

Sexual Exploitation of Children and Its Laws in India

Arshi

Research Scholar (Law)

Email-yarshiyarshi608@gmail.com

Abstract

Analysing the legislative framework, social issues, and critical data, this research delves into the complicated subject of child sexual exploitation in India. Many instances of child sexual exploitation go unreported even if legislation like the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Protection of Children from Sexual Offences (POCSO) Act, 2012 have been put into place. The research looks at how government programs have dealt with child protection, explores seminal cases like Tuka Ram v. State of Maharashtra (1979), and investigates the cultural and social elements that lead to underreporting. It also draws attention to the POCSO Act's abuse, which suggests places that need revision. Further evaluations focus on the National Commission for the Protection of Child Rights' (NCPCR) function in this area. This study sheds light on the mental and physical health consequences of child exploitation over the long term and suggests ways to protect children from these dangers.

Keyword: Child sexual exploitation, POCSO Act, child protection laws, Juvenile Justice Act, child rights

INTRODUCTION

Every living being whose chronological age is less than or equal to eighteen years old is referred to as a kid. Nearly one-fifth of the world's children—or 42% of the total—live in India. About half of these kids need some extra help. There are a total of 4441.5 lakhs children in India, according to the 2011 census. Although only 65.6% of crimes were reported in 2020, 28.9% of youths were victims of a crime, according to statistics from the National Crime Reporting Bureau. As part of its participation in the United Nations Convention on the Rights of the Child in 1992, India committed to protecting its children from sexual exploitation in all its forms. To combat the pervasive problem of child sexual exploitation (CSA), India passed the Protection of Children from Sexual Offences (POCSO) Act in 2012. It is absolutely forbidden by these rules to engage in any kind of sexual activity with a minor. Child sexual exploitation (CSA) encompasses a wide range of practices, including fondling, sexual encounters with kids, child exhibitionism, cyber-predator-assisted child seduction, and child prostitution or pornography. A kid is victimized by sexual abuse if "he or she does not fully comprehend, is unable to give informed consent to, or is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society." Such is the opinion of the World Health Organization.

In response to the serious problem of child sexual exploitation, India has passed strict legislation. The main law that deals with the problem of sexual abuse and exploitation of children is the Protection of

Children from Sexual Offences (POCSO) Act, 2012. Sexual contact with a minor (defined as a person under the age of eighteen) is illegal under several statutes.

Precisely identifying and penalizing penetrative sexual assault Sentencing for serious sexual assault with penetration, Bringing up the topic of sexual assault and its punishment. Exploring the gravity and consequences of sexual assault, sexual harassment, and the exploitation of minors in pornographic media A number of statutes prohibit the sexual exploitation of children, including the Juvenile Justice (Care and Protection of Children) Act, 2015, portions of the Indian Penal Code, and the POCSO Act..(Pallathadka et al., 2021)

DETAILS ABOUT CHILD EXPLOITATION IN INDIA

Trafficking of persons for the purpose of sexual exploitation is a major issue in India. Thirdly, 36 percent of males and 35 percent of females in a Kerala teenage survey reported having been victims of sexual exploitation. Approximately one in two youngsters in India have been victims of sexual exploitation, according to a new research by the Indian government that surveyed 17,220 youths. The states of Assam (57.27%), Delhi (41%), Andhra Pradesh (33.87%), and Bihar (33.27%), in that order, had the highest recorded rates of employee exploitation. Among all states, Uttar Pradesh has the highest reported incidence of sexual exploitation. The fact that half of the offenders were someone the kid knew is very concerning, especially considering the prevalence of these instances in trusting and responsible situations. Extremely high rates of exploitation occurred among children under the age of twelve, and the vast majority of these incidents go unrecorded. (Roche et al., 2023)

METHODOLOGY

This study rigorously analyses the Protection of Children from Sexual Offences (POCSO) Act, focusing on its principal provisions and unique attributes. Through meticulous examination and interpretation of the Act, the study seeks to elucidate its fundamental features. Furthermore, it investigates various case studies, scrutinizing them from a legal standpoint, particularly emphasizing judgments and proceedings compliant with the POCSO Act. By evaluating these cases, the study aims to determine the practical implementation and efficacy of the Act in addressing child sexual abuse while ensuring a child-centric approach. The findings will facilitate conclusions regarding the overall impact and success of the POCSO Act in protecting children. This secondary analysis will yield critical insights into the Act's effectiveness in fulfilling its objectives and the necessity for potential enhancements.

ANALYSING

STATISTICS REGARDING CHILD SEXUAL EXPLOITATION IN INDIA

Around one-third of the victims of sexual assault are children. There are almost 7,200 cases of child rape annually, including infants. In 2007, the Ministry of Women and Child Development of the Government of India released the first findings from their study on child sexual exploitation in India. Its official title was "Study on Child Exploitation: India 2007."

All forms of sexual exploitation, even the most extreme forms, are considered sexually exploitative for the sake of this study.

Severe forms of sexual Exploitation include:

Severe sexual exploitation includes a range of behaviours, such as assault (including rape and sodomy), improper caressing or stroking of a kid, coercing a youngster into showing off their privates (exhibitionism), and taking pictures of a child in their underwear. Forcible kissing, making overtures toward a kid during travel or marriage, exhibitionism via self-exposure to a youngster, and exposing a child to pornographic material are examples of other types of sexual exploitation. 12,447 children from five distinct categories—working children, children in institutions, children living in families, children attending school, and street children—were given questionnaires as part of an extensive study. These kids were chosen from thirteen different Indian states. The survey's main conclusions demonstrated how pervasive sexual exploitation is throughout the range of settings and circumstances that affect children. (Ifayomi et al., 2023)

A survey revealed that 53.22% of child respondents reported experiencing sexual exploitation in one or more forms, with 47.06% of them being girls and 52.94% boys. The age distribution showed that while exploitation could begin as early as five years old, it intensified after age ten, peaking between twelve and fifteen, making teenagers the most vulnerable group. A significant finding contradicted popular belief, showing that boys were more frequently exploited than girls, with 19 states reporting higher rates of exploitation among boys. For instance, Delhi recorded a rate of 65.64% for boys. Overall, 20.90% of respondents experienced severe forms of sexual exploitation, with boys (57.30%) being more affected than girls (42.70%).

Additionally, 76% of children reported different types of sexual exploitation, with 46.93% being girls and 53.07% boys. Assam had the highest rate of reported exploitation for both boys (62.55%) and girls (51.19%), followed by Delhi, where 54.66% of boys and 22.54% of girls reported exploitation, and Bihar with 35.89% of boys and 30.40% of girls. Goa, however, showed significantly lower rates of exploitation (2.17% girls and 2.55% boys), which goes against the prevailing assumptions. Nationwide, one in five children experienced severe forms of sexual exploitation, while every second child faced other forms.

The most common types of exploitation were reported by children in institutional care, those who worked, and those living on the streets; nevertheless, a staggering 77% of these youngsters did not report the abuse to anybody. In addition, people the kid knew or who were in authoritative roles committed half of the exploitation. (Bhave et al., 2023)

In 2006, Save the Children and Tulir conducted a research on child sexual exploitation that examined the frequency of this crime among Chennai's school-age victims. Major conclusions drawn from this research include:

- Of the 2211 respondents, 42% of the youngsters had experienced some kind of sexual exploitation.
- Of the respondents, 39% of girls and 48% of boys reported having experienced sexual exploitation.

- It was discovered that the top and medium classes had a comparatively greater frequency of sexual exploitation than the lower or lower middle classes.
- It was discovered that both nuclear and combined families often experienced sexual exploitation.
- The majority of the victims of abuse were somebody the kid knew, with strangers making up the minority.
- There was more exhibitionism and sexual harassment in public areas from strangers.
- Premeditated and subtle manipulation of a connection by an abuser of the kid was often the basis for sexual exploitation of minors.

The first research on child sexual exploitation in India was carried out in 1998 by the non-governmental organization Recovery and Healing from Incest (RAHI). Sixty-six percent of the middle-class and upper-class English-speaking women polled claimed to have been exploited as children or adolescents; with forty percent of them reporting that at least one family member had done so. Statistics show that, in contrast to popular belief, a higher proportion of boys are victims of child sexual exploitation. Additionally, most children are exploited by their parents, relatives, acquaintances, or those in positions of trust and authority; consequently, the incidence of incest is high. The kid experiences more mental distress as a result of incest.

In India, instances of exploitation sometimes go undetected.

Only 3% of incidents involving child sexual exploitation in India were ever reported to the authorities. Children who have been victims of sexual assault are often neglected by the criminal justice system, which is a result of the societal shame that surrounds this kind of abuse. It is not unexpected that CSA is considerably underreported given the shame and related social stigma, especially when the exploitation happens inside the family. None of Asia's collectivist civilizations are unique in their practice of ignoring victims' stories in the sake of shielding the family from the stigma associated with sexual assault.

Landmark Case of Tuka Ram And Anr V State Of Maharashtra, 1979

The Mathura case is a well-known name for this particular instance.

Here, while in police custody, two guys sexually assaulted a young indigenous girl. The session judge's ruling that the lady had consented clarified the rape laws in India. Bombay court later determined that session court judges should have defined passive submission and consent separately, even if they had differentiated between rape and sexual intercourse.

The rape convictions of the accused were based on these findings. Since the girl did not seem to have been physically attacked and made no effort to fight back, the Supreme Court later concluded that she may have provoked the men. Such judicial rationale has led to substantial changes to our rape legislation. Below this, you will find a number of them.

Courts are required by law to assume, as a rebuttable presumption, that victims of rape did not give their consent if it is proven that the accused had sexual relations with them. This presumption is based on

section 114(A) of the Indian Evidence Act, of 1872, as amended by the Criminal Law (Second Amendment) Act, 1983. (**Kristiningsih et al., 2018**)

Crimes committed against a person when they are under the care of the state are now classified as custodial rape under Section 376(2) of the Indian Penal Code, 1860. A fine and/or a harsh jail sentence of not less than 10 years and not more than life is imposed upon anybody found guilty of breaching paragraph (2) of section 376. As a result of the Act, the prosecution is now required to provide proof, rather than the defense. The burden of proof shifts on the accused after sexual intercourse is proved in a rape case. Therefore, from a cultural and legal standpoint, the Mathura rape case was significant. The Criminal Law (Second Amendment) Act of 1983 was a turning point in India's rape legislation, igniting unprecedented public outcry and rallies in response to such pervasive crimes.

Understanding Child Sexual Exploitation

The overarching phrase "child sexual exploitation" (CSA) is the most suitable way to talk about sexual offenses committed against minors. When an adult has sexual relations with a juvenile for his or her personal sexual enjoyment, financial gain, or both, this is known as child sexual exploitation. We must confront the issue of child sexual exploitation. The Indian community must unite if the sexual exploitation of youngsters is to come to a close. For the sake of our children's dignity and future peace of mind, we must all do everything we can to protect them from harm. While the government has most of the responsibility, everyone of us has a responsibility to do our part to ensure the safety of children. Offenders who are known to the victimized child and have some kind of authority over them are the most common perpetrators of child sexual exploitation. Data obtained from the Crime in India Report by the National Crime Records Bureau (NCRB) over the last several years indicates that in 80 to 90% of cases, the victim is acquainted with the offender. Plenty of cases exist, nevertheless, in which the offender is a complete stranger. (Levine, 1987).

Child Sexual Exploitation (CSA) is the umbrella term for any sexual crime committed against a child. When an adult engages in sexual contact with a youngster without the minor's consent for the adult's sexual pleasure or financial benefit, this is known as sexual exploitation of a kid. It is critical that we prioritize the end of child sexual exploitation. The Indian community must do all in its power to end the sexual exploitation of children in India. Every parent should never have to doubt that their children are secure from harm. While the government must fulfill its obligation, we must all do our share to provide an environment free from exploitation for our children. Most victims of child sexual exploitation know and trust the perpetrator, who is often powerful and in a position of trust with the victim. In 80–90% of the incidents, the victim knew the perpetrator, according to data collected over several years by the National Crime Records Bureau (NCRB) for their Crime in India Report. However, there are many cases when the criminal is someone totally unknown. (**Herland, 2024**).

Misuse Of POCSO Act, 2012

An instant injunction barring the immediate exploitation of the POCSO Act provisions to settle personal scores with an opponent has been ordered by the Kerala High Court. This is due to the fact that several

persons file false accusations of sexual assault in an effort to exact revenge. The court determined that the claim of sexual exploitation of children was very disturbing and affected the public. The penalties for violators of the POCSO Act are severe. Because of this, accusations of sexual exploitation of children, regardless of whether they are true or not, must be handled with the highest severity.

National Commission for Protection of Child Rights

Established by legislation in 2005, the NCPCR is responsible for ensuring the safety of children. The responsibility of the commission is to ensure that the Indian government's actions are in accordance with the child rights principles stated in the Indian Constitution and the United Nations Convention on the Rights of the Child.

The effectiveness of the commission's job depends on the active involvement and participation of society, according to the commission. (Parveen, 2021)

Sexual Offences against Children in India

In the not-so-distant past, it would have implied either a calm, confused silence or the idea that, while genuine, it is too little, remote, and unimportant to warrant immediate attention. On the other hand, 12,500 children from 13 states were included in a 2007 study about child exploitation by the Ministry of Women and Child Development. Over half (53%), of those who have come forward, have been victims of sexual exploitation. One in two youngsters would have been victims of sexual exploitation if this were generalized. Among those who survived, at least 20% reported having been victims of severe sexual exploitation. Male victims of sexual exploitation outnumbered female victims by 57%. In 2014, there were 20.1 crimes per 100,000 underage Indians, as reported by the National Crime Records Bureau (NCRB) in their Crime in India report. From 13,766 in 2014 to 10,854 in 2015, the number of child rape cases decreased by 26.8 percent. Nevertheless, there has been a noticeable uptick in the number of instances recorded under the POCSO Act concerning the sexual exploitation of kids. (Maity & Chakraborty, 2023)

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) Act, 2000

In accordance with the Act's requirements, a Child Welfare Committee and specialist juvenile police units may be established. Also included are rules for how residential care establishments for children are to be supervised. (Agrawal et al., 2016)

CHILD WELFARE COMMITTEES (CWC) - According to the Juvenile Justice (Care and Protection of Children) Act, 2000, it is necessary to establish CWCs in every district in India. As a quasi-judicial entity, the CWC is responsible for supervising government welfare and police officers, as well as children's residential care facilities. Unfortunately, CWC's activities aren't usually adequately monitored as state governments choose its personnel. Only 44% of members had received training on protecting children and the juvenile justice system, despite 83% having received training on children's rights. A special legislation was needed to protect juveniles from sexual offenses as most of them were already covered under the Indian Penal Code, 1860 before POCSO. Due to its expansive nature, the IPC does not cover all types of sexual crimes perpetrated against children and does not distinguish between

victims who are adults and those who are children. In addition, the Indian Penal Code has historically held men accountable for acts of child sexual exploitation since it does not acknowledge the crime as one that does not discriminate based on gender. In addition, the only statute in India that dealt with sexual assaults that did not penetrate the skin was Section 354 of the Penal Code. Parliament in India passed the Protection of Children From Sexual Offences Act (POCSO) in 2012 to address the terrible crimes of sexual exploitation and child sexual abuse. Under the Act, a "child" is defined as "any person below the age of 18 years" under Section 2(d). As stated in this Act, child sexual exploitation includes a variety of sexual crimes, like as:-

- Penetrative sexual assault (Section 3) – Penetrative sexual assault may be committed by anybody who compels a child to do the same or who successfully penetrates the victim's urethra, anus, vagina, or mouth with the child's penis. In addition, it includes penetration via any part of the body (apart from the penis). Additionally, the act of sodomy is discussed.
 - Aggravated penetrative sexual assault (Section 5)- When an adult in a position of trust or authority, such as a police officer, member of the military or security forces, public worker, staff, or management of a detention centre, performs penetrative sexual assault on a child, it is considered aggravating penetrative sexual assault..
 - Sexual assault (Section 7)- “Sexual assault occurs when an adult intentionally touches a child's vagina, penis, anus, or breasts, or coerces a child into touching these areas, or engages in any other act of physical contact with sexual intent that does not involve penetration..”
 - Aggravated sexual assault (Section 9)- Sexual assaults committed by those in positions of trust and authority, such as members of the military services, members of the public, etc., fall under this category. The following are examples of what it covers: incest, exploiting a kid's mental or physical impairment, forcing a child to get HIV or another deadly disease, inducing mental sickness, or making a youngster physically or temporally unable to do everyday duties.
 - Sexual harassment (Section 11)- It entails making a sexually suggestive sound or phrase, or gesturing in any way. This also includes showing a youngster or coercing a child to show a sexually explicit area of their body. The crime of exposing a minor to pornographic material or inciting them to do so.
 - Use of child for pornographic purposes (Section 13)- Indecent or obscene depictions of children, including their sexual organs, or their use in actual or imagined sexual actions, are all part of this.
- (Bajpai, 2018)**

Thus, the Act acknowledges incidents of non-penetrating sexual assault and is gender neutral, meaning that attackers might be male, female, or even children.

No media outlet is required under the POCSO Act to reveal a child's identify unless a special court decides that doing so would be in the child's best interests. The media must refrain from making any false statements about the youngster that might damage their reputation or invade their privacy. This clause aids in preventing the media from needlessly pressuring and re-vilifying the minor.

The requirements for recording the child's statement are laid forth in Section 24 of the Act. An uniformed female police officer should record the kid's statement at the child's home or another suitable location, taking reasonable precautions to ensure the youngster does not come into touch with the accused. Both parents and children will benefit from this strategy, which will increase the number of reports of child sexual exploitation. In the presence of the parent or another adult the kid confides in, a female doctor should examine the youngster medically.

To handle cases involving violations of the Act, the State Government and the Chief Justice of the High Court will designate a Court of Session for every district. This designation will be made public by a publication in the Official Gazette in order to facilitate a summary trial. Section 33 of the Act lay out the powers and procedures of the Special Court. The special court cannot approve of character assassination, but it may give the minor as many hearings as they like and allow a trusted adult to be present throughout their trial. Further, the court may not ask the kid to testify more than once. These rules can help create a kid-friendly space and lessen any anxiety a youngster could have throughout the trial.

Section 35 of the Act mandates that the Special Court document the child's testimony and any justifications for the delay within thirty days after taking cognizance of the offense. For the Special Court to do its job properly, the trial must be completed within one year of the date of taking cognizance of the offense. Now more than ever, situations of child sexual exploitation will be exposed, which is crucial since the lengthy and cumbersome legal process used to prevent many of these cases from being reported. By the time these cases made it to trial, the abused child was usually an adult with a husband.

One major drawback of the POCSO Act is that it criminalizes consensual sexual conduct between minors under the age of 18, which is an increase over the previous 17 years. Child sexual exploitation must be reported by anybody who knows about it, according to Section 20 of the Act. Whoever violates this law might be fined or sent to prison for six months. To be honest, we are unsure of how to implement his promise. The accused is assumed guilty of certain violations under the Act (Sections 3, 5, 7, and 9) pursuant to Section 29 of the Act until proved differently in court. This idea conflicts with the 'presumption of innocence,' which is a staple of Indian law. Unfortunately, the Act does not specifically address medical evaluations of victims or the proper care, protection, and rehabilitation of exploited children.

As stated in Section 44 of POCSO, the National Commission for the Protection of Child Rights (NCPCR)—established by the Commission for Protection of Child Rights Act, 2005—is tasked with supervising the implementation of POCSO's requirements. As outlined in the Indian Constitution and the United Nations Convention on the Rights of the Child, the Child Rights perspective must inform all legislative initiatives, policy frameworks, and programmatic and administrative processes. With this, the Commission is charged. The National Commission on Poverty and Child Rights (NCPCR) not only looks into cases of child rights breaches, but it also reviews existing laws, suggests new ones, and might decide to investigate crimes. Due to its quasi-judicial character, it may hear cases brought by individuals who feel the government and police are not doing enough to address their problems. **.(Shah, 2020)**

A comprehensive legislation, the POCSO was established by the Indian parliament as a positive step toward ending the sexual exploitation of children in the nation. It is of the utmost importance to address specific issues with the Act and ensure its proper implementation. Accordingly, more resources are

required for the NCPCR, the agency tasked with its execution, to carry it out effectively. Making ensuring that its and the CWC's officers have access to robust investigation units and enough training in child protection regulations is equally crucial. Doctors and police officers who evaluate victims must participate in training programs to learn how to treat children who have been victims of abuse in a way that prevents them from becoming victims themselves due to their hostile attitudes. Only by establishing a state commission to protect children's rights and establishing CWCs in each district can the Act's objectives be realized. Further, to ensure they are meeting adequate requirements, all residential child care centers should be registered and subjected to frequent inspections.

Consequently, child sexual exploitation is a human rights concern in India; the next step is to ensure that these legislation, regulations, and initiatives are effectively implemented. To gauge the success of the POCSO Act and similar government initiatives, the public should be polled on a frequent basis.

CONCLUSION

Child sexual exploitation is still a problem in India, despite the passage of comprehensive laws such as the POCSO Act, 2012 and the Juvenile Justice (Care and Protection of Children) Act, 2000. Despite these laws' intentions to protect victims' rights and punish offenders severely, enforcement issues like as underreporting, slow judicial processes, and a lack of awareness persist. Furthermore, these protections are weakened as a result of the misuse of legal laws, which further complicates the matter. To make sure victims achieve justice quickly, a multi-pronged approach is required, which includes stricter law enforcement, public education campaigns, victim aid programs, and faster court procedures. The National Commission for the Protection of Child Rights (NCPCR) is an admirable government initiative, and civil society organizations should strive to strengthen and support it. Together, India's leaders, police, communities, and families can put an end to the horrific practice of child sexual exploitation and provide a brighter future for the country's children.

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