

The Pocso Act 2012: An effective tool for Implementation and Prevention of sexual offences against children

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Abstract

We say that children are the future of our nation, India is the country of youth, and we expect from our youth to contribute in the nation's growth and its security, but who is going to take the responsibility of their growth and security. We fail to keep them safe. When children are abused they carry the trauma with them into adulthood. It is harder for them to come back to their normal lives. A statement released by Louis Georges Arsenault, UNICEF in reference to India says that "it is alarming that too many of these cases are children. One in three rape victims is a child. More than 7,200 children are including infants are raped every year. Now these are the ratios where the offence was reported and we knew about them but what about the cases which are not reported, where the assault is happened but no light of justice could be seen. Child abuse is mounting in India with a rapid rate; the age of innocence is altering with age of qualms.

Keywords: stalking, sexual harassment, sexual abuse, enforcement, zero tolerance

Introduction

Sexual abuse against children is considered to be any type of sexual advancements passive or violent that a child is tortured with, It could be penetration it could be non penetration but the legally does not change the definition of sexual abuse for children in the legal definition. In India there are specific laws to protect child from all types of abuses including sexual abuses of any kind. In 2011 'Protection of Children against Sexual Offences Bill' was placed in Parliament. On May 22nd 2012 the bill became an Act.

Background

More than 53% of the children in India are victims of Child Abuse in the country. Before the legislation of 2012 the legal protection for children was in the form of the following penal Code and they are still in existence today. They are all part of the India Penal Code. These are encoded in following sections of Indian penal code-

The IPC 375 of 1860 is also for rape against children.

The IPC 354 of 1860 is for outraging the modesty of a woman which could be an adult woman or a minor woman/girl.

The IPC 377 of 1850 is for all types of unnatural offenses against children and women.

The IPC 511 of 1860 deals with the attempt to commit sexual abuse or any other form of unnatural offenses against children and women.

The reason why the 2012 Act for the protection of children came into existence is because the Indian Penal Codes could not protect and provide adequate legal protections for these types of offenses. The loop holes in the Penal Codes create sufficient defense grounds for the alleged accused.

The IPC 375 does not protect the male victim from sexual abusers of any gender. It only protects the traditional form of intercourse. It was therefore not possible to protect the make child from being sexually abused by any gender.

In IPC 354 the word 'modesty' is not clearly defined and is open to interpretation. The penalties for IPC 354 are weak and it also does not protect the modest of the male child.

In the IPC 377 unnatural offenses are not clearly defined and it can only apply if the victim has been penetrated sexually in any form of bodily intrusion, if there is a sexual abuse on children that does not penetrate internally the abuser cannot be charged with a criminal sexual offense.

The Definition of Child Abuse in the Indian Context

The Pocso Act of 2012 defines sexual abuses against children as abuse if it is an act of sexual abuse, if it is exploitation of the child sexually, and it also lists the different types of sexual abuses that are protected by this Act.

Sexual Assault through Penetration

Inserting any type of object or using any part of the abuser's body to penetrate into any body part of a child or making the child do it themselves.

Sexual Abuse without Penetration

Any type of touching of organs like the penis, the vagina, the anus, the breasts of a child with sexual intentions is sexual abuse without penetration.

Initiating any type of physical nearness with a pre-mediated sexual intent on the child (Martin *et al.*, 1993) ^[3]

Sexual- Harassment

Making any type of sounds or gesture or showing any object or body part, with sexual intent, so that the child will be force to see it or hear it is sexual harassment.

Making any child show his or her naked body is sexual harassment. Making a child show any body part under the Act is also sexual harassment. Any type of obscene gestures with sexual intent that will be seen or heard or felt by a child is sexual harassment.

Stalking a child, watching child, directly or through digital media in natural positions or in compromising positions through the digital media or any other manner with a sexual intent is sexual harassment.

Luring children for pornographic purposes or showing the child objects of sexual interest or making them hold these objects while being photographed are all acts of sexual harassment according to the Act of 2012 legislated in India.

There is definition in the act of an 'Aggravated Sexual Assault'. This is when a person who is in a position of power over the child, when the child is mentally ill or the abuse has been committed by a person in authority such as a doctor, a teacher, a family member a police officer etc, the sexual assaults according to the Act is an aggravated sexual assault. (Widom, 1999) ^[9]

Statistics of Sexual Abuse on Children in India: In 1998 a survey was conducted in which it was found that 76% of those who had been surveyed had been sexually abused at some point in their life as children. This abuse took place in their childhood and or in their adolescence. 40% of those surveyed also said that the abuser was a family member normally an Uncle or a cousin who had abused the person as a child.

In 2006 the COHCS study that was undertaken brought about facts that need to be acknowledged and accepted and action taken to minimize the figures that the study brought out. The study was conducted with 2211 children who were attending school on a regular basis. The Sexual abuse rate found was 42% of all the children and they belong to all the different socio economic groups of Indian society. 48% boys reported sexual abuse, 39% girls reported sexual abuse. 15% of the total sample size were boys and girls who had been severely abused sexually leaving emotional, psychological and mental scars.

In 2007 the Government had undertaken a study and the sample size was 125,000 children from thirteen different states in India. The results and the findings were that 53% of the participants in the study had been abused and they were subjected to not only on type of sexual abuse but to different types of sexual abuse. 20% of them were severely abused. Out of all the children who were abused 57% of them were boys who said that they had been sexually abused and severely abused. (Widom, 1999) ^[9]

The 2013 report called 'Breaking the Silence' was prepared by the 'Human Rights Watch' The report has highlight in 82 pages that the abusers are rarely legally punished in anyway and most of the time they get away scot free. Sexual abuse of children is in all classes of society and it is an occurrence in all socio economic backgrounds. Most of the time, the children are abused by the carers and the family members. The various schemes and efforts of the government to implement the care and the protection of the child from sexual abuse have failed so far with no one taking an interest to make the law enforcement of sexual abuse stricter and more stringent.

Famous Child Abuse Cases

The Mathura rape case which took place March 22nd 1972 in which a tribal girl was raped by two policeman in the Desai Ganj Police station. The two policemen were acquitted by the Maharashtra High Court but the public outcry led to the amendment of the criminal law 'The Criminal Law (Second

Amendment) Act 1983 (No. 46)'

The second famous case of abuse was 'Bharwada Bhoginbhai Hirjibhai v. State of Gujarat 1983' ¹ In this case a middle aged father locked the two friends of his daughter who was ten years old and raped them, In this case the accused was sentenced by the sexual assault charges were changed to attempt to assault charges which drew lesser sentencing and penalties for the rapist.

The third famous case took place in 1996-'State of Punjab Vs. Gurmit Singh -1996' A girl of 16 years was raped by a gang. The trial court acquitted the gang rapists but the Supreme Court was high critical saying that in such cases of assault the victim's statement is enough to justify the rape and trying to corroborate the victim's testimony is tantamount to adding 'insult to injury.'

The other famous cases were Sakshi Vs. Union of India of 2004, Anchorage Case 2006 State of Maharashtra Vs. Dattatraya. All these cases took place before the PocsO Act of 2012 came into existence. (Taneja, 2010) ^[7]

1. BBJ vs State of Guj. India Kanoon".
2. State of Pun vs Gurmit Singh. India Kanoon

The Effective Implementation of the POCSO ACT of 2012

There can be several laws passed in a country to protect children from sexual abuse and violence but the laws are ineffective unless they are put to use in the protection of the children. In this country today as of 2015 there are 48% of the total population of the country who are below the age of 18 and the number of sexual abuse cases are rising. The way to implement the POCSO effectively and prevent the sexual abuse of children to create an education program that will make the population aware of what child sexual abuse is. The details of the PocsO Act must be provided to the population of the country in all walks of life so that those who are unaware will know where to gain the help that is essential

The next move is to create emergency helpline that are toll free where a child can call the number if necessary. In most cases the abuses go unreported because of confusion and the social stigma attached. It also goes unnoticed because the adults prefer to keep quiet than to stand by the child in the child's hour of need. Educational programs must be created where the children and the guardians/parents/carers are made aware of the consequences of not reporting abuse and why they should report abuse. The population must be educated that there is no social stigma attached to child rape and sexual abuse to a family that reports such an incident.

The law enforcement agencies must take a zero tolerance policy towards child abuse cases and child abuses and they must be trained and developed that in some area at some point in life they must honor the uniforms that they wear and take stringent action against rapists with no exceptions made to people of influence or people who are willing to bribe their way out. Many types of dealing are acceptable in the police and the law enforcing system in the country but no dealing should be tolerated or accepted from child abuses. (U.S. Dept. of Justice, 2001) ^[8]

It should be made mandatory in public schools and in private schools whether they are state aided or not to provide the warnings of what a sexual abuser would normally say, and who they would try to coerce and persuade the children. The types of actions and the psychology of child abuser. The

entire psychological and the physical profile of child abusers should be made public to all children so that the instance they are faced with such a person they will be able to recognize them. The children should also be told to do and where to run to on such occasions.

There should be practice drills conducted in every school as part of the mandatory legislation from the part of the law enforcement agencies in order to be able to minimize the incidents.

Every neighborhood should be alerted that any known child abuser or pedophile that resides in the neighborhood should be reported for preventive action. Under no circumstances should child abusers and pedophiles be spared for any reasons. (NSCL, 2004) ^[5]

A task force should be created of law enforcement officers who are upright officers and have integrity as well as the skills to be part of a task force that will be hunters of child abusers and pedophiles. They should be given the authorization that if there is watertight real evidence and not tailored evidence of sexual abusers and pedophiles they should be eliminated in the Bolivian style of 'one bullet for one head' no wastage of ammunition.' (Luft, 2003) ^[2]

The psychological profile of child abusers should be published widely in the media of all types so that it becomes as common as seeing a product in the media

In areas where literacy is low, the children the guardians and the parents should be taught what it means for a child to be abused and the long term problems that a child who has been victimized can have. (Murray, 2000) ^[4]

From the task force that is formed they should have the authority to act in any state at any given point of time without having to seek prior approval to deal with child abusers and pedophiles and to start the emergency care for an abused child.

The above ways are some of the suggestions and recommendation by which the Pocso Act can be implemented more stringently and enforced by the law enforcing agencies at all levels. Children are helpless who cannot defend themselves as they are small and innocent. Those who try to defile the innocence and to use their helplessness as a power over them such people are not worth anything to society in anyway. Such unproductive menaces should be removed like a cancerous growth before it starts to grow roots in the Indian social environment.

When a zero tolerance policy is used towards such criminals of unnatural crimes, there is still hope that the sexual assault and abuse of children can be reduced over a period of time with earnest commitment and a monitoring system in place where the real figures and not the tailored figures will be provided. Social engagement in such an issue is necessary especially in a democracy where the voice of the people and the actions of the people can improve the country and create an awareness about child abusers. (Normal. Erdos, 2005) ^[6]

Corporate sponsorship about child abuse projects and awareness programs should be sponsored which can take the real message of the POCSO Act of 2012 and the new of a task force to deal with child abusers to all parts of the country with telephone number that should be picked up round the call I the second or the third ring and not like 100 which keeps ringing for one hour and yet no one picks up the call. If they at all pick up the call they give you another number to call which will remain engaged perpetually. These are the

ways in which the law enforcing agencies reduce the number of distress calls that are incoming calls instead of taking the calls and reducing the levels of distress incidents. (Ecke. McGuire, 2000) ^[1]

Conclusion

The Pocso Act of 2012 shows that country's commitment towards protecting the children of the country who are the future of the country from sexual abuse. The above suggestions end to be implemented in full scale if the society is to decrease the number of child abusers in the country. The law enforcement agencies should stop to think that if the future of a country is emotionally and psychologically marred and that forms 53% of the Indian population then how can they take the reins of the country in their time?

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