

SEXUAL OFFENCE AGAINST CHILDREN AND LEGISLATIVE PROTECTION IN INDIA : AN INTRODUCTION

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ABSTRACT

Sexual offences against the children has always been a hidden problem in India and largely been ignored in public discourse making the issue more severe and complex. Only recently, it has been acknowledged as a major threat to the wellbeing of the children in India. In India, there has been very less understanding of the extent, magnitude and trends of this complex and rigid problem. The growing complexities of life and the dramatic changes brought about by socio – economic transition in the society have played a major role in increasing the vulnerability of the children to various and newer forms of abuse. Keeping the development of this intricacy trends in the society, the Government in order to combat with this social evil, brought in a special law – the Protection of Children from Sexual Offences (POCSO) Act, 2012 criminalizing a range of serious acts to safeguard the interest of the children. The Act brought in a lot of magnificent changes in the practice of dealing the sensitive matters related to children. In the present paper, the authors firstly will discuss the status quo of the crime against children in India; secondly will analyse the provisions of POCSO Act, 2012; thirdly will filter the NCRB Data on the crime against the children; fourthly will discuss the issues and challenges against the newly enacted POCSO Act, 2012.

KEYWORDS: India, Children, Sexual Offences, POCSO.

INTRODUCTION: STATUS QUO OF CHILDREN IN INDIA

"We are guilty of many errors and faults, but our worst crime is abandoning the children, neglecting the foundation of life. Many of the things we need can wait. The child cannot; right now is the time his bones are being formed, his blood is being made and his senses are being developed. To him we cannot answer 'tomorrow'. His name is 'today'." Gabriel Mistral (The Nobel Laureate)

The world of tomorrow stands on the children of today. The growth and prosperity of any country depends heavily on the survival, health, education and protection of its citizen, particularly the youngest ones (Chopra, 2015). The health, wealth and happiness of the nation as a whole depend upon the individual that is upon the fitness of the children who must carry on the nation's affairs of their generations (Spohn, 1921). Children are the supreme wealth of a nation and the Hon'able Justice P. N. Bhagwati in Lakshmikant Pandey v. Union of Indi (AIR, 469/1984) observing the same remarked that:

"The nation's children are a supremely important asset. Their nurture and solicitude are our responsibility. Children's programme should find a prominent part in our

national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice".

Perhaps it would not be incorrect to state that children are the mines of potentialities and these potentialities can only be developed and strengthened if the environment supports its development. We firmly believe that all of us would agree on the fact that an investment in children's survival and well-being is equal to the investment in future of the societies and of our communities. This investment in the children has not been recognized as one essential key instead has been recognized as obligation under the various principles of the United Nations Convention on the Rights of the Child (UNCRC) The UNCRC was adopted by the General Assembly of the United Nations on November 20, 1989 and India became the party to the convention by accession on December 11, 1992².

Children are more vulnerable and scope of their exploitation and abuse being far more, than any other person given their tender age and innocence. There have been numerous legislations and Acts solely enacted for the protection of the children. However, the failure in proper implementation and delay in timely policy review result in the dereliction. Moreover the situation has been worsened because of the variation in the ways laws are interpreted and implemented and hence there is need for separate legislation to protect the children from all possible kinds of situation in which they can be used, abused or misused.

India is a young country as about 40% of the population is below the age of 18 year (Census of India, 2010). The victimized and abused children often remain silent as most of the time they don't have the way to express their sufferings and problems. According to a survey commissioned by the Ministry of Women and Child Development in 2007, the 53% children interviewed reported some form of sexual abuse (Kacker et al, 2016). The reason behind the rise in the offences against the children has manifolds including that the society failed to acknowledge the offences against the children, most specifically the sexual offences. As a result of failure of legislature, a group of offensive behaviors such as sexual assault against children (not amounting to rape), harassment, and exploitation for pornography were never legally sanctioned (Belur and Singh, 2015). The *Figure 1* below shows the rise in the number of cases reported against the children from 2012-2015:

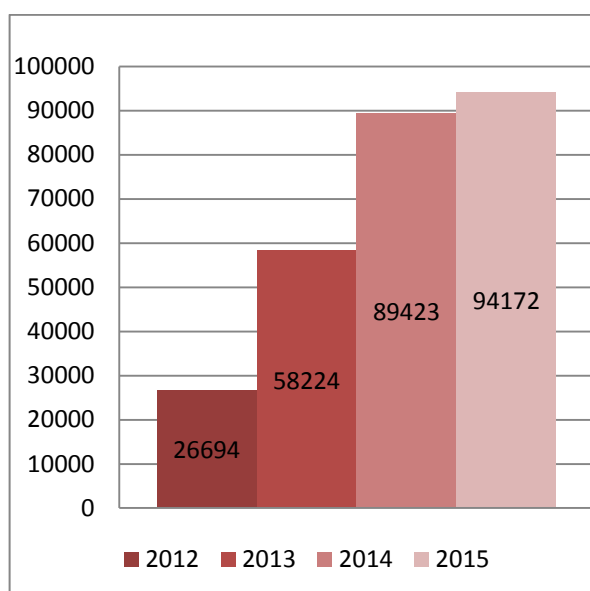


Figure 1: Number of criminal cases reported against the children from 2012-2015

(Source, National Crime Record Bureau, Ministry of Home Affairs, New Delhi, 27 Oct 2016)

In the year 2012, the Ministry of Women and Child Development after brainstorming field work and surveys with various Non-Governmental Organizations (NGOs) has helped in breaking 'the conspiracy silence' and generated substantial political and popular momentum to address this grave issue. Finally it led to the enactment of legislation called the Protection of Children from Sexual Offences (POCSO) Act, 2012³ (the POCSO Act, 2012 is discussed in detail in the *Section 2* of this paper) with the objective to contribute for the enforcement of the right of all children to safety, security and protection from sexual abuse and exploitation.

GENESIS OF POSCSO ACT, 2012

In the early traditional societies, child rights were secured on the concept of *patria potestas*⁴, the parent of the children enjoyed absolute autonomy to decide on the rearing and caring of the children. But with the passage of time and increasing community concern for the children, the concept of *patria potestas* evolved to be as *parens patria*⁵, where the State began to exercise its power to safeguard the interest of children in need of care. In India, the first legislation (Kumari, 2004) dealing specially with the rights of children came in as the Apprentices Act, 1850⁶ and since then the paedo-jurisprudence is evolving and developing. The years 2012-2013 have been eventful both in terms of legislative law and judicial law from the point of view of child rights in India. This vital period has been responsible for the development and expansions of the horizons of child rights in terms of its ideological underpinnings range of interest brought under its sweep and techniques of enforcement at the ground level (Pandey, 2013). In India too, the concept of child rights has remained at the focus of brisk legislative and judicial activity (Ibid) leading to the passage of laws such as the Commissions for Protection of Child Rights Act, 2005, Right of Children to Free and Compulsory Education Act, 2009, and the Protection of Children from Sexual Offences Act, 2012 (Ibid) which is also the latest legislation for the protection of child rights in the country. The Supreme Court, in *M. C. Mehta v. State of Tamil Nadu* (AIR 1991, SC 417) also dwelt on the obligation of State and society towards the child sector of Indian humanity. The Court recalled, "India's commitment to the World Community by acceding to the Convention on the Rights of the Children (1989). The gamut of the Convention covers the full personality of the child in every

dimension. Having acceded to the said instrument, that every fact is reinforced of the tryst of the Republic with the children of India which shall be redeemed. A constellation of legislations have been enacted and many occupation and processes have been prohibited for children. Quite a few directions have been issued to the States, particularly to abolish child labour, and the free and compulsory education of children has been, by court ruling, given the status of a fundamental right. But look at the lurid half children and not giving incentives for their education is a shock and shame half a century after Freedom was gained. The girl child faces foeticide to sati-cide, dowry-cide to 'rapicide'. India has come under international censure, more condemnable because even poorer African countries have done better by children than the Socialist Republic of India. The finest investment in the Future for any country to make is in nourishment, physical and mental, to babies, boys and girls. Every match box or cracker, every bangle, every brass-ware, every hand-made carpet or polished precious stone has on it a streak of innocent blood and tormented tears of some child forced to slave. No alibi can absolve this crime of State and society and rightly our moral pretensions and spiritual credentials hardly carry conviction within or without Bharat".

The Constitution of India confers power to the State to make special provision for the children (The Constitution of India, Art 15-3). Further, the Constitution also directs the State in particular to make its policy for securing that the tender age of the children are not abused (Ibid Art 39 e) and that the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity (Ibid Art 39 f). India is signatory to the UNCRC which also requires the State Parties to undertake all appropriate measure to prevent (a) the inducement or coercion of child to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; and (c) the exploitative use of children in pornographic performances and material. In the light of these said provisions, the POCSO Act, 2012 was enacted by the Ministry of Women and Child Development which was passed by the both the Houses on May 22, 2011 and received the assent of the President on June 19, 2012.

The POCSO Act, 2012 is a comprehensive legislation having many distinctive and new provisions to provide protection to children from a range of sexual offences with due regard for safeguarding the interest and wellbeing of the children at every stage of the judicial

process, incorporating child-friendly procedures for reporting, recording of evidence, investigation and trial of offences and provision for the establishment of Special Courts for speedy trial of such offences. This is for the first time; a special law is passed to address the issue of sexual offences against children. The Act clearly defines the offences and also provides for stringent punishments, which have been graded as per the gravity of the offence which ranges from simple to rigorous imprisonment of varying periods.

KEY PROVISIONS OF THE ACT ARE AS FOLLOWS:

- i. The Act defines "child" as any person below the age of 18 years (The PoCSO Act, 2012, Sec-2d).
- ii. The Act defines and penalizes new sexual offences against children which include: penetrative sexual assault (Ibid, Sec 3), aggravated penetrative sexual assault (Ibid, Sec 5), sexual assault (Ibid, Sec 7), aggravated sexual assault (Ibid, Sec 9), sexual harassment of child (Ibid Sec 11) and use of child for pornographic purposes (Ibid Sec 13).
- iii. The Act provides for the establishment of Special Court for speedy trial in each district (Ibid Sec 28.1). The Special Court may take cognizance of any offences (Ibid Sec 33.1) and shall have to complete the trial, as far as possible within a period of one year from the date of taking cognizance (Ibid Sec 35.2).
- iv. The Act provides that any offence committed under this shall be reported either to the local police or the Special Juvenile Police Unit who has to report the matter to the Special Court within 24 hours (Ibid Sec 19.1). The Police also have to make special arrangement for the care of the child (Ibid Sec 19.6).
- v. In keeping with the best international protection standards, the Act also provides for mandatory reporting of sexual offences (Ibid Sec 21). This cast a legal duty upon a person who has knowledge that a child has been sexually abused to report the offence. In case a person fails to report the case, he shall be penalized⁷.
- vi. The Act also defined the punishments for various offences under the Act. The Table 1 given below clearly show the same:

TABLE 1 : PUNISHMENT DEFINED FOR VARIOUS OFFENCES UNDER THE POCSO, ACT,2012

Offence	Punishment	Section in the Act
Penetrative Sexual Assault	7 years imprisonment for life	Section 4
Aggravated Penetrative Sexual Assault	10 years to imprisonment for life	Section 6
Sexual Assault	3 years to 5 years	Section 8
Aggravated Sexual Assault	5 years to 7 years	Section 10
Sexual Harassment of the Child	3 years	Section 12
Use of Child for Pornographic Purposes		5 years and in case of subsequent
If along with pornographic acts offence also committed under section 3,5,7 & 9	Section 3: 10 years to life imprisonment Section 5: Life imprisonment Section 7: 6 years to 8 years Section 9: 8 years to 10 years	Section 14 (2) Section 14 (3) Section 14 (4) Section 14 (5)
Storing pornographic material involving a child,for commercial purposes	3 years	Section 15

vii. The Act also makes provisions for the medical examination of the child designed to cause as little distress as possible. The examination is to be carried out in the presence of the parent or other person whom the child trusts and in the care of a female child by a female doctor (Ibid Sec 27). The help and assistance may also be sought from the Psychologists and Mental Health Expert for the above said purpose (Ibid Sec 39).

viii. To ensure the children from any apprehension and to keep them in comfort zone while investigating of any crime against child, the police have to record the statement of such child at his residence or at a place

where he usually resides or at the place of his choice (Ibid Sec 24).

ix. The Act barred the media from disclosing the identity of the child without the permission of the Special Court (Ibid Sec 33.7).

NRCB DATA: A SNAPSHOT OF BRUTALITY

The figures of number of offence committed against the children are terrifying and howling. A total of 18854 cases of rape against children were reported in the country in 2015 against 13766 cases in 2014; a total of 41893 cases of kidnapping and assault were recorded in country against 37854 in 2014; a total of 3087 cases of procurement of minor girls were recorded in country against 2020 in 2014; a total of 885 cases of exposure and abandonment were recorded in country against 983 in 2014; and a total of 293 cases under the Prohibition of Child Marriage Act were recorded in country in 2015 against 280 in 2014. See Figure 2 for the comparative graph on the number cases recorded under these crimes head from 2012 – 2015:

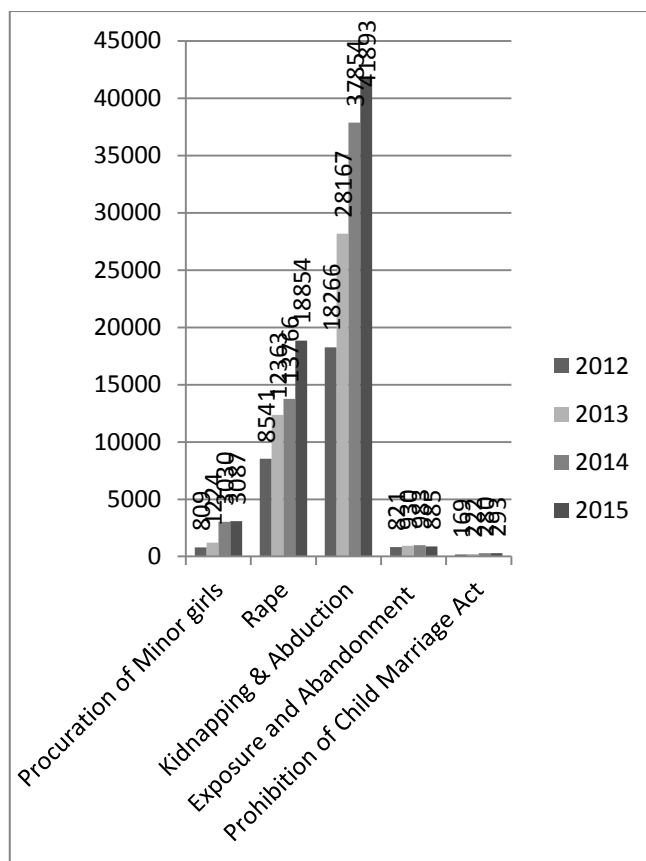


Figure 2: Crime Committed against Children⁸

On the other hand a total of 14913 cases under the POCSO Act, 2012 were recorded in country in 2015 against 8904 in 2014; a total of 1457 cases under Juvenile

Justice Act were recorded in country against 1315 in 2014; a total of 814 cases of unnatural offences were recorded in country against 765 cases in 2014, and a total of 251 cases under Child Labour Act were recorded in country in 2015 against 147 in 2014. See Figure 3 for the comparative graph on the number cases recorded under these crimes head from 2012 – 2015:

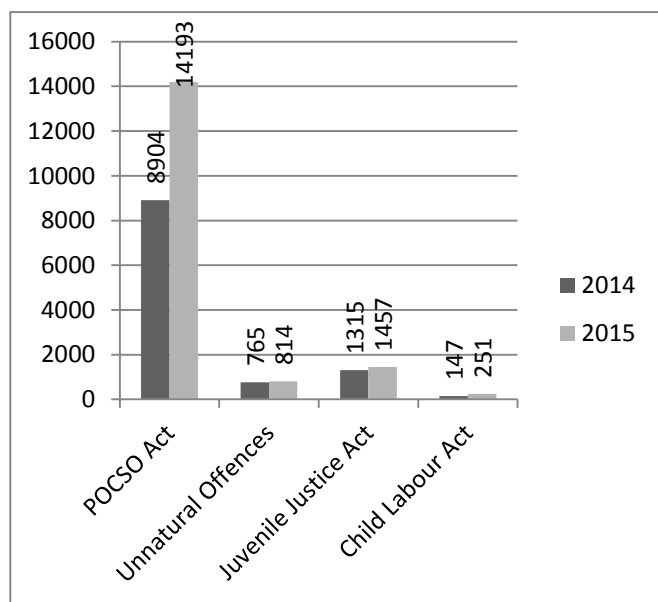


Figure 3: Crime Committed against Children⁹

Apart of these above mentioned cases, 8390 cases of assault on girl child¹⁰ reported in 2015, 221 cases of human trafficking of children reported in 2015, 348 cases of insult to modesty of girl’s children reported in 2015, 111 cases of selling of minors for prostitution reported in 2015 and 1758 cases of murder reported in 2015.

Whereas a total number of 84440 cases of crime committed against children has been disposed off by the Police in year 2015 against the 77024 cases in 2014, the number of disposed off case has been increased but when we look at the rise in number reported than the figure still looks smaller. See Figure 5 for the comparative graph on the number cases disposed off by the Police of crime committed against the children from 2012 – 2015. On the other hand, a total number of 188243 cases were before the court of law for trial during the year 2015 against 152050 cases in 2014. A total number of 165853 cases are pending for trials at the end of the year against 130925 cases are pending for trail in 2014. See Figure 5 and 6 for the comparative graph on the disposal of cases by Police and Court from 2012 – 2015, respectively:

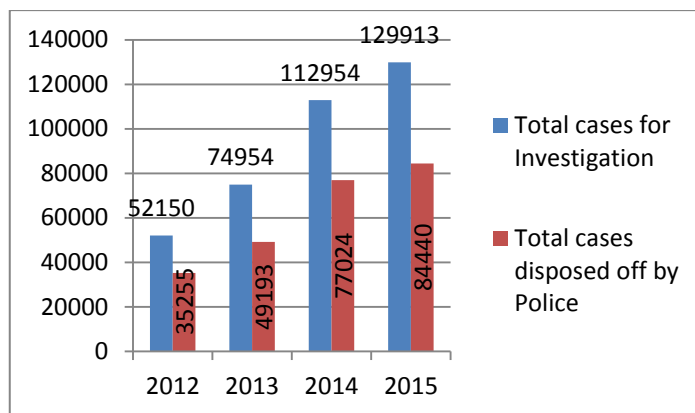


Figure 5: Disposal of Crime Committed Against Children Cases by Police from 2012 – 2015¹¹

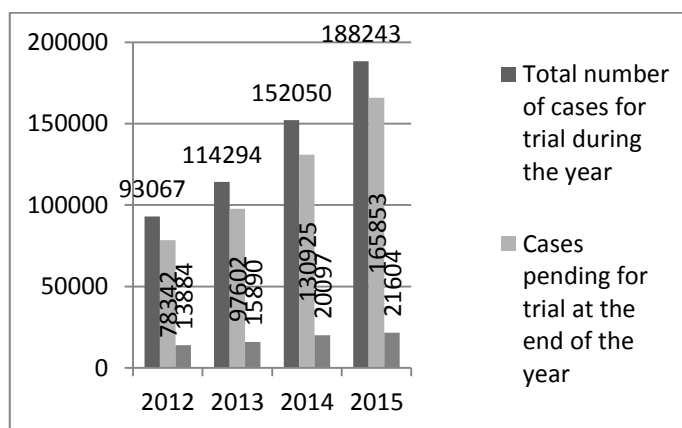


Figure 6: Disposal of Crime Committed Against Children Cases by Court from 2012 – 2015

The crime rate i.e. incidence of crimes committed against children per one lakh population of children was observed as 21 per cent in 2015 against the 20.1 per cent in 2014, 13.25 per cent in 2013 and 8.89 per cent in 2012. The crime rate has been increased by threatening 12.11 per cent from 2012 to 2015. On the other hand, the conviction rate was observed as 35.6 per cent in 2015 against the 33.1 per cent in 2014. See Figure 7 and 8 for the comparative graph on the rate of total cognizable crime and conviction rate from 2012 – 2015, respectively:

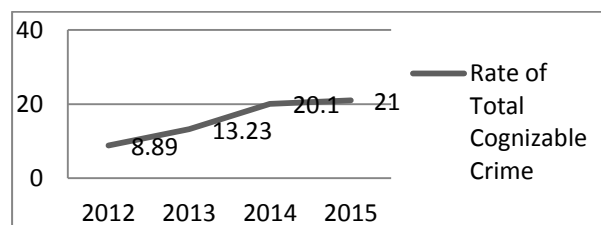


Figure 7: Rate of Total Cognizable Crimes

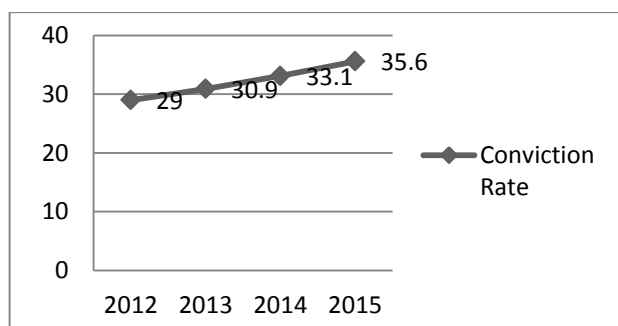


Figure 8: Conviction Rate

ISSUES AND CHALLENGES

Contest on the Age of Victim

Issues related to decide the age of the victim is very sensitive and complex. The age of the victim is an important aspect to be decided before considering the question as to whether there was either an offence under Section 4 of the POCSO Act¹² committed or not. The victim must be a child as per the definition of “child” provided under Section 2(d) of the POCSO Act which indicates that “child” means any person below the age of eighteen years and it should be proved by the prosecution before the court that as on the date of the commission of the crime, the victim was a child.

On the question whether the school certificate be relied upon to ascertain the age, the Supreme Court decided that entry in register is relevant fact. The content of itself does not stand proved, only the document is proved. There has to be more evidentiary proof to prove it. Transfer certificate or other documents if produced it has to be proved further by the person who has actually given the information, who got it registered. In a case, two different dates of birth were recorded in two different schools; the Supreme Court decided that the Medical Report was to be relied upon to find out the actual age of the victim¹⁶. In the contest of the age of the child there are many complications; Rule 12 of the Juvenile Justice Act can be used in criminal matters to determine the ages under the POCSO cases.

When both Victim and Accused are Child

The Act does not confer any sexual autonomy to children who may then be liable for committing sexual acts under the law. Moreover the Act provides that, if the offence has been committed by a child, then it shall be dealt with Juvenile Justice Act, 2015(The POCSO Act, 2012 Sec 4(1)).

Determining whether an allegation involving underage sex was forced or consensual would depend greatly on individual interpretation of the circumstances(Op Cit). In the case of consensual sex between two minors, the concepts of victim and perpetrator become interchangeable as the law inexorably criminalizes sexual behaviour for under 18 year olds.

In *Santhosa v. State*(Car 2014), the Court looked into the material placed on record and held that as on the date of the alleged incident, the victim was at the age of 13 years. The contention of the learned Counsel for the respondent was that there was free consent of both victim and the accused for consuming the marriage. The Court rejected the contention and framed the issue as per the sections of the POCSO Act, 2012. Similarly in another case, the Court reject the contention of appellant that it was a consensual act and the victim and accused were having a love affair. The Court looked into section 375 of Indian Penal Code which indicated that when the offence of rape has been committed, the consent of the victim under 18 years of age is irrelevant. Similarly, for an offence under POCSO Act, which is more stringent Act, the consent of the child would be of no consequence, as she is protected by the provisions of law. Lack of proper support and professional help to the victim and accused in such matters sometimes cause greater psychological harm and trauma(Balson 2007). There are difficulties for “victim” as well as for “perpetrator” under 18 years of age, the later are criminalized but not provided with professional help they might need.

International Comparison

In most countries the age of consent varies between 13 and 18 years. The table below lists the age of consent in the selecting countries:

Countries	Age of consent	Law
United States of America	Varies from state to state between 16 and 18 years. In some states, the difference in age between the two parties is taken into account. This can vary between 24 years.	Different state laws.
United Kingdom	16 years	Sexual Offences Act,2003

Germany	14 years (16 years if the accused is a person responsible for the child's upbringing, education or care).	German Criminal Code
Sweden	15 years (18 years if the child is the accused person's offspring or he is responsible for upbringing of the child).	Swedish Penal Code
France	15 years.	French Criminal Code
Malaysia	16 years for both males and females.	Malaysian Penal Code Child Act 2001
China	No information about consent. Sex with a girl below 14 years is considered rape. Sodomy of a child (male or female) below 14 years is an offence.	Criminal Law of China, 1997
Canada	16 years	Criminal Code of Canada
Brazil	14 years	Brazilian Penal Code 2009
Australia	Varies between 16 and 17 years among different states and territorial jurisdictions. In two states, a person may engage in sexual activity with a minor if he is two years older than the child. In such cases the child has to be at least 10 years old.	Australian Criminal laws
India	18 years.	Protection of Children Against Sexual Offences Act, 2012

Table: International Comparison of Age of Consent

Challenges on Collaborating Evidences When two objects come into contact, they always leave a trace on the

other. Every criminal case can be connected to his criminal by contact traces carried from the sense of crime or left by him at the scene of crime. Here the forensic science helps in tracing the chain of evidences which ultimately help in concluding the evidence with strong conjoin.

In the cases of sexual offences against children, the children become victim by their close relatives or family members or friends and therefore the crime commit within their houses or in the places where it is difficult to collect the evidences from the scene. As a result, physical examination or medical examination has now an essential part of investigation of sexually abused children as it helps in explaining the injury pattern, age and intensity of injury. Section 27 (2) of the POCSO Act, 2012 now mandates that in case of a female child/adolescent victim, the medical examination should be done by a female doctor. However, the law mandates that the available medical officer to provide emergency medical care. On the other hand, the Section 166A of the IPC mandates that the Government medical officer on duty to examine the rape victim without fail. The conflicting legal position arises when female doctor is not available (Sidney et al, 2014).

Another important aspect to be taken into consideration and which also need cautious examination is effective child forensic interview. Child forensic interview is a formal, structured interview technique that is used to investigate whether a child has experienced or witnessed physical or sexual abuse and if so, to get disclosure. The goal of child forensic interview is to:

- (a) To get maximum information while causing minimum stress and contamination.
- (b) To assist the child in providing detailed information.
- (c) On the nature and extent of the abuse, including those responsible

Age Determination

Determining the age of the victim and the accused is fraught with problems. Section 34 (2) authorized the court to determine the age of the child, but no provision or guidelines has been provided as to how to determine the age. It is generally acknowledged that forensic means of establishing age of a living person can be inexact and quite complicated. In a matter, the Supreme Court decided that, "the age determination is very difficult in the absence of birth certificates or other official documentation and while the opinion of a specially constituted Medical Board may be useful, but it cannot be the only or conclusive factor to do so" (Baboo Pasi Vs Jharkhand State). The court further stated that a hyper-technical approach should also not be adopted and the court should lean towards giving the

benefit of the doubt to the juvenile while ensuring that the law is not being misused (Ibid). In developing country like India where a large proportion of births are just not registered and therefore substantial sections of the population do not have documents like birth certificates or school leaving certificates to provide proof of age, thus creating lots of chaos (Op Cit).

Obligatory Reporting

Section 19 of the POCSO Act, 2012 mandates that any person, especially those who are working with children and young people in the education, social, religious or health sector, who has either the knowledge of any offence given in this act has been committed or is going to be committed to provide the information to the local police or to the special juvenile police unit. Failure to do so carries legal sanctions of imprisonment up to 6 months and/or fine. In *Shankar Kishanrao Khade v. State*, the Supreme Court exercising its *parents patria* obligation, especially with regard to children with intellectual disability, issues direction in respect of reporting of the offence, which are as follows:

1. Incharge of schools, special homes, shelter, hostels, remand homes etc. are under a special obligation to report special juvenile police unit or local police all the incidents of sexual abuse or assault of children that comes to their knowledge;
2. media persons, incharge of hotels, hospitals and clubs in compliance with section 20 are under an obligation to furnish information about sexual abuse/assault of children that comes to their knowledge;
3. special obligation of institutions handling children with disability;
4. where the accused of the crime is a family member reporting the matter relating to such children should be in consultation with the mother of the accused/assaulted child in the best interest of the child;
5. special obligation of the hospitals and medical institution where children come for treatment to report sexual abuse of children to appropriate authorities;
6. non – reporting of such crimes is in itself a serious offence and person should be subject to legal action for such in action;
7. the Central and State Governments are directed to constitute Special Juvenile Police Unit in all the districts;
8. Central and State Governments are directed to take all steps to give widest publicity to the provisions of the 2012 Act.

The overall purpose of the provision is included to encourage compliance with the law but the result of the same has mixed success. Mandatory reporting obligation under POCSO Act, 2012 raises three problems (Op Sit):

- a. Criminalizing sex less than 18 years virtually pushes it beyond the purview of health professionals and school counsellors who might be reluctant to impart safer sex advice or treat effects of unsafe or reckless sexual practices without breaching patient confidentiality and/or getting involved with reporting it to the authorities.
- b. The law raises many issues of institutions, charities and organizations working with poor and backward communities and children and who are deeply committed to building relationships based on trust with young people. Breach of trust would seriously jeopardize their efforts to communicate with and work with young people if they are legally bound to report any knowledge of consensual, albeit underage sex. Lack of training for professionals (doctors, teachers, psychologists, social workers, counsellors, etc.) working with children on how to deal with knowledge of sexual activity and to respond appropriately can be an additional problem.
- c. Mandatory reporting raises the issue of who is or should be responsible for enforcing this legal obligation. The police are overworked and scarcely possess the capacity to do so. Prescribing a legal obligation with penal and financial sanctions, without thinking through the mechanism for its enforcement, and the resulting lack of accountability, might mean that cases of failure to report fall through the cracks. There is a danger that the law may be used only retrospectively to punish transgressions, rather than ensure prospective reporting of suspected sexual offence against the child by competent authorities in appropriate cases.

POSCO and Child Marriage

The legal age of consent and mandatory reporting obligations of POCSO Act, 2012 combine with the difficulty in determining age could cause more problems than anticipated. In a recent report, it is indicated that in India one in six women were married before they were 8 years of age, of which 17.5 per cent (6.5 million) women had been married within 4 years prior to when the data was collected (Indian Express 5 Jun 2015) Thus there could be possible 6.5 million potential law suits under the POCSO Act. It would lead to enormous waste of time and resources

of the criminal justice system in cases of consent to marriage by a girl between ages of 15 – 18 years.

Under the IPC, sexual intercourse by a man with his wife above 15 years of age is an exception to rape. The Criminal Law Amendment Act, 2013 raised the age of consent to 18 years but did not disturb this exception. As a result, sexual intercourse with a wife above 15 years of age and below 18 years of age will not amount rape under the IPC (<http://www.nls.ac.in/ccljusticetochildrenposcoact.pdf> retrieved on 30 nov 2016). But in case of conflict between the provisions of the POCSO Act and other laws, the former will override. Owing to Section 42 A of the POCSO Act, the exception under the IPC will not apply. Thus, in all cases of child marriage where the bride or groom is below 8 years of age, a charge of aggravated sexual assault can lie against them under the POCSO Act (Ibid).

CONCLUSION

“Children are the citizens of the future era. On the proper bringing up of children and giving them the proper education to turn out to be good citizens depends the future of the country... Every society must devote full attention to ensure that children are properly cared for and brought up in a proper atmosphere where they could receive adequate education, training and guidance in order that they may be able to have their rightful place in the society... ”(Supreme Court of India in *Sheela Basre Vs Children Aid Society and Others*) Justice V. R. Krishna Iyer remarked that, ‘the world’s culture and future are shaped by the practical policies and legal prescriptions relating to the worth and growth of the Child, its environment and opportunities for development. The fledglings, if properly educated and brought up with sound initiatives, will be the wealth, not the ‘tilth’, of the country and the century’. This is evident by the fact that UNCRC is the most widely and rapidly ratified human rights treaty in the world¹⁹, as every nation put the issues relating to the children at the top most priority realizing the importance of the same. Whereas in India, the number of children increasing year after and the problem of primary health, nutrition, immunization, school enrolment, the noxious phenomenon of street children and orphans in neglect. Building a database focusing on disadvantage, elimination of social discrimination empowerment of women and pressing into use of NGOs as instruments to enforce the law and above all sensitization of the legal systems and all segments of society – are under the eclipse (Op Cit).

After regular brainstorming exercises of the legislatures and judicial officer so much has been achieved in favour of the rights of the children but still there is so much to be contributed to the curb this social evil. Fir and foremost, there is need to mobilize, educate and sensitize the stakeholders and practitioners who are working in the field of education, health and social work about the possible methods and remedies available. Another is strengthening the vigilance of the matter coming up to the State for the speedy and effective delivery of the justice. Most importantly the government should take due diligence in securing the rehabilitation of the victims which is somehow left behind in many of the cases.

There has been no objective assessment of the manner and extent of implementation of Directive Principles by the Central State Governments excepting occasional surveys by the Planning Commission, some NGO studies and the Human Development Reports of the States. The annual reports of the Ministries of Human Resource Development and Health give scanty and fragmented data on investments and outcomes with no clear indication in terms of fulfillment of rights and obligations. As India is required to report performance on basic rights to the Human Rights Committee of the United Nations there ought to have been periodical reporting on nature and extent of rights availed or fulfilled to Parliament and State (Menon,2013) Legislatures so that there could be public scrutiny of not only government’s performance but also that of Parliament’s and legislatures as well.

APPENDIX

¹For the full text of the Convention, See: [http://treaties.un.org/doc/publication/mtdg/volume%20i/chapter%20iv/iv-11/en/pdf\(October 22, 2016: 10:35 AM\)](http://treaties.un.org/doc/publication/mtdg/volume%20i/chapter%20iv/iv-11/en/pdf(October%2022,%202016%2010:35%20AM))

²India declaration: “while fully subscribing to the objectives and purposes of the Convention releasing that creation of the rights of child, namely those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries, subject to the extent of available resources and within the framework of international co-operations; recognizing that the child has to be protected from exploitation of all forms including economic exploitation; nothing that for several reasons children of different ages do work in India; having prescribed minimum age of employment on hazardous occupation and in certain other areas; having made regulatory provisions regarding hours and conditions of employment; and being aware that it is not practical immediately to prescribe minimum wages for admission to

each and every are of employment in India – the Government of India undertakes to take measures to progressively implement the provision of Article 32, particularly para 2 (a), in accordance with its national legislation and relevant international instruments to which it is a State party”.

³For full text, POCSO Act, 2012 (October 28, 2016; 11:30 AM)

<http://indiacode.nic.in/amendmentacts2012/The%20Protection%20of%20Children%20From%20Sexual%20Offences%20Act.pdf>

⁴In Roman Family Law, the power that the male head of a family exercised over his descendants in the male line and over adopted children.

⁵ A doctrine that grants the inherent power and authority to the State to protect persons who are legally unable to act on their own behalf.

⁶ Act No. 19 of 1850. This Act has been repealed by the Apprentices Act, 1961 [52 of 1961]

⁷ The punishment shall be imprisonment for a term which may extend to one year and fine.

⁸The head ‘kidnapping & abduction’ includes kidnapping and abduction, kidnapping and abduction in order to murder, kidnapping for ransom, kidnapping and abduction of women to compel her marriage and others.

⁹ No cases are specifically recorded under the crime heads mentioned in the figure prior to 2014.

¹⁰‘Assault on girl child with intent to outrage her modesty’ also includes sexual harassment, assault or use of criminal forces to women with intention to disrobe, voyeurism, stalking and other.

¹¹Total cases for Investigation” include cases pending for investigation from previous year and cases reported during that year and does not include number of cases withdrawn by the government during investigation, cases transfer to other Police Station/Magistrate and cases investigated under Section 157 (1)(b) of Criminal Procedure Code.

¹²*Gangadhar Sethy v. State of Orissa* (MANU/OR/0172/2015)

REFERENCES:

Chopra, Neelima (2015) : *Care for Young Children : Health, Nutrition and Protection*, Delhi, Global Books Depot p199-209,

Howrad Spohn(1921) : *The Healthy Child – Our Greatest National Asset* 12 (8) *Pub. Health J* p352-359

Census of India – Age Structure and Marital Status, (October 20, 2016: 10:40 AM) http://censusindia.gov.in/Census_Any_You/age_structure_and_marital_status.aspx

Kacker, L and Brijesh Bahadur Singh : Study of Child Abuse: India 2007, New Delhi. Ministry of Women and Child Development, Government of India; (October 20, 2016: 10:44 AM) <http://wcd.nic.in/childabuse.pdf>

Kacker, L, N Mohsin and A Dixit, (2015): *Child Sexual Abuse and the Law in India: A Commentary* 26 (4) *CSIJ* (2015) (October 20, 2016: 10:44 AM) <https://crimesciencejournal.springeropen.com/articles/10.1186/s40163-015-0037-2>

Kumari, Ved (2004): *The Juvenile system in India : From Welfare to Rights*, USA, Oxford

Pandey, B.B. (2013): *Child Rights Law, ASIL*, 93

S. Oz. and D. Balshan,(2007): *Mandatory Reporting of Childhood Sexual Abuse in Israel: What happen after the Report?* 16(4) *JCS* 1-12 (2007)

Maharashtra State Consultation, *Review the Protection of Children from Sexual Offences 2012: Consultation between Stakeholders*

Sydney Moirangthem, Naveen C. Kumar and Suresh Bada Math, *The Protection of Children from Sexual Offences (POCSO) Act, 2012* 142 (1) *Indian J. of Med. Res.* 1-3 (July, 2015)

A. Schmeling, A. Olze, W. Resinger, F. Rosing and G. Geserick,: *Forensic Age of Diagnostics of Living Individuals in Criminal Proceedings* 54 (2) *HOMO J. of Comp. Human Bio.* 162-169

Swagata Raha,: *Child Marriage and the Protection of Children from Sexual Offences Act, 2012* (CCL-NLSIU) (November 30, 2016) <https://www.nls.ac.in/ccl/justicetochildren/poscoact.pdf>

Justice V R Krishna Iyer (2003): *Legally Speaking*, New Delhi, Universal Law Publications. p186-194

Menon, N R Madhav (2013): *Education and Public Health : Legislative Initiatives in Fifty Years of the Republic*, New Delhi, Universal Law Publishing,