

4. Interviewed with *Chittaranjan* Advocate, Anantapur District, Andhra Pradesh on 20.9.2011
5. Interviewed with *G. Erriswamy* Advocate, Anantapur District, Andhra Pradesh on 22.9.2011
6. Interviewed with *B. Kullayappa* Advocate Anantapur District, Andhra Pradesh on 23.9.2011.
7. Enadu, Daily Newspaper Andhra Pradesh State Editions.

## A UNIQUE REMEDY TO CHILD ABUSE - POCSO ACT, 2012

By

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The Constitution of India guarantees several rights to children and enables the State to make provisions to ensure that the tender age of children is not abused. Even though India is a signatory to a host of International Covenants and Instruments focusing on Child Protection, these along with the existing domestic legal mechanisms have not been able to provide the necessary systems which could prevent child abuse. The 12th Five Year Plan (2012-2017) of the Ministry of Women & Child Development has unequivocally stated that “Strict measures are required to ensure that abuse of the child for sexual purposes is prevented<sup>1</sup>”. The new National Policy for Children, 2013, recognizes that “childhood is an integral part of life with a value of its own”. One of the key priorities of the Policy mandates the State to “*create a caring, protective and safe environment for all children, to reduce their vulnerability in all situations and to keep them safe at all places, especially public spaces and protect all children from all forms of violence and abuse, harm, neglect, stigma, discrimination,*

*deprivation, exploitation including economic exploitation and sexual exploitation, abandonment, separation, abduction, sale or trafficking for any purpose or in any form, pornography, alcohol and substance abuse, or any other activity that takes undue advantage of them or harms their personhood or affects their development*<sup>2</sup>”.

Despite the best intentions and plans in place, for the better protection of children, The Protection of Children from Sexual Offences Act 2012 (POCSO Act), defines various instances of child abuse have been known to occur in schools, homes for children and other child care institutions as also in the child’s own residence. In spite of all these, children in India have not been able to take full advantage of their rights and opportunities in practice of various reasons. Therefore in this paper an attempt has been made to highlight the POCSO Act initiatives to protect and preserve future India.

### *Need for Protection of Children:*

Child Abuse was and continues to be, one of the most heinous crimes designed and perpetuated by human beings against

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1. Report of the Working Group on Child Rights, For the 12th Five Year Plan (2012-2017), Ministry of Women and Child Development at P.24.

2. National Policy for Children, 2013, Ministry of Women and Child Development at P.9.

some of the most vulnerable and defenceless sections of the community. It is a malaise on a society that prides itself on the rule of law, democracy and the various freedoms enshrined in the Constitution. Globally, it has been recognised and seen as a particularly burdensome challenge, and numerous instruments, from the Geneva Declaration of the Rights of the Child of 1924<sup>3</sup> to the United Nations Convention on the Rights of the Child<sup>4</sup> and The Stockholm Declaration and Agenda for Action have called upon States to create and enhance Child Protection Systems<sup>5</sup> to ensure that *"the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world"*.

According to the World Health Organisation<sup>6</sup>, Child maltreatment sometimes referred to as *"child abuse and neglect, includes all forms of physical and emotional ill-treatment, sexual abuse, neglect, and exploitation that results in actual or potential harm to the child's health, development or dignity. Within this broad definition, five subtypes can be distinguished - physical abuse, sexual abuse, neglect and negligent treatment, emotional abuse and exploitation"*.

Sexual abuse is defined as the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared, or else that violates the laws or social taboos of society. Children can be sexually abused by both adults and other children who are - by virtue of their age or stage of development - in a

position of responsibility, trust or power over the victim<sup>7</sup>.

In India, Child Abuse occurs in various spaces including the home, neighbourhood, schools, and temporary homes of shelter for abandoned and neglected children, railway platforms, jails and refugee camps. The problem is deep rooted and is one that the community is hesitant to accept and acknowledge. Child abuse is shrouded in secrecy and there is a conspiracy of silence around the entire subject. In fact there is a well-entrenched belief that there is no child abuse in India and certainly there is no sexual abuse in the country. Further, certain kinds of traditional practices that are accepted across the country, knowingly or unknowingly amount to child abuse. Existing socio-economic conditions also render some children vulnerable and more at risk to abuse, exploitation and neglect<sup>8</sup>.

### ***Impact of Child Abuse:***

The possible consequences of child abuse effects vary depending on the circumstances of the abuse, personal characteristics of the child, and the child's environment. Consequences may be mild or severe; disappear after a short period or last a lifetime; and affect the child physically, psychologically, behaviorally, or in some combination of all three ways. Ultimately, due to related costs to public entities such as health care, human services, and educational systems, abuse impacts not just the child and family, but society as a whole.

### ***Importance of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act)***

With the repeated string of rape of

3. Adopted on 26 September, 1924, League of Nations, <http://www.un-documents.net/gdrc1924.htm>

4. Adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November 1989.

5. Adopted at the First World Congress against Commercial Sexual Exploitation of Children, Stockholm, Sweden, 27-31 August 1996.

6. Report of the Consultation on Child Abuse Prevention, World Health Organization, 1999, Geneva.

7. Preventing Child Maltreatment: A Guide to taking Action and Generating Evidence, World Health Organization and International Society for Prevention of Child Abuse and Neglect, 2006, Geneva.

8. Study of Child Abuse, Ministry of Women & Child Development, Government of India, 2007.

children being reported across the nation and a public outcry raging on the streets like molten lava flowing uncontrolled from a bursting volcano, the victimised and abused child suffers in silence. Traumatized, dejected and horrified family members of unfortunate victims find themselves helpless, confused and unable to cope up with the heinous crime. Even though on 22nd May, 2012, the Parliament passed the Protection of Children against Sexual Offences Act, 2012 (POCSO) and which came into force on 14th November, 2012, this special law to protect children from offences of sexual assault, sexual harassment and pornography, remains an unimplemented law, unknown to most and beyond knowledge or information of those who need to apply it. Sadly, the result is that POCSO, an Act, which is a necessity in India where 40 percent of the population is below the age of 18 and where over 53 percent of children reportedly stated that they had experienced one or more forms of sexual abuse, despite being on the statute book. Rhetoric demands stiff penalties, expeditious new law and fast track Courts little realising that POCSO, as a wholesome law.

Until recently, various provisions of the Indian Penal Code (IPC) were used to deal with sexual offences against children as the law did not make a distinction between an adult and a child. POCSO deals with sexual offences against persons below age of 18 years. The POCSO defines “Penetrative sexual assault<sup>9</sup>”, “sexual assault<sup>10</sup>” and “sexual harassment<sup>11</sup>” making the offence aggravated if it is committed by a police officer, public servant, staff member of jail, remand, protection or observation home, staff of a hospital or an educational institution or by a member of the armed or security forces<sup>12</sup>.

POCSO provides for relief and rehabilitation as soon as the complaint is made to the Special Juvenile Police Unit or the local police who are required to make immediate arrangements for care and protection<sup>13</sup>. The intent to commit an offence defined under POCSO is also punishable besides abetment or aiding the sexual abuse of a child<sup>14</sup>. Special emphasis has been provided for trial in special children’s Courts with speedy disposal and special procedures to avoid child not seeing accused at the time of testifying<sup>15</sup>.

### *Child Friendly Procedures as incorporated in POCSO*

- \* Recording the statement of the child at the residence of the child or at the place of his choice, preferably by a woman police officer not below the rank of sub-inspector<sup>16</sup>. Evidence has to be recorded within 30 days.
- \* No child to be detained in the police station in the night for any reason<sup>17</sup>.
- \* Police officer not to be in uniform while recording the statement of the child<sup>18</sup>.
- \* The statement of the child to be recorded as spoken by the child<sup>19</sup>.
- \* Assistance of an interpreter or translator or an expert as per the need of the child<sup>20</sup>.
- \* Child not to see accused at the time of testifying. The evidence of the child shall be recorded within a period of 30 days of the cognizance of the offence<sup>21</sup>.

9. Section 3 of POCSO Act, 2012.

10. Section 7 of POCSO Act, 2012.

11. Section 11 of POCSO Act, 2012.

12. Section 9 of POCSO Act, 2012.

13. Section 19 of POCSO Act, 2012.

14. Sections 16 to 18 of POCSO Act, 2012.

15. Chapters VII and VIII of POCSO Act, 2012.

16. Section 24 of POCSO Act, 2012.

17. Section 24(4) of POCSO Act, 2012.

18. Section 24(2) of POCSO Act, 2012.

19. Section 25(1) of POCSO Act, 2012.

20. Section 26(2) of POCSO Act, 2012.

21. Section 35 of POCSO Act, 2012.

- \* Assistance of special educator or any person familiar with the manner of communication of the child in case child is disabled<sup>22</sup>.
- \* Medical examination of the child to be conducted in the presence of the parent of the child or any other person in whom the child has trust or confidence<sup>23</sup>.
- \* In case the victim is a girl child, the medical examination shall be conducted by a female doctor<sup>24</sup>.
- \* Child not to be called repeatedly to testify and frequent breaks to be given to the child during the trial<sup>25</sup>.
- \* No aggressive questioning or character assassination of the child<sup>26</sup>.
- \* Trial to be in the special Court in camera<sup>27</sup>.

### ***Rational behind POCSO Act:***

A child lives within the broader confines of a society and is sometimes unfortunately the victim of the horrors perpetrated by that very same society. Crimes against children occur within homes, schools, institutions and the state itself, whose responsibility it is to house, educate and empower children.

Education plays a vital role in transforming a society by making its children more aware, open minded and independent. Schools and other institutions that provide education therefore, are vital in the role they play in creating a nurturing environment for children where they can learn their core values and define their initial behaviours. On the flip side however, they are also targeted

breeding grounds for sexual abuse and without the right preventive mechanisms, can be the unwitting accomplices to the perpetuation of Child Sexual Abuse.

Schools are uniquely placed to break the patterns of violence by giving children, their parents and communities the knowledge and skills to communicate, negotiate and resolve conflicts in more constructive ways. However, patterns of violence are often entrenched in school culture, sometimes as a matter of policy supported and promoted by certain theories about childhood development and learning. Educational institutions can also help in preventing the creation of future abusive behaviour in children by inculcating in them the right attitudes and ensuring they have access to the correct information, particularly around gender, health and myths that shroud abuse.

In most situations, the child or teacher can neither recognise early behaviours and therefore prevent the onset of sexual abuse nor do they know what to do once it has occurred. Various cases of abuse of children on the way to and from school, underline the fact that a wide variety of cases occur on the buses and transportation of children to school which neither the school nor the parent are in a position currently to prevent.

Apart from schools, there is a strong need for new legislation which will prevent sexual abuse within institutions which house children in need of care and protection and other registered or unregistered institutions where children spend a significant part of their day. Hence the child centric law has been formulated which ensure that all stakeholders form a part of the preventive system.

### ***Guiding Principles for Protection of Children from abuse:***

*1. Responsibility of Family Members:* All precautions must be taken to ensure that the family environment is safe, comfortable and

22. Section 26(3) of POCSO Act, 2012.

23. Section 27 of POCSO Act, 2012.

24. Section 27(2) of POCSO Act, 2012.

25. Section 33(5) of POCSO Act, 2012.

26. Section 33(6) of POCSO Act, 2012.

27. Section 37 of POCSO Act, 2012.

peaceful and parents fully comprehend and have the necessary tools, ability and resources to keep their children safe.

2. *Empowerment of Children:* Children's participation in peer to peer sharing and learning, shall be promoted in all settings and children shall be assisted by all possible means to be able to effectively participate in such exercises. Any disability, which might prevent a child from his or her participation in such sharing and expressions shall be specifically addressed. Children shall be recognised as rights-bearing individuals, guaranteeing them, as appropriate to their evolving capacity, the right to make decisions and participate in society. These decisions can include those involving their own protection and every effort should be made to ensure that children are able to exercise their right to be heard and to participate.

3. *Best Interest of the Child:* In all actions, processes and decisions taken to prevent Child Sexual Abuse, the best interest of the child shall be the primary consideration.

4. *Safety:* For ensuring safety of children, restrictive and coercive measures and processes shall not be resorted to in the name of care and protection.

5. *Non-stigmatizing decisions:* All decisions and actions taken should be in the best interest of the child. In furtherance of this, all initiatives should strive to reduce the stigma and taboo around child abuse and sexual abuse related issues and the language used should be child friendly and inclusive.

6. *Simplicity:* All measures to prevent abuse

must be practical and it should be easily replicable by concerned stakeholders. There are a number of institutions and spaces where children spend time and all such institutions should be able to absorb and implement these guidelines easily and within a short span of time, without requiring complicated training and rules.

7. *Zero Tolerance:* Child Sexual Abuse is perpetuated within the contours of the larger community and hence all actors within the community or society should be used to ensure that potential abusers and hazardous situations do not fester. There will be zero tolerance of child abuse.

### **Conclusion :**

Children being supreme asset of the country, they are to be looked after and groomed well not merely on the basis of constitutional or statutory provisions but also with great human touch and concern. Children should be motivated, inspired and persuaded to possess good qualities and human values. Children can be inspired to possess these qualities so that when they grow, they should be able to build bridges between man and man irrespective of regions, religions, caste, community, language etc., based on mutual love, confidence and trust and not the walls of hatred, violence and distrust. It is both expedient and convenient to infuse these qualities in the children from the beginning so that the future of this country can be safe in their hands. The POCSO Act ensuring a protective environment for children as they are the future leaders of the country.