part of section 5, except making a girl child pregnant.</p>	<p><b>Section 10</b> Not less than five years of imprisonment which may extend to seven years, and fine (Section 10)</p>

5	<p>Section 11</p> <p>Sexual Harassment of the Child With sexual intent:</p> <ul style="list-style-type: none"> <li>• showing any object/body part, or</li> </ul>	<p><b>Section 12</b></p> <p>Up to three years of imprisonment and fine</p>
	<ul style="list-style-type: none"> <li>• making any gesture aimed at a child</li> <li>• making a child exhibit her body enticing or threatening to use a child for pornography</li> </ul>	
6	<p><b>Section 13</b></p> <p>Use of Child for Pornographic Purposes</p>	<p><b>Section 14</b></p> <p>(1) Imprisonment up to five years and fine and in the event of subsequent conviction, up to seven years and fine</p>
7	<p><b>Section 14 (2)</b></p> <p>Penetrative sexual assault by directly participating in pornographic acts</p>	<p><b>Section 14 (2)</b></p> <p>Not less than ten years of imprisonment, which may extend to imprisonment for life, and fine</p>
8	<p><b>Section 14 (3)</b></p> <p>Aggravated penetrative sexual assault by directly participating in pornographic acts</p>	<p><b>Section 14 (3)</b></p> <p>Rigorous imprisonment for life and fine</p>
9	<p><b>Section 14 (4)</b></p> <p>Sexual assault by directly participating in pornographic acts</p>	<p><b>Section 14 (4)</b></p> <p>Not less than six years of imprisonment which may extend to eight years, and fine</p>
10	<p><b>Section 14 (5)</b></p> <p>Aggravated sexual assault by directly participating in pornographic acts</p>	<p><b>Section 14 (5)</b></p> <p>Not less than eight years of imprisonment which may extend to ten years, and fine</p>

11	<b>Section 15</b> Storage of pornographic material involving a child for commercial purposes	<b>Section 15</b> Three years of imprisonment and / or fine
12	<b>Section 21</b> Punishment for failure to report or record a case by (i) Any person; (ii) Any person, being in charge of any company or an institution. (This offence does not apply to a child)	<b>Section 21</b> (i) Imprisonment of either description which may extend to six months or with fine or  with both. (ii) Any person, being in charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub section (1) of section 19 in respect of a subordinate under his control shall be punished with imprisonment for a term which may extend to one year and with fine.
13	<b>Section 22</b> (1) Punishment for false complaint or false information in respect of an offence committed under sections 3, 5, 7 and section 9 solely with the intention to humiliate, extort or threaten or defame him. (2) False complaint or providing false information against a child knowing it to be false, thereby victimising such child in any of the offences under this Act. (This offence does not apply to a child)	<b>Section 22 (1)</b> Imprisonment for a term which may extend to six months or with fine or with both. (2) Imprisonment which may extend to one year or with fine or with both.

## **DETAILED ALYSIS OF POCSO: MENACE THAT ACT SEEKS TO CURE**

The Act defines a child as any person below eighteen years of age, and regards the best interests and wellbeing of the child as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child. It defines different forms of sexual abuse, including penetrative and non-penetrative assault, as well as sexual harassment and pornography, and deems a sexual assault to be —aggravated under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority vis-à-vis the child, like a family member, police officer, teacher, or doctor. People who traffic children for sexual purposes are also punishable under the provisions relating to abetment in the Act.<sup>28</sup> The Act prescribes stringent punishment graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life and fine.

1. Under Section 44<sup>13</sup> of the Protection of Children from Sexual Offences(POCSO)Act and Rule 6 of POCSO Rules, 2012, the National Commission for Protection of Child Rights, in addition to its assigned function, also mandated.
2. To monitor the designation of Special Courts by State Governments.
3. To monitor the appointment of Public Prosecutors by State Governments.
4. To monitor the formulation of the guidelines described in the Act by the State Governments, for the use of non-governmental organisations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial

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<sup>13</sup> Section 44 of POCSO Act- Monitoring of implementation Act : (1) The National Commission for Protection of Child Rights constituted under section 3, or as the case may be, the State Commission for Protection of Child Rights constituted under section 17, of the Commissions for Protection of Child Rights Act, 2005 shall, in addition to the functions assigned to them under that Act, also monitor the implementation of the provisions of this Act in such manner as may be prescribed .(2) The National Commission or, as the case may be, the State Commission, referred to in sub-section (1), shall, while inquiring into any matter relating to any offence under this Act, have the same powers as are vested in it under the Commissions for Protection of Child Rights Act, 2005 .(3) The National Commission or, as the case may be, the State Commission, referred to in sub-section (1), shall, also include, its activities under this section, in the annual report referred to in section 16 of the Commissions for Protection of Child Rights Act, 2005.

and trial stage to assist the child, and to monitor the application of these guidelines.

5. To monitor the designing and implementation of modules for training police personnel and other concerned persons, including officers of the Central and State Governments, for the effective discharge of their functions under the Act.
6. To monitor and support the Central Government and State Governments for the dissemination of information relating to the provisions of the Act through media including the television, radio and print media at regular intervals, so as to make the general public, children as well as their parents and guardians aware of the provisions of the Act.

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7. To call for a report on any specific case of child sexual abuse falling within the jurisdiction of a CWC.
  8. To collect information and data on its own or from the relevant agencies regarding reported cases of sexual abuse and their disposal under the processes established under the Act, including information on the following:-
    - a. Number and details of offences reported under the Act;
    - b. Whether the procedures prescribed under the Act and rules were followed, including those regarding timeframes;

### **ROLE OF CHILD WELFARE COMMITTEES (CWC)**

This Act need to be reported to the CWC within 24 hours of recording the complaint.<sup>60</sup>The Child Welfare Committees (CWC) play a vital role under the POCSO Act, cases registered under CWC should take into account the opinion of the child to decide on the case within three days and conclude whether the child should remain in an institution or be with the family. The CWC should nominate with the consent of the child parent / guardian / other person who the child trusts, a support person to assist the child during the investigation and trial of the case.

## **ROLE OF STATE COMMISSIONS FOR PROTECTION OF CHILD RIGHTS**

The State Commissions for Protection of Child Rights (SCPCR) has been empowered and with the responsibility of monitoring the implementation of the provisions of the POCSO Act 2012, to conduct inquiries and to report the activities undertaken under the POCSO Act 2012, in its annual report<sup>61</sup>. The commission is also empowered to call for a report on any specific case of child sexual abuse falling within the jurisdiction of a CWC. The commission can also recommend interim relief, or make recommendations to the state government to effectively redress the matter.

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<sup>60</sup> Section 19(6) of the POCSO Act

<sup>61</sup> Section 44 of the POCSO Act

## **DUTY ON STATE TO SPREAD AWARENESS**

The Act casts duty on state to spread awareness to the general public, of the provisions of this act through media i.e. television, radio and print at regular intervals. The POCSO Act of 2012 looks into a support system for children through a friendly atmosphere in the criminal justice system with the existing machinery i.e. the CWC and the commission. The positive aspect is the appointment of the support person for the child who would assist during investigation, pretrial, trial and post-trial. The major challenge also would be convergence between different entities under different legislations. The act makes it mandatory to report to the police about any offence defined under POCSO Act 2012. The recent decision of the cabinet in a bill to reduce the age of consent for sex to 16 years will mean that the protection given under this law to protect children from sexual crimes will be restricted to the children who are 16 years of age. There is a fear that this would end up taking away safeguards available to victims under the POCSO Act, especially girls in the 16-18 age bracket. The benefits of POCSO Act would trickle down to the child only if this Act is implemented in its true sense and spirit by all the agencies.

The Act defines a child as any person below eighteen years of age, and regards the best interests and well-being of the child as being of paramount importance at every stage, to ensure the

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healthy physical, emotional, intellectual and social development of the child. It defines different forms of sexual abuse, including penetrative and non-penetrative assault, as well as sexual harassment and pornography, and deems a sexual assault to be —aggravated under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority vis-a-vis the child, like a family member, police officer, teacher, or doctor. People who traffic children for sexual purposes are also punishable under the provisions relating to abetment in the Act.

### **Criteria of Compensation**

The rules laid down in this act also had defined a criteria of awarding the compensations by the special court that includes loss of educational and employment opportunities along with disability, disease or pregnancy as the consequence of the abuse. This compensation would be awarded at the interim stage as well as after the trial ends.

### **Trafficking of Children**

People who traffic children for sexual purposes are also punishable under the provisions relating to abetment in the said Act. The said Act prescribes stringent punishment graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life, and fine. The said Act recognizes almost every known form of sexual abuse against children as punishable offences, and makes the different agencies of the State, such as the police, judiciary and child protection machinery, collaborators in securing justice for a sexually abused child. Further, by providing for a child-friendly judicial process, the said Act encourages children who have been victims of sexual abuse to report the offence and seek redress for their suffering, as well as to obtain assistance in overcoming their trauma. In time, the said Act will provide a means not only to report and punish those who abuse and exploit the innocence of children, but also prove an effective deterrent in curbing the occurrence of these offences.

## **Mandatory Reporting of Sexual Offences**

In keeping with the best international child protection standards, the Act also provides for mandatory reporting of sexual offences. This casts a legal duty upon a person who has knowledge that a child has been sexually abused to report the offence; if he fails to do so, he may be punished with six months' imprisonment and/ or a fine<sup>14</sup>. Thus, a teacher who is aware that one of her students has been sexually abused by a colleague is legally obliged to bring the matter to the attention of the authorities. The Act, on the other hand, also prescribes punishment for a person, if he provides false information with the intention to defame any person, including the child.

## **ROLE OF POLICE**

The Act also casts the police in the role of child protectors during the investigative process<sup>15</sup>. Thus, the police personnel receiving a report of sexual abuse of a child are given the responsibility of making urgent arrangements for the care and protection of the child, such as obtaining emergency medical treatment for the child and placing the child in a shelter home, should the need arise. The police are also required to bring the matter to the attention of the

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Child Welfare Committee (CWC) within 24 hours of receiving the report, so the CWC may then proceed where required to make further arrangements for the safety and security of the child.

## **Unmistakable Duties of Police During the First 24 Hours**

Most specifically, the paramount role and duties of police need to be appreciated and streamlined, since police shall record and register the sexual offences (Penetrative or nonPenetrative) committed against the children under Protection of Children from Sexual Offences (POCSO) Act 2012 any negligence or lapses on the part of police will crop up with serious implications. If the police fail to register a case under the Act timely, then the case will remain almost unreported and it will slowly but surely evaporate from public domain resulting

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<sup>14</sup> Section 21(1) of the POCSO Act 2012

<sup>15</sup> See Section 19 and 24 of POCSO Act 2012

in leaving the culprit scot-free while the survivor child is not provided with any kind of care and protection measures or justice.

A relevant question to be analyzed: Could the police deny from record or register a complaint about sexual assault cases under the Act?

Under the POCSO Act, the police as a bounded duty need to record the complaint and assign an entry number to the information, read it over to the complainant/informant, enter the complaint in a book kept by the Police Unit. So it is evident that Police cannot refuse to record or register of any such complaint. Because failure to record information relating to the commission of an offence or an apprehension that an offence is likely to be committed is punishable under the Act, with imprisonment which may extend up to 6 months or with fine or with both. As emergency duties of police which need to discharge within 24 hours of the report being registered i.e. registering an FIR, local police or Special Juvenile Police Unit (SJPU) shall, without unnecessary delay but within a period of 24 hours, report all the sexual assault cases to the concerned Child Welfare Committee and Special Court or where no Special Court has not been designated, to the Court of Sessions, including the need of the child for care and protection ad steps taken in this regards. It is the duty of the SJPU and Police to ensure that a victim child of sexual assault is taken to the nearest hospital (Government or Private which is the closer) or medical facility within 24 hours of the report being registered<sup>16</sup>. The police should be aware the fact that the time frame for medical examination of a child is within 24 hours from the case is

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reported to the police. Therefore, the police should, either on one or another pretext, never try to delay in taking the child for a medical examination within 24 hours at any cost.

### **ROLE OF DOCTORS.**

The Act also makes provisions for the medical examination of the child in a manner that is least distressful. The Act also clearly vocalizes that doctors should not demand legal records or legal procedure or documentation to be completed before initiating the treatment or examination. Legal procedures can be done later after initiating the medical care. It is now mandatory for

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<sup>16</sup> Section 19(5) of the POCSO ACT 2012

doctors to register a medico-legal case in all cases of child sexual abuse. Failure of reporting could result in six months imprisonment and/or a fine under Section 21 of the POCSO Act, 2012. The registered medical practitioner rendering medical care shall (i) collect evidence after a thorough medical examination, (ii) treat the physical and genital injuries, (iii) conduct age assessment of the victim (if required), (iv) offer prophylaxis for sexually transmitted diseases including HIV, (v) discuss emergency contraceptives with the pubertal child and her parent, (vi) do baseline evaluation for mental health issues, (vii) monthly follow up at least for six months to look for development of psychiatric disorders, (viii) do family counselling and (ix) assist the court in interviewing the child and testifying in the court. Another significant provision made in this law is that no hospital under the jurisdiction of the Indian constitution can refuse to admit the victim of child sexual abuse for examination and treatment.

### **Medical Examination of the Child**

The Act also makes provisions for the medical examination of the child designed to cause as little distress as possible<sup>17</sup>.

### **Provision to avoid re-victimisation of the Child**

The Act further makes provisions for avoiding the re-victimisation of the child at the hands of the judicial system. It provides for special courts that conduct the trial in-camera and without revealing the identity of the child, in a manner that is as child friendly as possible. Hence, the child may have a parent or other trusted person present at the time of testifying and can call for assistance from an interpreter, special educator, or other professional while giving evidence;<sup>50</sup> further, the child is not to be called repeatedly to testify in court and may testify through

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<sup>17</sup> Section 27 of the POCSO act Medical examination of a child: (1) The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offences under this Act, be conducted in accordance with section 164A of the Code of Criminal Procedure, 1973. (2) In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.(3) The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the children poses trust or confidence.(4) Where, in case the parent of the child or other person referred to in sub-section (3) cannot be present, for any woman nominated by the head of the medical institution.

videolink rather than in the intimidating environs of a courtroom. Above all, the Act stipulates that a case of child sexual abuse must be disposed of within one year from the date the offence is reported.

### **ROLE OF STATE GOVERNEMENT UNDER SECTION 39 OF THE POCSO**

The said Act is to be implemented with the active participation of the State Governments. Under section 39 of the said Act, the State Government is required to frame guidelines for the use of persons including nongovernmental organizations, professionals and experts or persons trained in and having knowledge of psychology, social work, physical health, mental health and child development to assist the child at the trial and pre-trial stage<sup>18</sup>.

### **DESIGNATION BY STATE GOVERNMENT OF A SPECIAL COURT UNDER SECTION 28 OF POCSO**

Section 28 of the POCSO Act, 2012 specifies that the State Government shall designate for each district, a Court of Session to be a Special Court to try the offences under the Act. The Section also states that if a Court of Session is already notified as a children's court under the Commissions for Protection of Child Rights Act, 2005, then such court shall be deemed to be a Special Court to try offences under the POCSO Act, 2012. As per information available, eighteen States/UTs have designated Special Courts/Children's Court to try offences under the Act.

### **CRITICAL APPRAISAL AND BEST PRACTICES UNDER POCSO ACT**

The Protection of Children from Sexual Offences Act, 2012 is a criminal law, which protects children from the chilling reality of sexual abuse. All offences under the POCSO must be tried in

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camera by a Special Court and in the presence of the parents of the child or any other person that the child trusts. If the accused is a juvenile, then he/she will be tried under the Juvenile Justice (Care and Protection of Children) Act, 2015. If the child is differently abled or is

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<sup>18</sup> Guidelines for the use of Professionals and Experts under Section 39 of the POCSO Act, 2012, accessed at [www.manupatra.com](http://www.manupatra.com) on 23.02.2016.

mentally or physically ill, the Special Court should take the assistance of a translator, interpreter or special educator, to record the statement of the child and for any other purposes that it may need. If the offence complained of is also an offence under any other law, and if the accused is found guilty of the offence, then such an accused can be sentenced with the greatest punishment that there may be under the different laws. The family or the guardian of the child is entitled to separate legal representation during any trial for an offence. This legal representation is distinct from the public prosecutor and must act in the best interest of the child.

In case the offence is of a physical nature, try to report it to the police and then have a medical examination conducted within twenty-four hours as it is the best chance to gather vital physical evidence such as injury marks, DNA material, etc. If the child is capable of stating the facts, then he/she should be encouraged to do so. The police must record the complaint in simple language so that child can understand it. After recording the statement of the child, the policeman must read it back to the child so that the child can state whether the statement is correct or not.

### **LOOPHOLES IN THE LAW**

There are certain drawbacks in the law around the following issues:

#### **(A) Consent**

If the child/adolescent refuses to undergo medical examination but the family member or investigating officer is insisting for the medical examination, the POCSO Act is silent and does not give clear direction. There is an urgent need to clarify the issue of consent in such cases. However, it would be prudent to take informed consent from parent when the survivor is a child (below 12 years) and consent from both parent and the victim, if the survivor is an adolescent (age group from 12 -18 years). However, emergency treatment needs to be initiated without getting into these consent issues or legality to protect the life of the child.

#### **(B) Medical Examination**

The POCSO ACT, Section 27(2) mandates that in case of a female child/adolescent victim, the medical examination should be done by a female doctor. However, the law mandates the

available medical officer to provide emergency medical care. On the other hand, the Criminal Law amendment act, Section 166A of Indian Penal Code mandates the Government medical officer on duty to examine the rape victim without fail. This conflicting legal position arises when female doctor is not available.

#### **(C) Treatment Cost**

The law has casted legal obligation on the medical fraternity and establishment to provide free medical care to the survivors. If there are no proper facilities or costly procedure is required, the State should take responsibility of reimbursing the cost; otherwise hospital may provide substandard medical treatment procedure or may deprive the survivor from comprehensive treatment.

#### **(D) Consented Sexual Intimacy**

Sexual contact between two adolescents or between an adolescent and an adult are considered illegal under the POCSO Act 2012, because no exception has been granted in the Act under which an act of sexual encounter with a person under 18 is an offence irrespective of consent or the gender or marriage or age of the victim/the However, it is proposed that any consensual sexual act that may constitute penetrative sexual assault should not be an offence when it is between two consenting adolescents, otherwise both the adolescents will be charged under the POCSO Act, 2012. On the other hand, the latest amendment of the Indian Penal Code concerning rape laws in 2013 clearly reports that the age of consent for sex has been fixed to 18 year, hence, anyone who has consensual sex with a child below 18 year can be charged with rape, which may increase the number of rape cases. One more serious repercussion is that obstetric and gynaecologists need to report all the MTP (medical termination of pregnancy) cases performed on children below 18 year.

#### **(E) Need for Training**

Training: there is an urgent need to train the medical, teachers, judicial, advocates and law enforcing agencies in the POCSO Act, 2012. Research, information, monitoring and sensitizing the public are the biggest challenges. Training all the stakeholders is one of the important

variables in providing comprehensive care and justice. There is also an urgent need to train all the medical undergraduates and primary health care doctors in providing child friendly interview, structured assessment, collecting evidence, prophylaxis for sexually transmitted diseases and HIV, family counselling and regular follow up.

#### **(F) Role of Mental Health Professional**

Role of mental health professional: The definitive signs of genital trauma are seldom seen in cases of child sexual abuse. Hence, the evaluation of child sexual abuse victim requires special skills and techniques in history taking, forensic interviewing and medical examination. The role of mental health professional is crucial in interviewing the child in the court of law. Child sexual abuse can result in both short-term and long-term harmful mental health impact mental health professionals need to be involved in follow up care of the victim with regard to emergence of psychiatric disorders, by providing individual counselling, family therapy and rehabilitation.

#### **STRONG PROVISIONS, WEAK IMPLEMENTATION**

Albeit the state is needed to give wide exposure to the Protection of Children from Sexual Offences Act, the law is generally obscure even to the individuals who need to apply it. In the midst of the public objection seething in the city over occasions of assault of kids the country over, the deceived and mishandled kid endures peacefully. Damaged, blue and stunned relatives of the heartbreaking casualties get themselves powerless, confounded and incapable to adapt in the result of the egregious wrongdoing. There are Constant requests for hardened punishments, quick new laws and fasttrack courts despite the fact that POCSO, as a healthy law, as of now says everything. Up to this point, different arrangements of the Indian Penal Code (IPC) were utilized to manage sexual offenses against kids as the law didn't make a qualification between a grown-up and a youngster. POCSO manages sexual offenses against people under 18, who are considered as youngsters. POCSO gives meanings of —penetrative sexual assault, —sexual assault and —sexual harassment the offense is viewed as graver on the off chance that it is submitted by a cop, community worker, any individual from the staff at a remand home, assurance or perception home, prison, medical clinic or instructive organization, or by an



individual from the equipped or security for POCSO accommodates alleviation and recovery when the grievance is made to the Special Juvenile Police Unit or the neighborhood police, who are needed to make quick plans for care and protection.

The plan to submit an offense, as characterized under POCSO, is additionally culpable, other than abetment of sexual maltreatment against a youngster .Special accentuation has been set on guaranteeing the rapid removal of preliminaries in exceptional kids' courts just as following of uncommon methods to get the charged far from the kid at the hour of affirming. Regardless of POCSO charging the Central and State governments to take measures for giving wide exposure through the media TV, radio and print and bestowing intermittent preparing to all partners on the issue identifying with execution of POCSO's arrangements, the Act is generally obscure. The Supreme Court had, in a hard-hitting mandate gave request to all States to guarantee that the administrative and checking bodies are comprised and made useful. In any case, till date, such Commissions are either just halfway practical or successfully nonfunctional.

Albeit the POCSO Act contains a system, exceptional to deal with instances of youngster sexual maltreatment, its execution has been buried in misbehaviors and obsolete lawful procedures. Lead a basic experimental appraisal of the execution system conceived under the POCSO Act.

Evaluate the viability of the Act, recognize the execution holes, and propose strategy proposals to plug these holes.

We are attempting to accomplish the aggressive objectives of the POCSO Act, through a police power that is exhausted. In spite of their earnest attempts, the police face a great deal of obstructions in leading an appropriate examination in POCSO cases. It starts with the enlistment

of the FIR. The police should guarantee that there is no postponement in the enlistment of the FIR, and the leading of the Medico Legal Case.

The MLC of the casualty is in many cases not directed as the casualty's family is given incorrect data on the drawn out sick impact of the MLC on the kid's wellbeing. At the point when the youngster needs to go for a MLC or a fetus removal, the person in question regularly faces a threatening climate in the medical clinic. Specialists should be sharpened on the most proficient method to speak with the youngster about what the individual is going through. An unexpected bedside way or infringement of the youngster's security winds up damaging the person in question.

The FSL tests taken by the police regularly wind up getting sullied, or festered because of inappropriate stockpiling. The police should be familiar with the best strategies for gathering legal proof, so the enthusiasm for the proof can take easily during the preliminary. The establishments, for example, the NCPCR and SCPCR are needed to screen and assess the execution of the Act consistently as well as producing public attention to the arrangements of the Act.<sup>56</sup> However, the working of such offices and their M&E strategies has not been available to public investigation. To this degree, study the methodology set up by such bodies and assess the viability of the equivalent in creating significant results.

Taking everything into account, the advancement report of the POCSO Act gives blended outcomes. While the order of the enactment is really revolutionary in that it plans to secure kids against sexual maltreatment, and accommodates a casualty touchy criminal equity measure, there are a few obstacles in its execution.

There are a few strong inquiries which are regularly being asked, wondering for no specific reason by the legitimate experts as well as raised by the everyday person to comprehend certain interesting inquiries regarding the POSCO Act 2012. The scientist has attempted to inspect those inquiries in the wake of making the point by point examination of the different Sections under the POSCO Act. In this manner, the specialist has figured the accompanying exploration inquiries in the wake of talking with the average person.

### **Can POCSO Act be misused to frame any person?**

The Government says that it has brought this law on 20th June, 2012 as it has acceded on the 11th December, 1992 to the convention on the Rights of the child adopted by the General Assembly of the United Nations. Objections to the following provisions of the POCSO Act can be raised such that certain provisions of POCSO Act are not in conformity with natural justice and are biased towards the child or any other person who makes a complaint on behalf of child (accuser) but could be detrimental to the interest of an adult person against whom complaint has been filed (accused).

1. Under Section 22(1) of the POCSO Act, any person who make a false complaint or provides false information against any person in respect of an offence committed under section 3, 5,7 and section 9 solely with the intention to humiliate, extort or threaten or defame him shall be punished with imprisonment for a time which may extend to six months or with fine or with both. Now compare this with the punishment and fine on the person who has been implicated (accused) by the person mentioned in the above para (accuser). The person who is implicated under section 3/section 5 of this Act shall be punished with imprisonment which shall not be less than 7 years/10years and may extend to imprisonment for life and shall also be liable to fine.

The person who is implicated under section 7/section 9 of this Act shall be punished with imprisonment which shall not be less than 3 years/5 years and may extend to 5 years/7 years and shall also be liable to fine. If one compares the punishment being given to the person who has been implicated and to the person who is falsely implicating that person, it is very clear that the person who is implicating (accuser) is at an advantageous place than

the person who is implicated (accused). If the person who makes a false allegation is successful due to miscarriage of justice then he is free and even if it is proved that he has committed an offence of falsely implicating the other person then he will be behind bars maximum of 6 months. The members of parliament and the courts should rethink over these provisions before it does more damage to the society.

2. Section 22 (2) provides that when a false complaint has been made or false information has been provided by a child no punishment shall be imposed on such a child. How is this justified that no punishment is provided for the child who can ruin the life of an adult by making a false complaint. It is a known fact that child can be manipulated by his parents, guardians and others for their nefarious designs. The child can be used as a pawn by someone to defame anyone without any implications for him/her. This Act provides that his/her identity will be protected at all stages of the court proceedings, but this is not for the person who has been implicated. We all have heard the phrases —please do not talk like a child or why are you behaving like a child. Which shows or proves the point, that utterances of a child cannot be taken seriously and have to be taken with a pinch or handful of salt, depending upon his/her behavior or character of that child<sup>19</sup>.

But in the case of POCSO law. The child is being made father of any adult and can threaten anyone with the help of this Act and no one can do anything about it. The section 19(7) provides that no person shall incur any liability civil or criminal, for giving information in good faith for the purpose of sub section(1). What happens where intention of the accuser is to ruin the reputation of the accused? The Act appears to be in favor of the accuser. When a false complaint has been made or false information has been provided by a child or any complainant than proportionate punishment should be imposed on child or on such a complainant.

3. Section 29 provides where a person is prosecuted for committing or abetting or attempting to commit any offence under section 3, 5, 7 or 9 of this Act, the special court shall presume

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<sup>19</sup>R.K.Kalra [http, \\_The Protection of Children from Sexual Offence Act 2012\) Law has been and can be misused to frame any person'](http://www.ashram.org/Press/ArtMID/667/ArticleID/2907/the-pocso-law-has-been-and-can-be-misused-to-frame-any-person) available at <http://www.ashram.org/Press/ArtMID/667/ArticleID/2907/the-pocso-law-has-been-and-can-be-misused-to-frame-any-person>, accessed on 20.02.2016.

that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved. The court will presume you to be guilty of an offence you have not committed and onus is on you prove that you have not committed the offence<sup>59</sup>. How justified is this situation? In most of other laws the onus is on the person who has alleged that something wrong has been committed on him/her to prove his/her case.

This makes it very difficult for the person who has been alleged accused to have committed any offence under the section 3, 5,7 or 9 that he or she is innocent. In these cases generally there is no eye witness. It is a claim of a child against an adult which is denied by the adult. If there is any medical evidence in support of the child then it is different, if there is no medical evidence in support of the child the case will be decided on circumstantial evidences. This is where the difficulty arises as the courts have been made to presume that an offence has been committed which may not be the case in case of false allegations.

4. Section 30 of the Act provides that for any offence under the Act which requires culpable mental state on the part of the accused the special court shall presume the existence of such mental state but it shall be a defense for the accused to prove beyond reasonable doubt the

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fact that he had no such mental state with respect to the act charged as an offence in that prosecution. If a person has been falsely implicated by someone or if a person has committed an act of sexual assault for the first time, how can courts presume that such person is having culpable mind. How fair is this to the person accused<sup>70</sup>?

5. Section 34(2) provides that the age of the child will be decided by the court and shall record its reasons for such determination. Section 34(3) provides that no order made by the special court shall be deemed to be invalid by any subsequent proof that the age of the person as determined by it under sub section (2) was not the correct age of the person. This clearly shows that the child who is alleging that something wrong has happened with him or her may or may not be minor. What is difficult to comprehend is the fact that if court has come to a wrong conclusion on the age of a minor and it is proved that he or she is major even then the decision of the court will not be changed. This is against the principle of natural

justice. Is this fair in any way to the accused, again it is advantage to the accuser that he or she can manipulate the age and can get away with it as there is no punishment for the child and if child is proved to be major it is not more than 6 months of imprisonment or with fine or both.

6. The provisions of section 3 to 13 (both inclusive) shall not apply in case of medical examination or medical treatment when such medical examination or treatment is done with the consent of parent or guardian. Now let us assume day to day activity of a child, suppose he is injured while playing football or cricket in groin region, will the coach or elder person will have to wait for his parents to give consent before he/she does examination of the child private parts. How absurd is this law? Another example a girl child is hit in her breast area again the elder person cannot do anything to help her as he or she has wait for parental consent to do such examination, otherwise he will be implicated under this Act and may end up in jail for 3-5 years. If a girl child is dying and needs artificial respiration and revival, no male will touch her as she has fainted and the person has to touch her breast area to revive her, than that person will have to wait, if her parents are not around to give consent for the same. The law makers could have foreseen these situations of medical exigencies and could have entered the words —the provisions of section 3 to 13 of POCSO Act shall not apply in case of medical exigencies, in that case consent of parents is not required to save the life of any child.

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<sup>70</sup> Ibid

The above analysis of the provisions of POCSO Act has been done only to make understand how absurd, difficult to implement and draconian this law is. Any child can implicate you if you spend some time of privacy with him or her and onus will be on you to prove your innocence. The court will take the accusation of the child at face value and if you are prosecuted by police the court will presume that you have committed the offence or abetted or attempted to commit the offence.

The changes in POCSO Act are important to bring the children back to the life of any individual, so that everyone gets justice and no one is placed at a disadvantageous position in comparison to the other<sup>20</sup>.

**Should the child victim be produced before child welfare committee (CWC) within 24 hours of report being registered?**

As per the Section 6 of the Act, it is clear that police has a mandatory duty to report all the sexual assault cases to CWC within 24 hours, but production of the child is not stated. However, under Section 5 of the Act, if the SJPU/Police is convinced that the child is without any parental support or living with the abuser or potential abuser, or is in an institution, or homeless, the child victim must be produced within 24 hour before CWC. The SJPU/Police has to record the reason in writing as to why the child needs to be shifted and make immediate arrangement for care and protection. This may include admitting the child to hospital or shelter home within 24 hours of the report<sup>21</sup>.

**Whether the publication of the details of child rape victim's entail severe penalty?**

Police issues notices to some media houses for violating the law; rules outlined. The city police have decided to prosecute media houses and internet forums in which the identity of the child rape victims is revealed. People are not supposed to reveal any information which leads to the establishment of the identity of the child rape victim under the POCSO Act. So, notices have been issued to news channels to answer why they telecast such programmes even after they

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know the law. Police will even be sending notices to newspapers which have published information about the victims.

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<sup>20</sup> Ibid.

<sup>21</sup> Pocso Act vis-a-vis Police and Doctors, Published by Meghalaya Times (India) December 18, 2013 Wednesday available at [www.lexisnexis.com](http://www.lexisnexis.com), accessed on 21/02/2016.

### **Rules to be followed**

Under POCSO Act, section 23, police outlined the procedure for media:

7. No person shall make any report or present comments on any child from any form of media or studio or photographic facilities without having completed and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy.
8. No reports in any media shall disclose the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child Provided that for reasons to be recorded in writing, the Special Court, competent to try the case under the Act, may permit such disclosure, if in its opinion such disclosure is in the interest of the child.
9. The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omissions of his employee.
10. Any person who contravenes the provisions of sub-section (1) or subsection (2) shall be liable to be punished with imprisonment of either description for a period which shall not be less than six months but which may extend to one year or with fine or with both.

While interpreting the provisions of the Act, it is important to remember the purpose of the Act, as well as the conditions in which trials under the Act are conducted. The Act was brought into force to combat a widely prevalent evil of child abuse. Thus in this chapter, the enactment by the parliament and its application in letter and spirit has been discussed thoroughly.

#### **a) Recent Amendment regarding the Pocso Act**



**THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (AMENDMENT) ACT, 2019**

An Act further to amend the Protection of Children from Sexual Offences Act, 2012.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:

1. (1) This Act may be called the Protection of Children from Sexual Offences (Amendment) Act, 2019.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the principal Act), in section 2, (a) in sub-section (1), after clause (d), the following clause shall be inserted, namely: '(da) "child pornography" means any visual depiction of sexually explicit conduct involving a child which include photograph, video, digital or computer generated image indistinguishable from an actual child, and image created, adapted, or modified, but appear to depict a child;

(b) in sub-section (2), for the words, brackets and figures "the Juvenile Justice (Care and Protection of Children) Act, 2000", the words, brackets and figures "the Juvenile Justice (Care and Protection of Children) Act, 2015" shall be substituted.

3. In the principal Act, section 4 shall be renumbered as section 4(1) thereof and (a) in subsection (1) as so renumbered, for the words "seven years", the words "ten years" shall be substituted;

(b) after sub-section (1), the following sub-sections shall be inserted, namely:" (2) Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine.

(3) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim."

4. In section 5 of the principal Act, (I) in clause (j),

(A) in sub-clause (i), the word "or" occurring at the end shall be omitted;

(B) in sub-clause (iii), the word "or" occurring at the end shall be omitted;

(C) after sub-clause (iii), the following sub-clause shall be inserted, namely: "(iv) causes death of the child; or";

(II) in clause (s), for the words "communal or sectarian violence", the words "communal or sectarian violence or during any natural calamity or in similar situations" shall be substituted.

5. For section 6 of the principal Act, the following section shall be substituted, namely:

"6. (1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine, or with death.

(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.

6. In section 9 of the principal Act, (i) in clause (s), for the words "communal or sectarian violence, the words communal or sectarian violence or during any natural calamity or in any similar situations" shall be substituted; (ii) after clause (u), the following clause shall be inserted, namely: "(v) whoever persuades, induces, entices or coerces a child to get administered or administers or direct anyone to administer, help in getting administered any drug or hormone or any chemical substance, to a child with the intent that such child attains early sexual maturity;

7. For section 14 of the principal Act, the following section shall be substituted, namely:

"14. (1) Whoever uses a child or children for pornographic purposes shall be punished with imprisonment for a term which shall not be less than five years and shall also be liable to fine, and in the event of second or subsequent conviction with imprisonment for a term which shall not be less than seven years and also be liable to fine.

(2) Whoever using a child or children for pornographic purposes under sub-section (1), commits an offence referred to in section 3 or section 5 or section 7 or section 9 by directly participating in such pornographic acts, shall be punished for the said offences also under section 4, section 6, section 8 and section 10, respectively, in addition to the punishment provided in sub-section (1).

8. For section 15 of the principal Act, the following section shall be substituted, namely: "15. (1) Any person, who stores or possesses pornographic material in any form involving a child, but fails to delete or destroy or report the same to the designated authority, as may be prescribed, with an intention to share or transmit child pornography, shall be liable to fine not less than five thousand rupees, and in the event of second or subsequent offence, with fine which shall not be less than ten thousand rupees.

(2) Any person, who stores or possesses pornographic material in any form involving a child for transmitting or propagating or displaying or distributing in any manner at any time except for the purpose of reporting, as may be prescribed, or for use as evidence in court, shall be punished with imprisonment of either description which may extend to three years, or with fine, or with both.

(3) Any person, who stores or possesses pornographic material in any form involving a child for commercial purpose shall be punished on the first conviction with imprisonment of either description which shall not be less than three years which may extend to five years, or with fine, or with both, and in the event of second or subsequent conviction, with imprisonment of either description which shall not be less than five years which may extend to seven years and shall also be liable to fine.

9. In section 34 of the principal Act, for the words, brackets and figures "the Juvenile Justice (Care and Protection of Children) Act, 2000", the words, brackets and figures "the Juvenile Justice (Care and Protection of Children) Act, 2015" shall be substituted.

10. In section 42 of the principal Act, for the figures, letter and words "376E or section 509 of the Indian Penal Code", the figures, letters and words "376E, section 509 of the Indian Penal Code or section 67B of the Information Technology Act, 2000" shall be substituted.

11. In section 45 of the principal Act, in sub-section (2), clause (a) shall be re-lettered as clause (ab) thereof and before clause (ab) as so re-lettered, the following clauses shall be inserted, namely: "(a) the manner of deleting or destroying or reporting about pornographic material in any form involving a child to the designated authority under sub-section (1) of section 15;

(aa) the manner of reporting about pornographic material in any form involving a child under sub-section (2) of section 15;

## **b) Judicial trend and recent development**

Sexual offences against children have undergone radical reform since the advent of the *Constitution of the Republic of South Africa*<sup>22</sup>. The *Constitution* formally commenced on 4 February 1997. As with all other areas of law, it had a profound impact on the field of the criminal law, and more specifically within the ambit of sexual offences. Prior to the constitutional dispensation, sexual offences were partly catered for statutorily in terms of the previous *Sexual Offences Act (SOA)*<sup>23</sup>. The offences of rape and indecent assault were common

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<sup>22</sup>*Constitution of the Republic of South Africa*, 1996 (hereinafter referred to as the "Constitution").

<sup>23</sup>*Sexual Offences Act* 23 of 1957 (hereinafter referred to as the "SOA"). Also see in general Snyman *Criminal Law* (2002) 362-365; Burchell *Principles of Criminal Law* (2005) 699 pertaining to the position in terms of the SOA.

<sup>4</sup>See Snyman *Criminal Law* (2014) 436, 445-452; Burchell *Principles of Criminal Law* (2013) 699-727; 734-740.

<sup>75</sup>*Criminal Law (Sexual Offences and Related Matters) Amendment Act* 32 of 2007 (hereinafter referred to as the "Act"). The Act effectively commenced on 16 December 2007.

law offences.<sup>4</sup> The SOA provided for sexual offences against children, although the scope of the offences provided for was limited. With the birth of the *Constitution* giving rise to a human rights culture which ultimately changed the face of all fields of law, sexual offences in general as well as sexual offences against children were revisited. The advent of the *Constitution* undoubtedly played a pivotal role in the far-reaching transformation of the criminal law pertaining to sexual offences, eventually giving rise to the enactment and commencement the *Criminal Law (Sexual Offences and Related Matters) Amendment Act (SORMA)*<sup>75</sup>. The Act

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repealed various common law crimes including rape and indecent assault, replacing them with statutory crimes and also providing for a gender neutral definition and scope for the crime of rape.

One of the most prominent advancements in terms of the Act relates to a cluster of sexual offences against children. The preamble of the Act specifically underscores the vulnerability of children and mentally disabled persons and pertinently states that the expansion of the offences "aims to address the particular vulnerability of children and persons who are mentally disabled in respect of sexual abuse and exploitation". The Act further provides for the establishment of a National Register of Sex Offenders.<sup>8</sup> The aim of the establishment of the Register is to establish a record of persons who have been convicted of sexual offences against children and against persons who are mentally disabled in order to prohibit such persons from being employed in a manner that places them in a position to work with or have access to or authority over children or persons who are mentally disabled. The Register accordingly seeks to protect specifically two of the most vulnerable groups of persons. Chapter 6 of SORMA provides for comprehensive procedures with reference to the Register and allows for employers, licensing authorities and authorities dealing with fostering kinship, care-giving, adoption and curatorship to apply for a certificate stating whether or not the particulars of a potential employee or applicant are contained in the Register.

Despite the fact that the Act was drafted within the climate of a constitutional dispensation with the aim of promoting the values enshrined in the Constitution, certain provisions were recently challenged on a constitutional basis. These provisions were specifically sections 15 and 16

dealing with consensual sexual penetration and violation between adolescents, as well as the provisions in the Act relating to the Register pertaining to juvenile sex offenders.

In this contribution, recent developments in sexual offences against children with reference to the latter provisions will be addressed against the backdrop of the Constitutional Court judgments in *TeddybearClinic for Abused Children v Minister of Justice and Constitutional Development*<sup>24</sup> and *v National Director of Public Prosecutions*.<sup>10</sup> These two judgments had a profound impact

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in terms of shaping newly formulated sexual offences in line with constitutional principles, culminating in the enactment and commencement of the *Criminal Law (Sexual Offences and Related Matters) Amendment Act*.<sup>11</sup> Finally an analysis of the Amendment Act will be provided with reference to its impact on sexual offences against children. It is accordingly essential first to take a closer look at these two important judgments by the Constitutional Court, after which an assessment and discussion will be provided.

### **The Teddybear Judgment**

The salient facts appear from the judgment given by Rabie J in the North Gauteng High Court. The first applicant was the Teddy Bear Clinic for Abused Children, a non-profit company providing a full range of services to abused children, including forensic medical examinations, forensic psychological counselling, psychological assessments, play therapy, preparation for court appearances, and various programmes designed with the aim of diverting young sex offenders away from the criminal justice system.

The second applicant was RAPCAN ("Resources Aimed at the Prevention of Child Abuse and Neglect"), also a non-profit company dedicated to the prevention of child victimisation and the promotion of children's rights.

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<sup>24</sup>*Teddybear Clinic for Abused Children v Minister of Constitutional Development* 2014 2 SA 168 (CC) (hereinafter referred to as "*Teddybear 2*"). Also see the judgment by the North Gauteng High Court under *Teddy Bear Clinic for the Abused Children v Minister of Justice and Constitutional Development* 2013 ZAGPPHC 1 (4 January 2013) (hereinafter referred to as "*Teddybear 1*").

### **Reflections on the constitutionality of the register in respect of juvenile sex offenders**

Another recent development pertaining to sexual offences against children was the ruling on the constitutionality of the provisions of the Act dealing with the Register with reference to juvenile sex offenders. The latter related specifically to the constitutionality pertaining to the automatic inclusion of the names of child sex offenders in the Register.

An important aspect of the provisions pertaining to the Register relates to section 50(2), which provides that a court which has convicted a person of a sexual offence against a child or a person who is mentally disabled *must* make an order that the particulars of such a person be included in the Register.

In *J v NDPP* the Constitutional Court was required to assess the constitutionality of the provisions relating to the Register, with specific reference to juvenile sex offenders.

#### **c) supporting cases related to the Pocso Act**

##### **Avnish Bajaj Vs State of Delhi<sup>25</sup>**

An IIT Kharagpur student Ravi Raj, who placed on the baazee.com a listing offering an obscene MMS video clip for sale with the username alice-elec. Despite the fact that baazee.com have a filter for posting of objectionable content, the listing nevertheless took place with the description, Item 27877408 DPS Girls having fun!!! full video + Baazee points. The item was listed online around 8.30 pm in the evening of November 27th 2004 and was deactivated, around 10 am on 29th November 2004. The Crime Branch of Delhi police took cognizance of the matter and registered an FIR. Upon investigation, a charge sheet was filed showing Ravi Raj, Avnish Bajaj, the owner of the website and SharatDigumarti, the person responsible for handling the content, as accused. Since, Ravi Raj absconded; the petition was filed by Avnish Bajaj, seeking the quashing of the criminal proceedings.

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<sup>25</sup> (2005) 3 CompLJ 364 Del

Petitioner: Since the MMS was transferred directly between the seller and buyer without the intervention of the website, they can at most be responsible for the listing placed on the website which by itself was not obscene and did not attract the offence under Section 292/294 IPC or Section 67 of the Information Technology (IT) Act. Secondly, Due diligence was taken by the website to immediately remove the video clip once it was brought to its knowledge that it was objectionable. Thirdly, The scope of Section 67 of the IT Act is only restricted to publication of obscene material and does not cover transmission of such material.

State: Offence under Section 292 of Indian Penal Code (IPC) includes not only overt acts but illegal omissions within the meaning of Sections 32, 35 and 36 IPC. The failure to have adequate filter in a system which is entirely automated entails serious consequences and a website cannot escape such legal consequences. The fact that payment was made to the seller even as on 27th December 2004 shows that no attempt was made to prevent or stop the commission of the illegality by the website.

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The Delhi High Court observed that a prima facie case for the offence under Section 292 (2) (a) and 292 (2) (d) IPC is made out against the website both in respect of the listing and the video clip respectively. The court observed that by not having appropriate filters that could have detected the words in the listing or the pornographic content of what was being offered for sale, the website ran a risk of having imputed to it the knowledge that such an object was in fact obscene, and thus it held that as per the strict liability imposed by Section 292, knowledge of the listing can be imputed to the company.

However, as far as Avnish Bajaj is concerned, the court held that since the Indian Penal Code does not recognize the concept of an automatic criminal liability attaching to the director where the company is an accused, the petitioner can be discharged under Sections 292 and 294 of IPC, but not the other accused.

As regards Section 67, read with Section 85 of the IT Act, the Court however, observed that a prima facie case was made out against the petitioner Avnish Bajaj, since the law recognizes the



deemed criminal liability of the directors even where the company is not arraigned as an accused.

The judgement however did not declare Avnish Bajaj guilty.

**Kamlesh Vaswani Vs. Union of India**<sup>26</sup>

**A writ petition has been filed:**

- a) To issue appropriate directions to Ministry of Communication and Information Technology
- i. To take measures to promote the dissemination and improvement of filtering services.
  - ii. To take strict measures to prevent distribution and access to pornography including measures regarding file sharing software.
  - iii. To adopt various measures towards improvement in the effectiveness of blocking Child pornography on the Internet and to take measures to eliminate child pornography.

The case has not been finally disposed of yet.

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In reference to the conflict between Exception 2 to S. 375 of IPC and POCSO Act, it has been submitted with great emphasis that since POCSO Act has an overriding effect on any law related to the issue, Exception 2 to S. 375 IPC is redundant. The provisions of POCSO Act will prevail.

However, one issue which remains unresolved is whether Juvenile Justice Act of POCSO Act will have overriding effect on the other. Moreover, any act of consensual sex between an adolescent couples below 18 years will be governed by the provisions of Juvenile Justice Act, 2015.

Also, it has been stated firmly that the POCSO Act is incomplete as it fails to address the issue of child sexuality, by mixing it with child sexual abuse.

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<sup>26</sup> (2014) 6 SCC 705

## **CHAPTER 6**

### **JUVENILE JUSTICE VIS-À-VIS POCSO ACT 2012**

Kids are the establishments of a general public. They are the people in the future of the world, who should be sustained, minded, upheld and ensured. The assurance of privileges of youngsters turns out to be monstrously significant when one understands that they establish 33% of the human populace in a country and ensuring their privileges is a commitment which each nation owes to its succeeding ages. Guaranteeing fundamental common liberties of the weak segments of society are the cardinal standards of law and order. One of the difficulties that the contemporary world faces today is guaranteeing essential common liberties of youngsters . Youngster misuse is a social mental wonder, which is available at present a plague rate in same or different structures all through the world. The issues arising out of the youngster misuse are perplexing and multi-layered.

A large number of kids have no admittance to schooling, work extended periods under perilous conditions and are compelled to fill in as troopers in outfitted clash. They endure designated assaults on their schools and instructors or mull in foundations or confinement focuses, where they bear coldhearted conditions and attacks on their pride. Youthful and juvenile, they are regularly effectively abused. As a rule, they are manhandled by the very people liable for their consideration.

They are deserted. They don't get an opportunity to step in a school. They are left to fight for themselves in the city. They experience the ill effects of numerous types of viciousness. They don't approach even essential medical services. They are exposed to pitiless and insensitive medicines each day. They are kids – guiltless, youthful and delightful who are denied of their privileges.

Throughout the entire existence of common freedoms, the privileges of kids are the most sanctioned. The United Nations Convention on the Rights of the Child (UNCRC) characterizes Child Rights as the base privileges and opportunities that ought to be stood to each resident

underneath the age of 18 paying little heed to race, public beginning, shading, sexual orientation, language, religion, conclusions, beginning, abundance, birth status, incapacity, or different attributes.

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These rights encompass freedom of children and their civil rights, family environment, necessary healthcare and welfare, education, leisure and cultural activities and special protection measures. The UNCRC outlines the fundamental human rights that should be afforded to children in four broad classifications that suitably cover all civil, political, social, economic and cultural rights of every child.

- Right to Survival
- Right to Protection
- Right to Participation
- Right to Development

These basic human rights of children which have been recognized in the UNCRC are part of the Constitution of India 1950 that stands as the basic premise of fundamental rights of the children in India. Apart from this, India has enacted Juvenile Justice Act, 2015 and Prevention of Children from Sexual Offences (POCSO) Act, 2012 to make a better place for children to live in. The aim of this chapter is to analyze the making of child laws in India and to address the conflict between the Indian Penal Code, Juvenile Justice Act and POCSO Act.

### **JOURNEY FROM IPC TO JUVENILE JUSTICE (JJ) ACT 2015 AND POCSO ACT 2012**

Lord Macaulay's Indian Penal Code, 1860 is the masterpiece of criminal law governing Indian Territory. The Indian Penal Code (IPC) also has a list of offences against children including Sexual offences.

According to the sections 82 and 83 of the IPC a child who commits a crime and is below the age of seven is not considered to have committed a crime. A child who is between the ages of

seven and twelve and is deemed to have immature understanding about the consequences of his/her actions is also considered incapable of committing a crime.

Section 315 and 316 discusses the offence of foeticide and infanticide. If a person commits an act with the intention of preventing the child from being born alive or an act that results in the death of the child after birth, that person is committing foeticide/infanticide as long as they do not do it in the interest of the mother's health or life. If a person does an act that amounts to culpable death which results in the quick death of an unborn child, he will be charged with culpable homicide.

Section 305 states that it is a crime for any person to abet the suicide of a child, i.e. a person who has not completed eighteen years of age.

Section 317 states that it is a crime against children, if their mother or father expose or leave a child in a place with the intention of abandonment.

This does not prevent the law from pursuing further if the abandonment results in the death of the child. The parents would then be charged with culpable homicide or murder.

Section 360 states that kidnapping from India is defined as the conveyance of a person beyond the borders of India without their consent.

Section 361 states that if a male minor of not yet sixteen and female minor of not yet eighteen is taken from their lawful guardians without their consent it is termed kidnapping from lawful guardianship.

Section 362 defines abduction as compelling, forcing or deceitfully inducing a person from a place. Section 363-A states, it is a crime to kidnap or maim a minor for the purpose or employment of begging. If a person is found employing a minor for begging, and that person is not the legal guardian of the child, it is assumed that the child has been kidnapped for the purpose of employment in begging.

Section 364 states that any person who kidnaps another for the purpose for murdering or disposing of in a way that will lead to murder is punishable by law.

Section 364-A defines ransom kidnapping as any person who kidnaps another to threaten to harm or kill that person in an attempt to get the government, or any other foreign or state organisation to do or not do any act.

Section 365 discusses kidnapping to secretly or wrongfully confine someone.

Section 366 states it is a crime to force or compel or abuse a woman to leave a place in order to force her to marry or seduce or illicit sexual intercourse from her by the kidnapper or another person.

366A specially outlines such a crime being committed against a minor girl who has not attained eighteen years of age.

Section 367 states it is a crime to kidnap a person in order to cause them grievous hurt, place them in slavery, or subject them to the unnatural lust of a person.

Section 369 is a specific crime of kidnapping a child under 10 years of age in order to steal from them.

Section 372 discusses the selling of a child (below the age of eighteen) for the purpose of prostitution or to illicit intercourse with any person, or knowing that it is likely that the child is being sold for such a purpose. Section 372 states it is a crime to buy a child for the purpose of prostitution or to illicit sex from any person.

Section 376 discusses the offence of rape. Under this section a man who rapes his wife, who is not below twelve years old is given a lesser punishment. The section also discusses special circumstances of rape such as rape committed by a civil servant or police man, rape of a pregnant woman, gang rape or rape of a child below the age of twelve<sup>80</sup>.

However, the provisions of IPC were—inadequate to protect the children who needed special care and protection or who are victims of sexual abuse. By 1960, many states started enacting their separate legislations establishing systems and laws for children/juveniles which varied in terms of definitions, and other procedural requirements and their implementation also varied. In 1960, Union government enacted The Children Act 1960, which was applicable to union

territories which were directly administered by the Union government. In *Sheela Barse Vs Union of India*<sup>7</sup>, it was held by the Supreme Court:

“Instead of each State having its own Children's Act in other States. it would be desirable if the Central Government initiates Parliamentary Legislation on the subject, so that there is complete uniformity in regard to the various provisions relating to children in the entire territory of the country.

The Children's Act which may be enacted by Parliament should contain not only provisions for investigation and trial of offences against children below the age of 16 years but should also contain mandatory provisions for ensuring social, economic and psychological rehabilitation of the children who are either accused of offences or are abandoned or destitute or lost. Moreover, it is not enough merely to have legislation on the subject, but it is equally, if not more, important to ensure that such legislation is implemented in all earnestness and mere lip sympathy is not paid such legislation and justification, for non- implementation is not pleaded on ground of lack of finances on the part of the State. The greatest recompense which the State can get for expenditure on children is the building up of a powerful human resource ready to take its place in the forward march of the nation.

It was also said by the Court: “If a child is a national asset, it is the duty of the State to look after the child with a view to ensuring full development of its personality. That is why all the statutes dealing with children provide that child shall not be kept in jail. Even apart from this statutory prescription, it is elementary that a jail is hardly a place where a child should be kept. There can be no doubt that incarceration in jail would have the effect of dwarfing the development of the child, exposing him to baneful influences, coarsening his conscience and alienating him from the society.”

This judgment played a crucial role in passing the uniform law on juvenile justice, i.e. *Juvenile Justice Act, 1986*. The Parliament invoked its power under Article 253 of constitution of India in making the juvenile justice system in India to conform the United Nations standard Minimum Rules for the Administration of Juvenile Justice (*Beijing Rules 1985*) to abide the International Obligation which India agreed by ratifying in 1985.

For the first time the law mandated care, protection, treatment, development and rehabilitation of neglected and delinquent juveniles and for adjudication and disposition of juvenile delinquency matters throughout country. The act formulated separated procedures for the juvenile delinquents and neglected juveniles, by establishing separate juvenile courts and juvenile welfare boards. Juvenile courts handled the offences committed by girls under the age of eighteen years and sixteen years for the boys accused of committing crime.

Under the 1986 law, juvenile delinquents are persons below specified ages who committed certain acts that would be treated as crimes if committed by adults. Those juveniles would be processed through special courts following due process rules applied to adult offenders with exception that these proceedings are private and confidential and as far as possible be nonjudicial in nature. The delinquents who are convicted could be fined or placed under supervision for a maximum of three years but they cannot be executed or imprisoned or jailed.

**It has been observed that:**

“Juvenile Justice Act, 1986 was applied uniformly throughout India except state of Jammu and Kashmir. Prior to this law each state had its own enactment on juvenile justice with there being differences in the way juveniles were treated by different state legal systems. In a landmark step, the Government of India, repealing the juvenile justice Act 1986, introduced juvenile justice (Care and Protection of Children) Act in 2000 and further, amended , it in 2006, so as to make it responsive to the emerging needs in the tiled of juvenile justice, and making it, compatible with UNCRC standards. The Juvenile Justice Act, 2000 aims at consolidating and amending laws relating to juveniles in conflict with law, and children in need of care and protection by providing proper care, protection and treatment by catering to their developmental needs, by adopting child friendly approach in adjudication and disposition of matters in the best interest of children, and for their rehabilitation through various institutional mechanisms established.

As the Preamble of the Act (2000) clearly stated that the object of the law relating to juveniles in conflict with law is providing proper care, protection and treatment by catering to their

development needs and by adopting a child friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through institutions established under this law”.

The law underlined a welfare approach by inclusion of non-criminal justice language (arrest is replaced by apprehension, act does not speak about Jail, court, police, trial), Age of juvenile in conflict with law made same for both boys and girls as eighteen years after the country ratified United Nation convention on child rights which mandates the age of criminality as eighteen years, more emphasis on rehabilitation, re-socialization and reintegration of juvenile in conflict with law rather than punishment, placing minimal intervention of the correctional authorities and police as the special provision for special juvenile police to handle the cases in inquiry and replacing juvenile courts by Juvenile Justice Boards so as to make more child friendly in adjudication.

After the tragic Delhi Gang Rape of December 16, 2012 where a juvenile was involved with other adult offenders in raping and torturing due to which the victim died, the issue raised a debate on reduction of age of Juvenile in conflict with law as debated that juvenile offenders are increasing.

Standing firmly against lowering of the age criteria for juveniles accused of heinous crimes including rape, the Justice J.S. Verma Committee report on ‘\_Amendments to Criminal Law’ has noted that the Juvenile Justice Act has failed miserably to protect the children in the country. We cannot hold the child responsible for a crime before first providing to him/her the basic rights given to him by the Indian Constitution<sup>81</sup>.

However, the Juvenile Justice (Care and Protection of Children) Act, 2015 has now come into force which has repealed the Juvenile Justice (Care and Protection of Children) Act, 2000.

### **In the case of Ms. Eera Vs. State (Govt.NCT of Delhi)<sup>82</sup>**

The Delhi HC held that The POCSO Act has identified minors and protected them by prescribing the statutory age which has nexus with the legal eligibility to give consent. The Parliament has felt it appropriate that the definition of the term —age— by chronological age or



biological age to be the safest yardstick than referring to a person having mental retardation. It may be due to the fact that the standards of mental retardation are different and they require to be determined by an expert body. The degree is also different. The Parliament, as it seems, has not included mental age. It is within the domain of legislative wisdom. Be it noted, a procedure for determination of age had been provided under Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2000. The procedure was meant for determination of the biological age. It may be stated here that Section 2(12) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016) defines —child to mean a person who not completed eighteen years of age. There is a procedure provided for determination of the biological age. The purpose of stating so is that the Parliament has deliberately fixed the age of the child and it is in the prism of biological age. If any determination is required, it only pertains to the biological age, and nothing else. The purpose of POCSO Act is to treat the minors as a class by itself and treat them separately so that no offence is committed against them as regards sexual assault, sexual harassment and sexual abuse. The sanguine purpose is to safeguard the interest and well being of the children at every stage of judicial proceeding. It provides for a child friendly procedure. It categorically makes a distinction between a child and an adult. On a reading of the POCSO Act, it is clear to us that it is gender neutral. In such a situation, to include the perception of mental competence of a victim or mental retardation as a factor will really tantamount to causing violence to the legislation by incorporating a certain words to the definition. By saying —age would cover —mental age has the potential to create immense anomalous situations without there being any guidelines or statutory provisions. Needless to say, they are within the sphere of legislature. To elaborate, an addition of the word —mentall by taking recourse to interpretative process does not come within the purposive interpretation as far as the POCSO Act is concerned.

### **RELATIONSHIP BETWEEN IPC, JJ ACT AND POCSO**

While IPC is a general law, Juvenile Justice Act and POCSO Act are special laws.

The Juvenile Justice Act has ensured that a delinquent child will be treated differently at every stage of the criminal justice system and there shall be no adversarial trial in the sense of the term.

Instead, the case shall be enquired by the Juvenile Justice Board (JJB), presided over by a First Class Judicial Magistrate.

Section 15 of the Act (2015) states that: —In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of subsection (3) of section.

Section 18(3) states: Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.¶

However, a juvenile in conflict with law who was above the age of 16 years on the date of commission of crime, and the crime was serious in nature, such a juvenile might be kept in a place of safety; but in no case could the juvenile be committed to an adult prison system.

Further, Section 23(1) of the Juvenile Justice Act 2015 states: Notwithstanding anything contained in section 223 of the Code of Criminal Procedure, 1973 or in any other law for the time being in force, there shall be no joint proceedings of a child alleged to be in conflict with law, with a person who is not a child.¶

## **CONCLUSIONS AND SUGGESTIONS**

India is a place that is known for mysteries. There could be no other country on the planet that accepts a particularly unprecedented abundance of ethnic gatherings, commonly immense dialects, geography and environment, religions and social practices, and levels of financial turn of events. This biggest popular government on the planet is additionally home to the biggest number of youngsters on the planet. Kids comprise in excess of 400 million of the one billion or more populace of India .

We were all youngsters once. This is something we as a whole share practically speaking. A considerable lot of us have a kid or are engaged with the existences of youngsters here and there. We need youngsters to grow up, to be content, sound, solid and useful. We need them to flourish. Youngsters are both the present and what's to come. They address the following influx of guardians, grandparents, parental figures, instructors, specialists, cops, judges, local area pioneers, religious pioneers, legislators and leaders. It is apparent that viciousness against kids is certifiably not a separated occasion, the underlying foundations of which have an exceptionally profound porousness. Frequently these roots can be situated in circumstances and conditions that helped the development of such viciousness just as supported such conduct through inaction and detachment. It is inside this setting that a few youngsters become significantly more vulnerable to savagery, excusing it themselves, in contrast with different kids. What we address the offense meaning for kids today will have an immediate bearing on future families and social orders.

Consistently, about 6 out of 10 kids between the ages of 2 and 14, or almost a billion kids around the world, are routinely exposed to actual discipline by their guardians No kid is resistant. Those in danger cut across all limits old enough, sex, religion, ethnic beginning, incapacity, financial status, sexual direction as well as sex character and articulation.

Gendersensitive methodologies are expected to relieve kids' danger of brutality and to address explicit consideration and backing needs. Sex segregation isn't just a reason for some types of brutality against young ladies, yet additionally adds to the wide disregard and acknowledgment of viciousness against young ladies as a normal practice. Culprits are regularly not considered answerable and young ladies are deterred from standing up and looking for care, backing and

assurance. While these issues are articulated in the existences of young ladies, numerous types of savagery against young men likewise go underreported, frequently on account of issues identified with disgrace and disgrace. The effect of this viciousness against kids can be long lasting, and surprisingly passed from one age to another. At the point when youngsters experience brutality, the probability of their turning out to be future casualties and of acting viciously themselves as grown-ups increases<sup>84</sup>. Casualty can become culprit. However, savagery isn't unavoidable. We can and should break the cycle. Examination shows that brutality can contrarily affect youngsters' instructive exhibition and accomplishment, which can have longterm monetary outcomes, including neediness.

Openness to viciousness at an early age can impede mental health and is related with a scope of emotional wellness issues. Viciousness can prompt intense and long haul issues for kids' physical, sexual and conceptive wellbeing just as their mental prosperity. In the entirety of its structures, brutality is hindering; in the most pessimistic scenarios, it very well may be deadly. The scientist has attempted to decipher the current laws agreeably with the goal that Primary thought ought to be given to the wellbeing of the kid in all activities concerning the kid, regardless of whether embraced by open or private social government assistance establishments, courtrooms, managerial specialists or authoritative bodies.

The general benefits' assurance is a vital component of help and insurance measures for kid casualties. The scientist separated from inspecting the current laws of all around created nations like USA, UK, CANADA and so on have put uncommon accentuation on SARRAC nations so a superior development can be drawn for the security of youngster. The consideration is drawn on the Law in U.K which makes various offenses identified with —intentl for example to give somebody a substance without their assent so a youngster can be outlined for sexual misuse. In India the arrangement of youngster porn is needed to be reached out for basic translation of pseudo photo. In keeping vision of the computerized time extraordinary spotlight ought to be set down on digital offenses. The law accordingly should be corrected in the light of Protect Act 2003 of USA and projects like CAPTA planned in USA.

On investigation of South-Asian nations, the analyst inferred that still young lady youngster is constrained for early union with resolve property question like that of Afghanistan. The neediness being another incredible factor for the relocation of youngsters regardless of sex is a significant reason for kid abuse. Basically, it very well may be said that the blend of destitution, deficient training and broad kid work and kid portability causes a circumstance that is profoundly helpful for youngster sexual maltreatment and abuse. The scientist might likewise want to feature the issue of '\_tourism'.

84 4 Finkelhor, David, et al., '\_Children's Exposure to Violence: A Comprehensive National Survey.' Juvenile Justice Bulletin. US Department of Justice: Office of Juvenile Justice and Delinquency Prevention, October 2009, pp. 5.

Almost certainly the travel industry adds by and large in the economy advancement of the country yet in the process the issue of kid misuse is overlooked. In this reference the investigation of Srilanka is to be taken in setting, where low degree of youngster security, undeniable degree of family discontinuity and solid advancement of the travel industry have added to the development of an industry that has brought about the sexual abuse of kids in tourism. To shut down CSA, our affection for kids ought to go past the limits of our homes. Any kid's maltreatment is our youngster's maltreatment, this is the attitude that should be received," Satyarathi<sup>8</sup> said as a component of his 'SurakshitBachpanSurakshit Bharat' (Safe Childhood-Safe India) crusade. "This is an alternate battle. Kids who have been physically manhandled are not prepared to shout out. Kids dread in informing their folks regarding it. Regardless of whether they tell their folks, the guardians don't talk up to save their eminence. Numerous kids don't understand they have been physically abused." This quietness on kid misuse needs to end now and the issue should be taken head-on. We need to take a determination that we won't let one more instance of sexual maltreatment happen now," he added.

Subsequent to researching youngster sexual maltreatment through exact viewpoint, the insights achieved the truth of the diligence of CSA. The examination uncover reasonable picture of executing different kid defensive laws and lacuna about the data of same. What could be found from the individual experiences and reaction of the respondents was that the mentality of our general public actually center more around the standing and family honor as opposed to getting

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and ensuring the youngster. The majority of the youngster misuse casualties knew the wrongdoers i.e as a rule offense was submitted by close personals. Absence of time given to youngsters from their folks, directing and instruction on kid sexual maltreatment were a portion of the key factors that added to maltreatment of kids. It is necessitated that a check ought to be kept up about the conduct and youngster brain research. There is need to make an agreeable and simultaneously an understanding relationship with the kids. Accordingly a group and multi-sectoral approach is expected to forestall kid sexual maltreatment.

The researcher has analyzed some diagnostic tool for examining CSA so that timely action can be taken for the best interest of the child.

### **Strengthen legislation related to child sexual exploitation**

- i. Amend laws to specifically address children in prostitution.
- ii. Ensure that child victims of sexual exploitation are not criminalised.
- iii. Provide appropriate penalties for perpetrators of sexual exploitation of children.
- iv. Provide child-friendly services to girls and boys who are victims of sexual abuse and exploitation.
- v. Include preventive measures in legislation.
- vi. Amend laws to provide boys with legal protection from abuse and exploitation equal to girls, including legal recognition of rape, sexual harassment and sexual exploitation in prostitution.

Ensure that the following activities are penalized under the law: Recruiting a child into prostitution or causing a child to participate; Coercing a child into prostitution or profiting from or otherwise exploiting a child for that purpose; using a child in prostitution; Attempting or aiding or abetting or any other act of complicity with these offences.

## **Recommendations**

Apart from the general recommendations, there are certain specific recommendations regarding different evidence groups, that emerged from the study are as given below:

### **Children in Schools**

The study has indicated beyond doubt that schools as compared to other situations are the safest place for children and therefore efforts should be made to increase the enrolment and retention of children in school by adopting innovative, child friendly methods of teaching. Adequate infrastructure including sanitation facilities, keeping in the mind the special needs of the girl child, will encourage enrolment and retention of girl children in schools.

### **Children at Work**

There should be better coordination at national, state, district and block/ward levels for the following:

Rescuing children from banned occupations and their repatriation and mainstreaming into appropriate education streams. Poverty alleviation schemes specifically targeting families of working children, repatriated working children and children at-risk of falling into child labour.

### **Children in Institutions**

India continues to use institutionalization as a method of providing services to children in difficult circumstances. Although internationally it is now an established fact that institutionalization is not in the best interest of the child, yet, in countries like India, where the number of children in need of care and protection is very high and the non-institutional methods of care are not developed, the institutionalization of children will continue till alternatives are identified. In the light of this the following recommendations are made:

1. Juvenile Justice Boards, Child Welfare Committees and Special Juvenile Police Units should be set up in each district and manned by sensitive and trained personnel.

2. In existing institutions, standards of care should be established and maintained. Institutions under the Juvenile Justice (Care and Protection of Children) Act 2015 are corrective institutions. Children in conflict with the law in these institutions should be provided with all the opportunities to reform and develop into responsible citizens. The present state of the existing institutions leaves a lot to be desired.
  
3. The study reveals that often caregivers of the institutions are also abusers. This behaviour of the caregivers destroys the faith and trust of the child and completely alienates him/her from society itself. This should be prevented by strict monitoring and supervisions of homes, maintenance of detailed records of children, deinstitutionalization of children, wherever possible, and training and sensitization of caregivers in institutions.
  
4. Every home should have a management committee whose members, along with members of the community and civil society, should be involved in the efficient running of these institutions and prevention of abuse. Children should also be encouraged to participate in the management of the institutions. All children have the right to live in safety and dignity in a protective and nurturing environment, both at home and in the community. This is possible by creating awareness of their rights, especially their right to protection, in parents and other stakeholders, putting in place laws to punish those who abuse and exploit children and taking appropriate action to strengthen accountability on the part of government and nongovernment agencies and the civil society. For the first time, in India, an effort has been made to understand the extent and magnitude of different dimensions of abuse of children in the country with the hope that the findings will pave the way towards a better understanding of the factors leading to abuse of children and measures to prevent them, thus creating a such a caring and nurturing environment.

On the analysis of the various case laws it is found that the conviction rate under POCSO is very low which leaves an unsavoury image of the way the criminal justice system is being administered and creates alarm in the mind of the general public that child victims of rape and sexual offences are not getting justice. In fact, in most acquittals, it was found that the prosecutrix (the alleged victim) - considered the ‘sterling witness’ in court parlance had turned hostile. Simply put, the testimony of the alleged victim was found to contradict the legal



position of the prosecution. It is to be emphasized that every stage of the judicial process was intended to be child-friendly but in reality there something that hasn't exactly happened. While most courts have a 'vulnerable witness deposition room', from where victims interact with judges or prosecutors, the process is lengthy and tedious.<sup>21</sup> However it is very pleasing that recently the court in its judgment in the case of Independent Thought V Union of India and Anr.<sup>22</sup> ended the decades-old disparity between Exception 2 to Section 375 IPC and other child protection laws. The judgment gave a reasonable and appreciable solution to the question raised by the researcher in the present research work. The researcher here finds very apt, to quote the wise word of Justice

Lokur —A child remains a child whether she is described as a street child or a surrendered child or an abandoned child or an adopted child. Similarly, a child remains a child whether she is a married child or an unmarried child or a divorced child or a separated or widowed child. At this stage we are reminded of Shakespeare's eternal view that a rose by any other name would smell as sweet — so also with the status of a child, despite any prefix.

Thus it is concluded that a holistic approach of one and all is required to protect the best interest child. Although, a plethora of documents in the form of provisions have been laid down but somewhere it's not fulfilling the criteria in making full justice to the child sexual abuse victims and abusers are successful in escaping from their crime. A culture of silence around this major issue, rampantly increasing of child sexual abuse cases, no proper implementation of law and lack of adequate mechanisms especially in underprivileged sections to control sexual abuse of children are some of the significant challenges of this modern era.

Therefore, stringent measures should be taken in order to prevent and control child sexual abuse. Apart from statutory provisions and legislations by perceiving warning signs of the children, parents can prevent the child from being abused. It is the need of hour to eradicate this problem of child sexual abuse by joining the hands of entire humanity.

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