

Sexual Offences Against Children: Role of Indian Judiciary

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Abstract

Child's safeguard from sex crimes at every step has been the fundamental responsibility associated with the Indian judiciary under clause (f) of Art. 39, connected with an important law belonging to Bharat similar to the organic law of the nation, and that's purpose has been so as to carry out possibilities including the natural ability to do something well and easily grow a child with respect to well-being mode together with a qualification belonging to liberty together with honor as well as juvenility together with immaturity being safeguarded through legislation opposed to abuse together with humiliate. It requires judicial action so as to fulfill objectives towards these obligations of state, in which the judicial system is a key player. In the ancient Vedic period, the individuals who had sexual relationships with prohibited degrees of relationship were treated as outcasts. Arthasastra has been a source of justice during princely rule in India. Koran has been a source of justice during the Mohammendan dynasty. Reforms have been made in incarceration during the British period, changing the scenario of sexual offences under the Indian Penal Code, 1860. Further development to protect children from sexual offences took place in recent years by way of enacting the POCSO Act. The apex court of India has made positive remarks on the enactment of the POCSO Act and has keen interest in the proper implementation of the Act so as to protect children from sexual offences. Proper implementation of the Act will be in the right direction of the constitutional obligation of protecting the children and facilitating their development.

Keywords: Sex crime, child's right, legal guardian, social welfare, specific law court

INTRODUCTION

This research study focuses on the role of the Indian Judiciary in the issue of sexual crimes with respect to children in India. The Indian Judiciary has been actively discharging judicial duties since the Vedic period. The king was the judge during the Vedic period. The code of Manu dealt with the king, statecraft, and especially the judicial procedure. Lawful material facts are being used as a subject in an unmethodical manner with respect to Dharma sutras. The Manu Code was the first text to include provisions on judicial procedure and litigation. Grounds for litigation on sexual crimes against children

have been mentioned in the Manu Code. As stated by Manu statute, whenever males sexually abuse women belonging to dissimilar groups, rulers are obligated to mutilate their physiques and commit merciless dealings with them, whichever may result in extreme fear within their memory of belonging to dissimilar groups, and to put them to death. During princely rule in India, Chanakya's Arthasastra was the source of the legal code. Chanakya cast off the word "Sahasa" for crime and mentioned the offences under three degrees. The word "Sahasa" is equivalent to dare. Crime being nothing but a dare devilish act and being a panic on the society previously mentioned necessary so as to be weeded out, to which Chanakya gave the name Kantak

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Shodhan in his book Arthasastra. During the Mohammedan dynasty, the Koran was the foundation of both civil and criminal jurisprudence. During British rule within India, the Indian Penal Code was passed, and now the POCSO Act has been added as a supplement to the Indian Penal Code according to the requirements of changes in society and time period. In the above-stated background, there has been a requirement because it is essential to safeguard the rights of children, due to the fact that sexual crimes against children are regularly on the rise from the Vedic period to modern times. The Indian judiciary, even though it deals with harsh treatment and punishment for sexual crimes against children, is still on an increasing trend.

This research problem has been a combination of three distinct concepts: sexual crimes against children, harsh treatment to perpetrators of the sexual crimes, and the rights of the children against the sexual crimes. Every effort has been taken by the Indian judiciary to prevent sexual crimes against children, which can be socially acceptable under the conditions of increasing sexual crimes against children. So, as a precondition, before going into the details of the role of the Indian judiciary, the reasons connected with sexual crimes against children are to be discussed in association with these distinct concepts.

Sexual crimes against children being perpetrated during Vedic period, princely rule, Mohammedan dynasty, and during current period also. To prevent these crimes against children, there being severe treatment and harshly methods applied during Vedic period up to current time. Still number of sexual crimes have been increasing rapidly. Now, it is to be noted that India is also a party to the Convention on Rights of Child initiated by UNO.

Apex law court of India, in the case of “Sakshi vs. Union of India” (Dated 26-05-2004) recommended the parliament to enact statute in consideration to prevent sexual offences against children. In this case, Supreme Court considered the rape cases, child abuse and increasing of sexual offences against children in an alarming stage. Hence, the Supreme Court desired the appropriate legislation by the Parliament.

Supreme legislative assembly connected with Bharat enact POCSO Statute, 2012 in addition to any purpose associated with safeguarding sex indecent assault in relation to child, unjust hire children even though a prostitute, unjust hire children upon pornographic performance. As per the latest data published by National Crime Records Bureau (NCRB), number of sex crime cases have been increasing rapidly. Basic reasons stated are as follows: poverty, loneliness connected with child added to failure of efficient machinery to prevent sex crime on child are important factors associated with crime. If we join these reasons, we possibly may come to a conclusion that children never have been getting child rights which are guaranteed under the Fundamental Law of the land that is the Constitution of India. This study centralizes the issues connected with sex crime on child added to role of Indian Judiciary so as to prevent sex crime on child.

STATEMENT OF THE PROBLEM

Main discussion throughout the research paper is on sexual offences against children added to law court endeavor to curb sex crime on child within India. Indian Judiciary have been trying to prevent sex crime even though number of sex crime on child being increasing rapidly. For this, we have to focus upon the following issues. They are as follows:

- Are societies within India have accepted POCSO Act in current scenario?
- Is legal development related to protection of child rights able to achieve required outcome?
- Is the function of the Indian Judiciary enough to prevent sex crime against children?

REVIEW OF LITERATURE

The review of literature has been an explanation belonging to texts relevant so as to role of Indian Judiciary to prevent the sex crime against children with the purpose to protect rights of child. Texts give a general review of what effort being done through Indian judiciary throughout the time of Vedic period till the contemporary period. The literatures can be traced on three connected objects that is that is to

say child's right, legal code, role of Indian Judiciary to prevent sexual crimes against children. In this research, all these three ideas are taken and they are identified from the review of literature and they are correlated [1].

This literature gives understanding of role of judiciary during Vedic period in cases related to sexual assault against women. On condition that any unmarried sexually assault a different unwed, female offer being financial penalty two hundred thola, recompense tripartite reverse dowry, added to obtain 10 whip. During the time that any female sexually assault any unmarried, nevertheless, female person skull should being trimmed at once together with take in turn, 2 connected with female person digits owe being disinherit together with female owe being march upon any ass" [1]. Furthermore, in this text, it is mentioned and explained the role of judiciary during Vedic period in consideration to prevent sexual crimes against children.

In this text, knowledge regarding role of judiciary during princely rule connected with India has been elaborated. Chanakya's Arthashastra, being the source of exposing the harsh treatment to the perpetrators of sexual crimes. Chanakya's cast-off name "Sahasa" in consideration for severe crimes have been added in this text. Trial procedure also has been mentioned within Arthashastra. Death sentence also additionally awarded during princely rule in India [2].

During Mohammedan Dynasty, Koran was treated as authority for civil and criminal jurisprudence. Trial was held through Kazis and retribution type of punishment was imposed through Mir Abdul. Condition of severe vengeance was popular during above said period [2].

During British rule in India, Indian Penal Code (XLV, 1860) passed and enforced. In Indian Penal Code, Chapter 16 is related to crime on Human Body and Section 375 and Section 376 related to sexual abuse, which impose severe punishment on accused person. In a case decided by Supreme Court, A boy of 15 years raped a girl of 2 years, and the boy was sentenced to 2 years and a fine Rs 200/- has been proper [3].

United Nations Organization Convention on Rights of Child (2-09-1990): This Convention is related to child's rights. With respect to Article three connected with assembly of delegates to have to do with execution of a law liability innumerable upon constitutional either unofficial communal happiness public body, law courts, managerial jurisdiction either law-making organized group of people with a common function into protect supporting children. Further "States Parties undertake to ensure child protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians or other individuals legally responsible for him or her, added to, so as to last mentioned end, will take every appropriate legislative and administrative procedure." Sovereign State group will ensure first mentioned institutions, services added to facilities responsible in consideration for care and protection of child will conform standards established through competent authorities, particularly within areas connected with safety, health, within number added to suitability associated with their staff, as well as competent supervision.

POCSO Act, 2012- India ratified United Nations Organization Convention on Rights of Child and subsequently enacted Protection of Children against Sexual Offences, Act, 2012. particular court of law being start so as to deal in addition to sex crimes opposed to child. This law court has been the next course of action added to previous authorities. Any specific law court possibly can take account of all crime, in the absence of defendant, be handed to appropriate mechanism for his effective defense in criminal cases to avoid the grievances based on previously mentioned crime, and on any police report belonging to previously mentioned information. Under the requirement of Code of Criminal Procedure, 1973, it shall be applied in case of bail and bond connected with defendant.

- (i) Specific law court will develop with child-friendly feeling through permitting any family member, any custodian, familiar person, and any kin, on whom children have faith, in other words reliance, so as to being available within law court.

- (ii) Specific law court will make certain children has been never summon again and again, facing the court as a witness within law court.

Actual state of affairs connected with assist law courts within Bharat, assist law courts, establish in consideration for aim connected with efficiency and rapidity in action of the determination of suits opposed to female person, child, ageing added to physically challenged, being stop up similar to conventional law courts, in addition to undecided step up through 40% within previous triennial-starting point on 10.7 lakhs, undecided lawsuits previously mentioned being a sharp increase above 15 lakhs within this assist law courts during 2020. Sovereign States have been mainly liable in consideration for establish assist law courts, previously mentioned have been along with very important supporter plan connected with assist particular law courts in consideration for, in favor of lawsuits belonging to ravishment added to that opposed to child registered in accordance with POCSO Statute. undecided connected with ravishment together with POCSO lawsuits within assist particular law courts being frightening excessive approximately 2 lakhs lawsuits as stated by the data serving through statute member of the government accompanied by the legislature just now, 764 assist law courts, together with 411 not including POCSO law courts, have been working within 28 sovereign states/UTs. Last mentioned assist law courts being determination of suits extremely 1,44,000 lawsuits, whereas 1,98,563 have been even now undecided. Approximately 1,800 assist law courts being decide on so as to being establish through sovereign States according to suggestion connected with 14th sponsorship Committee duration of 2015-2020 in consideration for prompt hearing belonging to particular lawsuits, together with possessions-connected lawsuits undecided in consideration for extremely 5 calendar years. presently, 843 progress of law courts being working from one side to the other of nation at the time that 31-01-2023. Post-Nirbhaya incident added to Criminal statute Amendment enactment within 2018, Central Government have fixed any objective connected with execute very important support plan in consideration for begin 1,023 progress of particular courts, involving 389 not including POCSO law courts in consideration for done quickly determination of suits connected with ravishment together with POCSO Statute. At the start acquire duration together with 1 calendar year until 2021, plan being increase until month of March last mentioned calendar year, having complete price belonging to plan approximately Rupees 767 crore, from last mentioned Rupees 474 crore being very important due amount so as to be finance connected with Nirbhaya repository.

Table 1 below represents the number of pendency of cases that indicates slow pace of justice.

Table 1. Pendency of cases.

Year	Number of pending cases	Number of fast-track courts (ftcs)
2020	10,78,357	907
2021	11,73,298	898
2022	14,74,669	848
2023	15,08,842	843

Note. Functional fast-track courts (FTCs) and total cases pending as on December 31st of every year. These are in addition to Special FTCs on rape and POCSO cases.

Source. Ministry of Law and Justice, Government of India [4].

COURT DIRECTION ON EDUCATION ON POCSO ACT

The High Court of Judicature for Karnataka is ordering the Law Commission of Bharat to consider legal maturity within the POCSO Statute. In regard to the order given at the time of 05-11-2022, any Divisional Courts be asserted, “including a number of lawsuits connected with younger female child not vulnerable to 16 calendar years be become attached to, has been run away secretly in order to get married together with during the interval have sex in relation to boy, law court has been associated with view, statutory committee belonging to Bharat have been so as to consider again upon maturity means of judging, most relevant factors forming a basis for action in truth.” With respect to one more lawsuit, law Court trial any review through policemen testing exoneration connected with any POCSO charged

with. Law court adjudicate any female child have been run away secretly in order to get married accompanied by male child at the time of 2017. Although a female child's progenitor has lodged a grievance, every eyewitness has become unfavorable, whereas lawsuits carry on; two have been married and added to have been 2 children. affirm male exoneration law court, nevertheless, impose order so as to statute Committee in addition to Pedagogic Division within Karnataka pronouncing this being any poor knowledge upon be characteristic of POCSO Statute together with Indian Penal Code(45 of 1860) has been have (a specified outcome) several crimes be perpetrate through juvenile human being. this has been in addition envisage several mentioned earlier crimes have been regarding crimes being perpetrated fitted have insufficient information upon act of young female child together with male child. infrequently, male child added to female child associated have been for that matter intimately connected otherwise real familiar so as to ones be colleague and otherwise, law court make a remark. Although insufficient information connected with statute has been nought any serve to justify in consideration for perpetrate any offence, law court pronounce scholars owe being instruct POCSO Statute. This has been expected child on less than 9th level owe being literate upon details belonging to POCSO Statute. An action previously mentioned have been unlawful according to POCSO Statute be in addition unlawful according to Indian Penal Code (45 of 1860). Main administrator connected with Pedagogic Division is ordered so as to appoint any board so as to prepare methodically appropriate pedagogic matter with reference so as to mentioned earlier added to after that time treat too seriously inevitable order so as to every institutions (Governmental added to Privately) so as to teach scholars added to warn in advance themselves connected with a result associated with his act, on the condition with respect to break POCSO statute and Indian penal Code (45 of 1860). Lawsuit be again itemized in consideration for 05-12-2022 belonging to Division so as to report any obedience to assessment [5].

This study is limited to the analysis of success of Indian Judiciary to protect the best interest of child so as to prevent sexual offences against children in India with reference to Rajasthan State and further to enact the alternative law which may be helpful to prevent Children's sexual crimes, which would protect the rights of the child. Last mentioned fact-finding analysis has been have its origin with respect to 3 conception that is to say sexual offences against children, laws enacted by Parliament, and the rights of the child which have been protected through Indian Judiciary. But association among these different concepts are based on the fact that sexual offences against children cannot be prevented without the self-control in the society and for this change in the society, responsibility of society is required so as to safeguard child rights. A change of laws can also be helpful as need of the time.

As far as empirical part of this study is concerned, it includes two groups, that is, *group of police personnel* and the *counsel group*. Both *group of police personnel* and *counsel group* have been selected from five Districts of Rajasthan. The *group of police personnel* have practical experience of investigation of the case and *counsel group* have practical experience to prosecute the case on behalf of the state side and to defend the case as counsel of the accused. Use of empirical methods in this research study is subject to the availability of relevant data.

OBJECTIVES OF THE STUDY

Importance of this study is to have a detailed investigation and analysis so as to address challenge of sexual offences against children with reference to Rajasthan State from a legal perspective and to ascertain the success of the Indian Judiciary to prevent sex crime on child through taking inspiration from international laws. Therefore, one of the objectives of this study is to find out relation between POCSO Act so as to prevent children's sexual crimes with respect to India and to evaluate the success of this Act so as to safeguard the child rights. Later on, this study trace out the changes brought over the years in the criminal laws to prevent children's sexual crimes with respect to India and evaluate the relationship between these legal measures which are required to prevent the sexual offences against children with a balanced approach which is a fair combination of above laws and rights of the child. The objective of this study are as follows,

- To study the nature and extent of sexual offences against children, which are to be prevented with the help of international legal instruments.

- To study the existing laws and regulatory mechanism in India with reference to Rajasthan State.
- To evaluate the approach taken by Indian Judiciary to prevent the sexual offences against children.
- To know whether Indian Judiciary have been successful so as to safeguard the child rights with respect to India.

With respect to the last-mentioned analysis, doctrinally added to non-doctrinally *modus operandi* connected with fact-finding being put in an application. Furthermore, material taken from detailed examination of available literature, identification of the constituents present in a substance, quantitative data, classifying without expressing judgement, and inferential orderliness of thought have been collected and relevant system of doing systematic study of materials and sources in order to establish facts and to reach new conclusion.

Facts and statistics are used for reference or analysis with regard to learning so as to reach new conclusion, which have been derived to the following sources: Judgement of Courts, International Legal Code, reports of various institutions, newspapers, National Crime Records Bureau reports, NGO's reports, Journals, Books, Expert Committees Reports, Law Ministry of Central Government report, Law Court recommendation, and so forth. In addition to these, Constitution of India, Magazines, PhD theses, International Convention, and so on, are also referred so as to obtain outcome of a detailed investigation and analysis so as to connect a relation between sexual offences against children and child rights. Researcher performs a detailed investigation and analysis of material belonging to principal and outcome of principal sources with regard to achieving a reason for children's sexual crime. The results pertaining in such situations are depicted here.

The second portion is based on detailed investigation and analysis of subject, wherein, source to obtain principal facts and statistics of research are two Groups, that is, (a) *group of police personnel* and (b) *counsel group*. The *group of police personnel* is expert in the investigation when information of alleged offence is given to the officer in charge of the police station and police start to collect the evidence against the accused. The *counsel group* are expert in the subject matter of law. Counsel perform duty as a public prosecutor on the state side and defend the accused on the defendant side and contradict the statements of the witness of prosecution under section 145 of the Indian Evidence Act, 1872 (1 of 1872). The experience of both the groups are very vital for this study.

DATA ANALYSIS

For the empirical research, questionnaire is being used to collect data. As there are two target groups, two separate objective type questionnaire was prepared by the researcher. Questionnaires have been constructed on the basis of the goal of detailed investigation and analysis of a subject; relevant formal assessment is also done with the intention of instituting change if necessary in written work.

Specimen be carefully chosen as being the best upon foundation connected with aim added to goals so as to be accomplished by effort. To get the opinion of the *group of police personnel*, Sessions Court, Office of the Superintendent of Police, police station, police choki at Medical College Hospital, and five districts of Rajasthan State were selected: Ajmer, Alwar, Bundi, Kota, and Jaipur. To get information related to *counsel group* experience, the same five districts of Rajasthan State were selected, and information was obtained from the Sessions Court of these districts.

For the empirical legal research, the researcher used objective type questionnaire to collect the data. The questionnaire for the *group of police personnel* has a total of 31 questions, which are basically focused on various points. The *counsel group* has a total of 33 questions.

For the doctrinal research the relevant legal principals, theories, available judgement of Honorable Supreme Court of India, High Courts in India, reports of Parliamentary committees and expert committees, Government published data on sexual offences against children, NGO's works, journals,

books, The Constitution of India, Newspapers, Magazines, PhD Theses, International Conventions and Declaration, and so on, have been considered on a detailed examination of the material dealt with in text and outcomes are being accomplished by efforts.

In relation to statistically analysis connected with matter together with origin concerning show to be true information added to attain now for the first time an end previously mentioned has been basis on practical contact with and observation of facts or events, information added to the collection and analysis of numerical data in large quantities collectively by means of objective type printed questions, oral examination of expert, which were expressed in an indirect way and recorded in computer for calculation and a detailed examination of the element is done. Expected table have been obtained on the computer and classified, collected, and analyzed numerical data such as number in each hundred have been taken as explained above. Further analysis of data with inference methods with the help of review of literature has also been done.

ETHICAL CONSIDERATIONS

As a researcher had included individual participants for empirical study and collected primary data from them, it is the responsibility of the researcher to uphold ethical considerations. In this regard, first of all the nature of this study with reasons and purposes were explained to the respondents and assured them of the confidentiality of their identity. Informed consent was taken from participants to include their opinion in the study.

This research study includes two targeted groups for the collection of data, that is, first, police personnel and second, the counsels. In India, sexual offences against children are a big issue. The researcher has selected five district in Rajasthan State, which is one limitation in the sense of geographical area of the state. Time and money are another limitation of this research study.

CONCLUSION

The information revealed through the Law Ministry, Central Government, and recommendations sent by the High Court indicates that the Indian judiciary has been partially successful in protecting children's rights within India. Though the POCSO Act itself is an effective legal instrument, it could not achieve the desired effect. The space is further supplemented by the Indian Higher Judiciary in interpreting the POCSO Act in consonance with the objectives of the Act and the severe nature of the crimes. The decisions of the judiciary show that it is not lenient in awarding the sentence. This may have a deterrent effect on potential criminals. The other side of the effectiveness of the POCSO Act is that the investigation machinery should be stronger. The cases may be investigated by special agencies to have more effects.

REFERENCES

1. Olivelle P. The Law Code of Manu. Oxford, England: Oxford Press University; 2009.
2. Shri Narain Gaur. IPC (45 connected with 1860): Civil Lines, Allahabad; 2005.
3. Gaur SN. IPC (XLV Connected with 1860) AIR 1976 SC 1991: 1976 Cr LJ 1545, (1976) 2 SCC 215, 1976 SCC(Cr) 270. Allahabad, India: Dwivedi & Company; 2005.
4. Thakur P. (2020). 597 fast-track courts at work, 321 for POCSO. [Online] The Times of India. Available at <https://timesofindia.indiatimes.com/india/597-fast-track-courts-at-work-321-for-pocso/articleshow/80037311.cms> [Accessed on September 2023]
5. Ministry of Law and Justice. (2012) POCSO Act. Available at <https://wcd.nic.in/sites/default/files/POCSO%20Act%2C%202012.pdf> [Accessed on September 2023]