

Research Article

Child Abuse and the POCSO Act: A Comprehensive Analysis

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ABSTRACT

This paper provides an in-depth analysis of child abuse in India and examines the Protection of Children from Sexual Offences (POCSO) Act, highlighting its procedural aspects, the scope of offences, and implementation challenges. Drawing from various cases and the insights of Dr Mamatha Raghuveer Achanta, this paper underscores the necessity of the POCSO Act and suggests measures for its effective enforcement.

Keywords: Child abuse, POCSO act, Sexual offences, Legal framework

INTRODUCTION

Child abuse is a pervasive issue in India, affecting over 53% of children, with many cases occurring within the home. The Protection of Children from Sexual Offences (POCSO) Act, enacted in 2012, aims to address these abuses with a comprehensive legal framework. This paper transforms the narrative provided by Dr Mamatha Raghuveer Achanta into a scholarly analysis.

Background and Context

The Protection of Children from Sexual Offences (POCSO) Act was introduced in response to a growing awareness and concern about the prevalence of child sexual abuse in India. Prior to the enactment of the POCSO Act, there was no comprehensive legal framework specifically designed to address sexual offences against children. The Act aims to protect children (below 18 years) from sexual offences and ensure their rights are safeguarded during legal proceedings. This gap in the legal system left many child victims without adequate protection and recourse.

The need for a dedicated law became particularly evident through several high-profile cases that shocked the nation and highlighted the vulnerabilities faced by children. One such case was the rape of a 16-year-old girl by two policemen who were intoxicated while on duty. This incident not only exposed the brutality faced by child victims but also underscored the abuse of power by those meant to protect the public. The lack of a stringent legal framework to hold the perpetrators accountable further fuelled public outcry and demands for legislative action.

Another pivotal case that contributed to the demand for the POCSO Act was the Mathura rape case of 1972. Mathura, a young tribal girl, was allegedly raped by two policemen in a police station. The Supreme Court's acquittal of the accused on the grounds that Mathura had not resisted enough to establish non-consent led to widespread protests and significant debate over the inadequacies of existing rape laws. This case highlighted the urgent need for laws that placed the burden of proof on the accused, rather than the victim, especially in cases involving children who are often unable to fully articulate or defend themselves.

Achanta observes 'Children often become victims of child abuse and rape through different approaches like forcing, verbal abuse, tricking a child into sexual activity, and also lack of knowledge. These can also involve touching and non-touching behaviours, given the increased use of technology. More than 53% of children in India report one or more forms of sexual abuse and 50% of child sexual abuse happens at home'.

POCSO Act came into force when a 16-year-old young girl was raped by two policemen (drunk on duty). With the Mathura case, the burden of proof for the first time lied on the accused. She also enlightens Freddy Peats case, Goa, 1990, where, a philanthropist – known as 'father' ran a home for children living and working on the beaches which was called, 'GURUKUL'. He used to say that, there is nothing wrong in sleeping naked with boys and called it 'BODY JOY'. He was subsequently sentenced for committing offence of criminal conspiracy, kidnapping, abducting and selling minors for prostitution. Similarly other cases like Swiss couple, Mumbai; Anchorage, Mumbai; Jaku v/s Jaku, Delhi; Kavda Kalyani case, Thane led to the Protection of Children from Sexual Offence Act, 2012.

POCSO ACT protects children (boys and girls) below 18 years from a range of sexual offences. POCSO calls for mandatory reporting of all sexual offences by all citizens to the nearest police station. The punishment for abetment of an offence under POCSO is the same as the punishment prescribed for that offence. The punishment for attempting to commit an offence under POCSO is half of the punishment prescribed

for that offence. It penalises any person who provides false information/registers false complaint against child knowing it to be false, thereby victimising such child in any of offences is punishable with imprisonment which may extend up to 1 year or fine or both. Section 23 also mentions, media should not disclose any details of the child including name, family details, photograph, and name of school, details of his neighbourhood or community.

She further explained that the POCSO Act provides for a variety of offences under which an accused can be punished. It recognises forms of penetration other than penile-vaginal penetration and criminalises acts of immodesty against children too. Offences under the act include:

- Penetrative Sexual Assault: Insertion of penis/object/another body part in child's vagina/urethra/anus/mouth, or asking the child to do so with them or some other person
- Sexual Assault: When a person touches the child with sexual intent, or makes the child touch them or someone else
- Sexual Harassment: passing sexually cultured remark, sexual gestures/noise, repeatedly following, flashing, etc.
- Child Pornography
- Aggravated Penetrative Sexual Assault/ Aggravated Sexual Assault.

According to the Act, every crime of child sexual abuse should be reported. If a person who has information of any abuse fails to report, they may face imprisonment up to six months or may be fined or both. It also provides for various procedural reforms, making the tiring process of trial in India considerably easier for children. The child-friendly process aims to minimise trauma felt by the victim, eliminate the possibility of re-victimisation and to protect against intimidation. A Victim of Child Sexual Abuse can file a complaint at any time irrespective of his/her present age.

In response to these and other cases, the Government of India enacted the POCSO Act in 2012. The primary objective of the Act is to provide a robust legal framework for the protection of children from offences of sexual assault, sexual harassment, and pornography. The Act defines a child as any individual below 18 years of age and lays down comprehensive measures to ensure the protection of children's rights during the judicial process.

The POCSO Act introduces several key provisions to safeguard the interests of child victims. These include:

1. ***Child-friendly procedures:*** The Act mandates that the investigation and trial processes be conducted in a child-friendly manner to minimise trauma. This includes the use of video conferencing for recording statements, allowing the presence of a trusted adult during the child's examination, and ensuring that the child's identity is protected.
2. ***Mandatory reporting:*** The Act requires any person who has knowledge of the commission of an offence under the Act to report it to the appropriate authorities. Failure to report such offences can result in legal consequences.
3. ***Special courts:*** The Act provides for the establishment of Special Courts for the trial of offences under the Act. These courts are equipped to handle cases involving child victims with the sensitivity and urgency required.
4. ***Burden of proof:*** The Act shifts the burden of proof to the accused in certain circumstances, thereby strengthening the position of the child victim. This provision is particularly crucial in addressing the power dynamics often involved in cases of child sexual abuse.
5. ***Penalties and Punishments:*** The Act prescribes stringent penalties for various offences, including life imprisonment for aggravated penetrative sexual assault. It also penalises attempts to commit offences and abetment of such offences.

The POCSO Act represents a significant advancement in the legal protection of children in India. However, its effective implementation requires continuous efforts in raising public awareness, training law enforcement agencies, and ensuring that the judicial system is equipped to handle these sensitive cases with the utmost care and diligence.

LEGAL FRAMEWORK OF THE POCSO ACT

The POCSO Act encompasses a wide range of sexual offences, including penetrative and non-penetrative assault, sexual harassment, and child pornography. It mandates the reporting of all sexual offences, imposes severe penalties for abetment and attempts to commit offences, and criminalises providing false information.

Penetrative Sexual Assault

Penetrative sexual assault under the POCSO Act includes the insertion of objects, body parts, or other items into a child's body. For example, the Freddy Peats case in Goa involved a supposed philanthropist who abused children under the guise of running a charitable home.

Sexual Assault and Harassment

Sexual assault involves touching a child with sexual intent, while harassment includes making sexually explicit comments or gestures. Cases such as the Swiss couple case in Mumbai illustrate the exploitation of children under the guise of tourism.

Child Pornography

The Act criminalises the use of children for pornographic purposes. The Anchorage case in Mumbai is a notable example of how children were exploited for pornographic content.

Implementation Challenges

Despite its robust framework, the POCSO Act faces several implementation challenges. These include a lack of awareness among the public and law enforcement, societal stigma, and procedural delays. The mandatory reporting clause, for instance, has faced criticism for not being effectively enforced. Moreover, the judicial process can be intimidating and traumatising for child victims.

Innovative Approaches: The Bharosa Initiative

The 'Bharosa' initiative, spearheaded by Dr Mamatha Raghuveer Achanta, represents an innovative approach to supporting victims of child abuse. Bharosa centres provide a child-friendly environment away from police stations and hospitals, offering medical examinations, video conferencing for statement recording, and legal assistance. This initiative, replicated in several districts in Telangana, has handled numerous cases and significantly contributed to the support and rehabilitation of child abuse victims.

She briefly described the work of 'Bharosa' Centre which started in 2016 May, replicated in 4 districts till now, Warangal, Sangareddy, Vikarabad, Hyderabad and she said other 10 centres are coming up. Bharosa is an innovative and victim-friendly centre away from police stations and hospitals operating 24/7. It has medical unit for medical examinations, video-conference facility for 164 CrPC statement recording, lady police inspector for recording statement, one of its kind child-friendly court in the same Bharosa premises, skilling centre for the victims and victim assistance fund for immediate relief. It has successful convergence between all the stakeholders. Experts & corporate hospitals provide free services & NGOs give shelter and skilling. A child help line-1098 is also practised in Bharosa Centre. Child welfare committee sessions happen in Bharosa. It has been registered as a society to become financially self-sufficient. Bharosa Centre is being replicated in all the districts of Telangana.

CASE STUDIES AND IMPACT

The Bharosa Centres have successfully addressed over 5,154 domestic violence cases, 318 rape cases, and 1,065 POCSO Act cases. These centres demonstrate a successful convergence between various stakeholders, including experts, corporate hospitals, and NGOs. They offer comprehensive services, such as a medical unit for examinations, a child-friendly court, and a victim assistance fund. The Bharosa model has received Supreme Court citations and is being expanded across Telangana.

CONCLUSION

The Protection of Children from Sexual Offences (POCSO) Act stands as a landmark legislation in India's fight against child sexual abuse. By providing a robust legal framework tailored specifically to address the unique vulnerabilities of children, the Act aims to ensure that young victims receive the protection and justice they deserve. However, the mere existence of the POCSO Act is not sufficient; its effectiveness hinges on several critical factors, including proper implementation, public awareness, and societal change.

Implementation Challenges

The implementation of the POCSO Act faces numerous challenges. One significant hurdle is the lack of adequate training and sensitisation among law enforcement officials and judicial personnel. Many police officers, prosecutors, and judges are not fully equipped to handle cases involving child victims with the necessary sensitivity and understanding. This often results in secondary victimisation, where the child suffers further trauma during the legal process.

Furthermore, the infrastructure required for the effective implementation of the POCSO Act is often lacking. For instance, the establishment of Special Courts and child-friendly facilities, as mandated by the Act, is not uniformly available across all regions. This disparity leads to inconsistencies in how child sexual abuse cases are handled, depending on the locality.

Public Awareness and Societal Change

Public awareness is another crucial factor in the effectiveness of the POCSO Act. Despite the Act's mandatory reporting requirement, many cases of child sexual abuse go unreported due to a lack of awareness among the general public and a deep-rooted societal stigma surrounding sexual abuse. Victims and their families often fear social ostracism and retaliation, which discourages them from coming forward. Hence,

widespread awareness campaigns are essential to educate the public about the provisions of the POCSO Act and the importance of reporting abuse.

Societal attitudes towards child sexual abuse also need to change. In many communities, there is a tendency to blame the victim or dismiss the severity of the abuse. Efforts must be made to foster a culture of zero tolerance towards child sexual abuse, where victims are supported and perpetrators are held accountable. This involves not only legal reforms but also educational initiatives and community engagement programs.

Community-Driven Support Systems

Initiatives like the Bharosa centres exemplify the potential of community-driven support systems to complement the legal framework provided by the POCSO Act. Bharosa centres offer a holistic approach to supporting child victims by providing medical, psychological, and legal assistance in a single, child-friendly location. These centres operate independently of police stations and hospitals, which can often be intimidating environments for children.

The success of Bharosa centres lies in their ability to create a supportive network involving various stakeholders, including NGOs, healthcare providers, legal professionals, and social workers. By offering services such as video conferencing for statement recording and child-friendly courtrooms, Bharosa centres help to reduce the trauma associated with the legal process and ensure that the child's best interests are prioritised.

Strengthening Enforcement Mechanisms

To enhance the effectiveness of the POCSO Act, there must be a concerted effort to strengthen enforcement mechanisms. This includes regular training programs for law enforcement and judicial personnel to sensitise them to the needs of child victims and familiarise them with the provisions of the Act. Additionally, there should be strict monitoring and accountability measures to ensure that cases are handled promptly and judiciously. The establishment of more Special Courts and child-friendly facilities is also imperative. These courts should be equipped with the necessary resources and staffed by personnel trained to deal with child sexual abuse cases. The government should allocate sufficient funding to build and maintain these infrastructures.

Promoting Comprehensive Support for Victims

Ensuring that victims of child sexual abuse receive comprehensive support is paramount. This involves providing immediate medical and psychological care, legal assistance, and ongoing support throughout the judicial process. Victims should have access to

counselling services to help them cope with the trauma and rebuild their lives. Additionally, there should be mechanisms in place to protect victims from retaliation and ensure their safety.

FUTURE DIRECTIONS

Future efforts should focus on a multi-pronged approach to combat child sexual abuse. This includes enhancing the legal framework, improving the implementation of existing laws, raising public awareness, and fostering societal change. Collaborative efforts between the government, civil society, and community organisations are essential to create a protective environment for children.

Research and data collection on child sexual abuse should be prioritised to inform policy decisions and track the effectiveness of interventions. There should also be a focus on preventive measures, such as education programs in schools to teach children about their rights and how to protect themselves from abuse.

In conclusion, while the POCSO Act is a critical tool in addressing child sexual abuse in India, its success depends on comprehensive and coordinated efforts to ensure its effective implementation, raise public awareness, and bring about societal change. By strengthening enforcement mechanisms, supporting community-driven initiatives like Bharosa, and providing comprehensive support to victims, India can make significant strides towards protecting its children and securing their futures.

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