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**CRITICAL ANALYSIS OF INDIA'S PROTECTION OF CHILDREN
FROM SEXUAL OFFENCES ACT, 2012**

ABSTRACT

Child sexual abuse is one of the most serious problems in India. Although there are many provisions in India regarding the same e.g., sec 375 provides the punishment for rape. Sec 354 enacts a provision for outraging the modesty of a woman. One of the main lacunas is that sec 375 of IPC does not protect the males from molestation and acts of sexual penetration. Sec 354 does not protect the modesty of the man. To adopt a gender-neutral approach towards sexual offenses and in the wake of the Nirbhaya Case, the POCSO Act was enacted. The protection of children from sexual offenses Act 2012 was framed to provide legal protection against sexual assault, pornography, and sexual harassment. It also recognizes penetrative sexual assault and Aggravated Penetrative sexual assault.

It is a child-friendly process. It also defines a procedure for bringing the cases of sexual offenses into the eyes of the law, including a punishment to report a case or register a false complaint. This also expanded the jurisdiction in which the person including servants, police, management is punished if they commit any crime related to sexual offenses. This paper attempts to critically analyze the features, loopholes, and lacunas in the existing adjudication and laws.

Keywords

Sexual abuse, gender, POCSO Act 2012, gender-neutral act, constitution, right to life, right to safety, right to dignity, right to equality,

Features of POCSO Act

This acts on the principle of guilty until proven innocent rather than innocent until proven guilty. It also contains complaints about the false registration of the cases and false claims that are put with malicious intent. This gives a child-friendly environment to recognize sexual abuse even in the police stations where the statement of the child must be recorded by the female who

is not below the rank of sub-inspector. This also lists all the crimes that relate to abetment of the offenses that are sexual.

It describes children in the act as the one who is below 18 years of age. This act also provides for the settlement of the cases at the special courts. Under sec 45 of the POCSO act the power to make all the rules and regulations lies with the government. To monitor that this act is being properly implemented the National commission for the protection of child rights and state commissions for the protection of child rights have been made.

Section 42 of this act also provides that in case of the other laws are not able to fulfill the criterion of determining a sexual offense. POCSO Act shall come into play. This act has been built on the fundamental rights that have been enshrined in the Indian constitution. It includes the right to life and survival which further includes any kind of abuse which is physical, psychological, emotional, and mental. It also includes the right to dignity where every child has the right to deal sensitively and emotionally throughout the legal proceeding. Right to equality- a child should not be recognized based on his culture, caste, religion, and linguistic origin. Right to privacy, the privacy of the child victim should be maintained while legal proceedings. It also inhibits the right to safety which includes that a child must be protected before or after the judicial proceedings.

Features of the Protection of children from sexual offenses (Amendment) Act 2019.

After 2016 there was a huge upsurge in the commission of crimes related to sexual abuse. As a result, an amendment was proposed in 2019 which widened the scope of the POCSO act 2012.

It increased the punishment from seven years to twenty years for the penetrative sexual assault. It also ensured that victims are compensated for their medical and rehabilitation expenses. It broadened section 9 which now mentioned that if any drug is given to the child to make him/her sexually active, then he or she shall be punishable under this section. It also provided hard punishments for child pornography. It also extends power to the court to grant capital punishment in the rarest of rare cases as we have seen in the Nirbhaya case also.

Loopholes

Although this act is an ideal act that addresses many of the problems there are some lacunas and loopholes which if filled shall make this activity more efficient. This act does not leave any scope for the consent of the person given under the age of 18. This means if a 16-year-old with his consent had sexual intercourse with a person of 20 years then this person is liable under this act. In these cases, there is discrimination in which a boy is usually declared as a child in conflict with the law, and the girl is described as children in need of care and protection. The fact that boys can also be susceptible to sexual abuse is completely ignored by this act.

Similar to sec 375 of IPC the word "he" describes that only a man is the one who is at the fault. It does not accept the fact that even women can impose themselves on the man.

Another loophole in this act is regarding the age of the child which can be proved only by using a birth certificate, school certificate, and matriculation certificate. In rural and tribal regions where these people don't have the access to all these documents are at greater risk these crimes

might go unrecognized that's why the victim of sexual abuse has to go through a bone ossification test which only gives a rough estimation of the child's age.

There should be a clear estimation as to which document is needed and this should be specified in the act itself.

Pitfalls in the Judicial Administration

one of the main goals of this act is to provide speedy justice to all the victims. Section 35 of this act provides a timeline for the child testimony and the trial which further demands that the child testimony should take place within a month and trial should be completed within a year but this timeline is not abided by because the courts of India are overcrowded.

Even Nirbhaya's mother struggled for almost 8 years to get justice for his deceased daughter even when all the evidence was prima facie. The case is delayed due to adjournments due to which justice is not delivered on time and the victim is more prone to psychological problems such as clinical depression etc.

It is also important to understand that interim compensation is awarded not only for the medical expenses but also for the rehabilitation expenses. Under sec 33(2) a child should be appointed a special prosecutor and while the process of questioning and cross-questioning he or she should be given sufficient breaks so that he does not feel overburdened.

Special courts

This act provides guidelines for the establishment of special courts for the trial of cases of sexual offenses against children.

They are also known as the child-friendly courts which are set up to serve the best interest of the people. Section 28 of the POCSO act states that special courts need to be set up. It states that the victim can take cognizance of any offense without being tried for initial. It also states that government should appoint a special prosecutor who is deemed to be a public servant for not less than 7 years as an advocate.

IMPORTANT JUDGEMENTS

The most important judgment was delivered in 2021 in the case of Satish Ragde vs the state of Maharashtra ¹in which it was held that grabbing a child's breasts without making any skin-to-skin contact consisted of molestation under the POCSO act. Thus, setting aside the Bombay high court's judgment it was propounded by the supreme court that courts must continuously regulate the laws so that an effective remedy is provided to all the accused.

Another case was Jarnail Singh vs the state of Haryana ²in which it was an issue that whether a child who conflicts with the law can as given under Juvenile justice rules 2007 can also be included under POCSO act 2012. In the present case, the defendant was accused of raping the plaintiff's minor daughter. Court observed that under serious offenses there is a need to try even a minor child and thus convicted the defendant.

¹ Satish Ragde vs state of Maharashtra, (criminal appeal 161 of 2020)

² Jarnail Singh vs state of Haryana, 1993 SCR (1) 260

Conclusion

From ancient times, the crimes against minors have often gone unrecognized solely for the reason that their perpetrators often fear them of killing their near and dear ones which gives them a sense of guilt and they make them think that they are criminals. This not only affects them mentally but also prolongs their period of victimization. This brings deep effects to their education, social life, and pattern of behavior. Along with the relevant laws, parents need to keep a check on the behavior of the children and encourage them to share everything with them. In homes as well as schools we need to create an environment that makes it easy to address these issues.



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