

HAS POCSO BEEN SUCCESSFUL IN SHATTERING THE SILENCE SURROUNDING CHILD ABUSE IN INDIA: A META-ANALYTICAL STUDY

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Abstract

It took a whopping 336% rise in Child Rape cases (2001-2011) to ultimately compel our government to acknowledge the ugly truth concerning offenses against children in India. Bringing up children in today's treacherous environment is a herculean task for parents. 39% of the total population of our country comprises of children but have we done enough for their safety and security? For the first time, National Crime Record Bureau (NCRB) has tabulated data in terms of relationship of abuser with the victims in rape cases (2015). These statistics makes it official, that in 94.8% of cases, the abusers were persons known to the victims with most coming under the category of neighbours. POCSO Act 2012 came as a respite to this silent epidemic. A progressive, profound and comprehensive legislation with stringent provisions is our saviour of hope. The preventable pitfalls are proper implementation/enforcement of POCSO, periodic training, familiarization, discontinuing outdated methods to collect evidences and sensitization of Special Juvenile Police Unit (SJPU), local Police, legal professionals, judiciary, medical professionals and child care providers. National Commission for the Protection of Child Rights (NCPCR), State Commission for the Protection of Child Rights (SCPCR) and all states shall equally ensure that the regulatory and monitoring bodies which are constituted should be made functional. Higher conviction rates shall act as a deterrent. Mass awareness campaigns on child abuse prevention shall illuminate the future of our children from darkness to light.

Keywords: POCSO, NCRB, Sensitization, Child Rape, Awareness

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INTRODUCTION

The future of a nation which boasts of having the largest number of children¹ in the world is shaken. 2 out of every 3 children in this country is a victim of physical, emotional, or sexual abuse.² This dark reality was kept under wraps and India was living in a state of denial for decades. Often child abuse victims are given a life sentence and forced to live in the shadows of their abusers³. Although there is very little empirical data available on the scale of abuse in India, this paper makes an attempt to take a 360 degree view on POCSO Act, 2012 by studying pre and post-POCSO indicators, post-POCSO challenges with feasible recommendations.

CHILD ABUSE INDICATORS IN THE PRE- POCSO ERA

In 1993-94, a Bangalore-based NGO, Samvada undertook one of the first specific studies⁴ on Child Sexual Abuse (CSA) through a series of workshops for 348 girls aged between 15 and 21 years, who were from 11 schools and colleges in Karnataka. The study reported that 47 per cent of the girls had been molested and 15 per cent had been subjected to serious sexual abuse, including rape.⁵

In 1997, the Sakshi Violation Intervention Centre, a Delhi-based group, undertook a study of 350 schoolgirls.⁶ Of these 63 per cent had been sexually abused by someone in the family; 25 per cent had been raped, made to masturbate the perpetrator or perform oral sex. Over 30 per cent of the girls had been sexually abused by their fathers, grandfathers or male friends of the family.

In 1998, the Delhi-based NGO Recovering and Healing from Incest (RAHI) carried out a study in selected States on 'Women's Experience of Incest and Childhood Sexual Abuse'⁷. The study had found that 76 per cent of middle and upper class women in Chennai, Mumbai, Kolkata and Goa had been sexually abused as children, and 71 per cent of them had been

¹ Available at: www.cry.org/resources/pdf/types_of_corp_parts_sep11.pdf

² Available at: www.medind.nic.in/daa/t12/i2/daat12i2p416.pdf

³ Herbert, W. 2008

⁴ Available at: <http://arpan.org.in/the-issue/csa-in-the-indian-context/>

⁵ Available at: www.boloji.com ; Enfold www.enfoldindia.org

⁶ Available at: http://www.chitrapunjab.com/assets/CHILD_ABUSE.328174846.pdf

⁷ RAHI 1998 cited by WCD 2007b

abused by relatives or someone they knew and trusted. The study revealed that some women only realized that they had been abused when they were responding to the questionnaire

In 1999, the Tata Institute of Social Sciences, Mumbai, interviewed 150 girls and found that 58 of them, more than one in three had been raped before the age of 10.⁸

In 2006 a Chennai-based NGO Tulir with the support of the international organization save the Children undertook a study of CSA in Chennai. The results of the study showed that out of a total of 2211 child participants, 939 had faced at least one form of sexual abuse at some point in time. The study results show that 39 per cent of the girls faced sexual abuse, compared to 48 per cent of the boys; taken together this is 42 per cent of the children.⁹

In 2007, the largest nationwide study on child abuse ever undertaken in the world was done by the Ministry of Women and Child Development (MWCD)¹⁰. It looked at different forms of child abuse: Physical Abuse, Sexual Abuse and Emotional Abuse and Girl Child Neglect in five different evidence groups, namely, children in a family environment, children in school, children at work, children on the street and children in institutions. The results of this report aren't hidden from anyone.¹¹

NCRB's statistics stated that 48,338 child rape cases were recorded during 2001-2011 in India.¹² This is an increase of 336 percent since 2001.

These findings are just the tip of the iceberg, reflecting the most severe instances of sexual abuse that were prosecuted. Most other incidents of sexual abuse in children often go unreported. Additionally, the alarmingly high figures are limited not just to child sexual abuse, but also reported for incidents of physical and emotional abuse, and neglect¹³

CHILD ABUSE INDICATORS IN THE POST-POCSO SCENARIO

⁸ Available at: <http://arpan.org.in/the-issue/csa-in-the-indian-context/>

⁹ Available at: <http://tulir.org/images/pdf/Research%20Report1.pdf>

¹⁰ Ministry of Women and Child Development, Study on Child Abuse: India 2007, p.74, Available at <http://wcd.nic.in/childabuse.pdf>

¹¹ 53.22% children reported having faced one of more forms of sexual abuse. Out of these 53% child victims, 57% were boys

¹² Asian Centre for Human Rights (2013)

¹³ cf. Zolotor et al., 2009

National Crime Records Bureau¹⁴ As per available data, a total of 8,904 cases was registered under POCSO Act during 2014.¹⁵

Women and Child Development Minister Maneka Gandhi informed Lok Sabha that 45,498 cases have been registered between November 2012 and March 2015, based on information collected from the states/UT and collated by the National Commission for Protection of Child Rights (NCPCR), 45,498 cases have been registered under the POCSO Act, out of which 4,316 cases are pending with the state police and 35,700 cases are pending before courts.

NCRB for the first time has tabulated data in terms of relationship of abuser with the victims in rape cases (2015).

These statistics makes it official, that in 94.8% of cases, abusers were persons known to the victims with most coming under the category of neighbours.

A 360° ANALYSIS OF POCSO 2012

Silent on other forms of child abuse and neglect: There is no explicit legal definition of other forms of child abuse and neglect except for child sexual abuse in POCSO and only a handful of research studies exist on this. Nevertheless, a few studies including the MWCD report, reveals high incidence of all forms of child abuse and maltreatment in India.¹⁶

Inadequate structural compliances: Most states have still not notified Special Courts or appointed Special Public Prosecutors, forget about vulnerable witness room, for child witnesses giving evidence or usage of special tools and facilities to record child testimonies¹⁷. The records of NCPCR indicate that since its constitution, there are 605 Special Courts and 478 public prosecutors across the country. Ironically, only a handful of these are fully and dedicatedly functional. Goa, Assam, Delhi, Chandigarh, Telangana¹⁸ and Hyderabad are the only States and Union territories with fully functional separate child- friendly courts as mandated under POCSO Act.¹⁹

¹⁴ Available at: www.ncrb.nic.in/StatPublications/CII/CII2014/Compendium%202014.pdf

¹⁵ Available at: www.pib.nic.in/newsite/PrintRelease.aspx?relid=136923

¹⁶ Charak & Koot, 2014

¹⁷ Section 36 of the POCSO Act

¹⁸ Available at: <https://www.inshorts.com/.../telangana-gets-south-indias-1st-childrens-court-1472097>

¹⁹ Available at: www.dnaindia.com/.../report-over-500-cases-of-sexual-offences-against-children-pen...

Encumbered procedural compliances: 4 years on, cases of child sexual abuse are still being brought before regular criminal courts, thus denying children their right to a child-friendly system and structure. The 2015 Crime in India report by the National Crime Records Bureau (NCRB) has revealed that 60% of victims in all the cases registered under Section 377 – IPC provision that outlaws ‘unnatural sex’ – are children²⁰. The collaborators of child abuse are still in-adept with the basic provisions of POCSO²¹. They use outdated methods to collect evidences with shoddy investigations leading to acquittal of most of the abusers.²² Their failure to comply with provisions has devastating effect on victims of child abuse and their families.

Investigative machinery's non-sensitive approach: The Protectors of child rights themselves failed to realize the scope of child abuse. Cases of vulnerable children should be dealt differently than the traditional cases. The thoughts, emotions, thinking capacity, immaturity of children are to be considered while dealing with them. It is extremely difficult to get responses from children on such a sensitive subject because of their inability to fully comprehend different dimensions of child abuse including how to express their trauma.²³ This insensitive approach of authorities in question is contrary to the whole idea of the child-friendly legislature, which is that the child who has already been victimized by the perpetrator should not face any uncomfortable situation or mental trauma during such recording of statement.²⁴

Rampant misuse of mandatory reporting: Children are unable to avoid themselves from the abusive conditions and hence, they need adults to act on their behalf.²⁵ Misuse of section 19 and also section 22 is on rise, as cases of under- reporting, over- reporting and false complaints provide misleading information and makes the purpose of mandatory reporting futile.²⁶ In such cases, this act would be a potent assault weapon and would land the accused

²⁰ Available at: <http://thewire.in/66397/sexual-crimes-against-children-still-registered-under-section-377-not-pocso/>

²¹ Available at: www.icmr.nic.in/ijmr/2015/july/editorial.pdf

²² *State v. Avadesh*, Delhi District Court (Delhi Central) in SC No.82/13 decided on 01.08.2014

²³ Model guidelines u/s 39 of POCSO Act for examining child witnesses before & after trials issued by MCD

²⁴ Available at: <http://www.livelaw.in/trial-court-can-recommend-action-police-officers-flouting-provisions-pocso-act-orissa-hc/>

²⁵ Section 19 of POCSO Act

²⁶ Mandatory reporting protects children from further abuse and prevents the abuser from abusing again

person in hot water.²⁷ However, mandatory reporting alone cannot ensure effective intervention in all cases of abuse.”²⁸

Conflated child sexuality with child sexual abuse: POCSO has been a little unfair to the rights of teenagers (16-18) as it pays no regards to the idea of consent given by persons under 18. The act has risen the age of consent from 16 to 18 years without considering scientific evidence on adolescent sexuality.²⁹ Furthermore, children involved in sexual activity will be treated as juveniles in conflict with the law. POCSO has failed to consider nuances of age, age difference, and child development. Moreover, judges commit gross violation of victims’ fundamental rights by passing bizarre orders of marriages between perpetrators and their child victims, which not only sanctions marital violence, but child marriage – both of which are illegal, and requires to be prohibited.³⁰ Hence the existence of a statutory provision that punishes forms of sexual expression that are developmentally normal degrades and inflicts a state of humiliation on adolescents.

Issue of hostile witnesses: In huge proportion of cases victims turned hostile. Most of the children between 12-18 years turn hostile due to delayed FIRs, technical snags, unclear procedures, calling victims to testify repeatedly along with tremendous pressure to compromise despite of extraordinary efforts put in by the SJPU or local Police. People don’t understand it is not a wrong it is a sin – the abusers cannot be forgiven.³¹

Gap in law: Plight of a child victim who has to testify twice, as per the procedural requirement, before the Special Court as well as Juvenile Justice Board (JJB)³² could be avoidable. Secondly, the minimum sentences under the POCSO Act are very high and discretion of sentences should be given to the judges. Lastly, admissibility of statements recorded under Section 164 CrPC can be used as examination-in-chief provided these statements are recorded uniformly in a transparent manner.

CONCLUSION

²⁷ Available at: http://www.telegraphindia.com/1140122/jsp/opinion/story_17850822.jsp#.V99FRo9OLIU

²⁸ Available at: <https://jilsblognujs.wordpress.com/2015/06/27/mandatory-reporting-under-pocso-are-we-ready/>

²⁹ Available at: <http://www.satyamevjayate.in/child-sexual-abuse/reviewing-pocso.aspx>

³⁰ Available at: <http://www.tarshi.net/inplainspeak/voices-love-and-sex-in-the-time-of-the-pocso-act-2012/>

³¹ Available at: <https://www.nls.ac.in/ccf/jjdocuments/specialcourtPOSCOAct2012.pdf>

³² In cases in which the accused persons include a juvenile as well as an adult, the child victim will have to testify twice, as per the current legal framework.

POCSO has been successful in shattering the silence surrounding child abuse in India to a prodigious extent. POCSO is the ideal solution to all sexual offences affecting children without which India was crippled for decades. POCSO is the voice of the silent hullabaloo of victims of abuse who were denied justice earlier. India's first gender neutral legislation exclusively defines all forms of sexual offences against children and fulfils the mandatory obligations of India as a signatory to the UNCRC.³³ POCSO follows best international standards to safeguard interests of the child. POCSO is exceptional as it requires all actors within the legal system to modify their professional practice while dealing with child victims of sexual offences. From child friendly mechanisms for reporting and recording of evidence; to investigation and speedy trial of offences; trial in-camera without revealing the identity of the child through designated Special Courts, everything is enshrined in golden letters in this landmark legislation.³⁴ However, provisions of criminal liability of children in consensual sexual relationship needs to be reconsidered. The definition of a child in the Act should also include transgender under 18 years. In fact, the legal definition of child should be uniform across all laws and acts and should be brought under the ambit of POCSO. All forms of child abuses and neglect should be covered under the umbrella of POCSO. The Ministry of Women and Child Development (MWCD)³⁵ has taken a leadership role in spreading awareness and breaking the silence. POCSO E-box³⁶ is the most recent initiative taken by MWCD. (August 2016)³⁷. Only when every individual along with different agencies of the State, i.e. the police, judiciary and child protection machinery, unite and adopt a sensitive approach towards securing justice for victims of child abuse, can POCSO Act be successfully implemented, benefit the victims and transform the society; in the process will be one of most revolutionary laws in recent times and a legendary legislation success in years to come.

RECOMMENDATIONS:

- Sensitization and procedural training of all law enforcement agencies, child protection institutions, judiciary and society shall play a paramount role in effective implication of POCSO. Workshops and training programs for the same should be formulated and imparted.

³³ United Nations Convention on the Rights of The Child, acceded to on December 11, 1992.

³⁴ Available at: www.wcd.nic.in/sites/default/files/childprotection31072012.pdf

³⁵ Ministry of Women and Child Development

³⁶ POCSO e-Box, is an online complaint management system for easy and direct reporting of sexual offences against children and timely action against the offenders under the POCSO Act, 2012.

³⁷ Available at: www.ncpcr.gov.in/index2.php

- Vigilant NCPCR and SCPCRs to monitor the implementation of laws would control incidence of rape and molestation would reduce drastically.
- Universities and other institutes of higher education, police and medical training academies should develop specialized courses and training programs focusing on child abuse and its consequences, and children's rights.
- State governments have to ensure that all child-friendly requirements specified under the law are duly met.
- Special Courts to be directed on the award of interim and final compensation in cases under the POCSO Act clarifying the role of various authorities in the awarding and disbursement of compensation amount.
- Citizens of India should conduct mass awareness campaigns for prevention and protection of children from the menace of child abuse.