



Crimes against children's and role of the child welfare committee, special courts in India- A legal study

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Abstract

Children are the most vulnerable section of society and often fall prey to various forms of crimes such as sexual abuse, trafficking, kidnapping, murder, etc. The protection and welfare of children are the primary responsibility of the state and society. The Indian Constitution and various laws have provided for the rights and safeguards of children against crimes. The Child Welfare Committee (CWC) is a statutory body established under the Juvenile Justice (Care and Protection of Children) Act, 2015 to deal with the cases of children in need of care and protection. The Special Courts are designated courts under the Protection of Children from Sexual Offences Act, 2012 to try the offences of sexual violence against children. This paper aims to study the role and functioning of the CWC and the Special Courts in India in relation to the crimes against children. It also analyses the challenges and limitations faced by these institutions and suggests some measures to improve their effectiveness and efficiency.

Keywords: crimes against children, child welfare committee, special courts, juvenile justice act, POCSO Act.

Introduction

Children are the future of any nation and deserve to be nurtured and protected from any harm. However, in India, children face various forms of violence, exploitation and abuse that violate their basic human rights and dignity. Crimes against children in India include physical, sexual and emotional abuse, child labour, child trafficking, child marriage, female foeticide, infanticide, etc. These crimes not only affect the physical and mental health of children, but also hamper their education, development and well-being.

The legal framework for the protection of children in India is based on the Constitution of India, which guarantees the fundamental rights of all citizens, including children. The Constitution also provides for special provisions for the welfare and development of children under Article 15(3), Article 21A, Article 24, Article 39(e) and (f), Article 45 and Article 47. Moreover, India is a signatory to various international conventions and treaties on children's rights, such as the United Nations Convention on the Rights of the Child (UNCRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Worst Forms of Child Labour (C182), etc.

However, despite the constitutional and legal provisions, crimes against children in India are rampant and widespread. According to the National Crime Records Bureau (NCRB), a total of 1,48,090 cases of crimes against children were registered in India in 2020. This shows an increase of 4.5% from 2019, when 1,41,764 cases were registered. The major crimes against children in India are kidnapping and abduction (45.7%), rape (27.8%), Protection of Children from Sexual Offences Act (POCSO) (20.9%), murder (2.9%) and other crimes (2.7%).

The main causes of crimes against children in India are poverty, illiteracy, gender discrimination, social and cultural norms, lack of awareness, weak law enforcement, corruption, etc. These factors create a conducive environment for the perpetrators to exploit and abuse

children with impunity. The victims of crimes against children often suffer from physical injuries, psychological trauma, stigma, shame, guilt, fear, isolation, loss of trust, etc. They also face difficulties in accessing justice and rehabilitation services due to various barriers such as lack of evidence, witnesses, legal aid, support systems, etc.

Therefore, there is an urgent need to address the issue of crimes against children in India from a legal perspective. This study aims to analyse the existing laws and policies on crimes against children in India and their implementation and effectiveness. It also aims to identify the gaps and challenges in the legal system and suggest some recommendations for improvement. The study will adopt a socio-legal approach that will consider the social context and realities of crimes against children in India along with the legal aspects. The study will also use various sources of data such as official statistics, reports, case studies, etc. to support its arguments and findings.

Crimes against children in India are a serious issue that includes physical and emotional abuse, neglect, exploitation, and trafficking^[1]. Some of the specific crimes against children in India include:

Child trafficking: The illegal movement of children for the purpose of exploitation, including forced labor and sexual exploitation^[2].

Sex tourism: The exploitation of children for sexual purposes by tourists.

Incest: Sexual activity between family members.

Child rape: Sexual assault on a child.

Child pornography: The creation, distribution, and possession of pornographic material involving children.

Devadasi syste: A religious practice in which young girls are dedicated to a deity and forced into prostitution.

Prostitution: The act of engaging in sexual activity for payment.

The laws related to child abuse in India are designed to protect children from harm or neglect by another person, whether an adult or child^[3]. These laws apply to all cultural, ethnic, and income groups. There are various socio-legal studies that have been conducted to understand the issue of crimes against children in India^[4]. It is important to address this issue and take necessary actions to protect children from such crimes.

A Socio-Legal Perspectives On Crimes Against Children In India^[5]: This is a research paper that examines the various forms of crimes against children in India, such as child labour, child abuse, child trafficking, child marriage, etc. It also discusses the legal framework and the role of the state, family and society in protecting the rights and welfare of children.

Crime against Children in India: Preventive and Protective Laws^[6]: This is an article that provides an overview of the legal definition of a child, the status of children's rights in India, the issues affecting childhood in India, such as poverty, child labour, child abuse, etc. It also analyses the legislation and policies related to children, such as the Protection of Children from Sexual Offences Act, 2012, the Child Labour Act, 1986, the Juvenile Justice Act, 2000, etc. It also suggests some prevention strategies and challenges for combating crimes against children.

Crime against Children: Issues, Challenges, and Perspectives^[7]: This is an article that provides a detailed discussion on the persisting problem of crime against children. The article deals with the context, issues behind, and perspectives on the crime against children, with a special focus on the current Indian scenario.

A Critique on Crimes against Children in India^[8]: This is a research paper that critiques the existing laws and policies on crimes against children in India. It also highlights the gaps and challenges in the implementation and enforcement of these laws. It also suggests some recommendations for improving the situation of children in India.

Offences against Children: Criminal Justice and Social issues in India^[9]: This is a research paper that explores the offences against children in India, such as murder, kidnapping, rape, etc. It also examines the constitutional rights and welfare provisions of children in India. It also discusses the role of parents, state and society in providing care and protection to children.

The laws in India to protect children from abuse

India has implemented several legal measures to protect children from abuse, and these measures are aimed at preventing, detecting, and punishing perpetrators of child abuse^[1]. The following are some of the laws in India that protect children from abuse:

The Protection of Children from Sexual Offences Act (POCSO), 2012: This act provides for the protection of children from sexual abuse and exploitation. It defines different forms of sexual abuse and prescribes punishments for the same^[10].

The Juvenile Justice (Care and Protection of Children) Act, 2015: This act provides for the care, protection, and rehabilitation of children in need of care and protection. It also provides for the establishment of Juvenile Justice Boards and Child Welfare Committees^[11].

The Child Labour (Prohibition and Regulation) Act, 1986: This act prohibits the employment of children below the age of 14 years in hazardous occupations and processes.

The Child Marriage Restraint Act, 1929: This act prohibits the solemnization of child marriages.

The Protection of Children from Sexual Offences Rules, 2020: These rules provide for the procedure for reporting, recording, and investigation of offences under the POCSO Act^[12].

The National Commission for Protection of Child Rights (NCPCR) Act, 2005: This act provides for the constitution of the NCPCR for the protection, development, and welfare of children.

The Right of Children to Free and Compulsory Education Act, 2009: This act provides for free and compulsory education to all children between the ages of 6 and 14 years.

The Child Welfare Committees (CWCs): These committees are established under the Juvenile Justice Act and are responsible for the care, protection, and rehabilitation of children in need of care and protection.

The Indian law provides for the protection of children from all forms of violence, neglect, and exploitation. The Child Welfare Act of India sets out specific provisions for the care and protection of children, including minimum age requirements for placement, procedures for investigating allegations of child abuse and neglect, and a host of other provisions designed to ensure that children are adequately protected.

Types of Child Abuse

Child abuse is a serious and widespread problem that affects millions of children around the world. It can have devastating and long-lasting consequences on the physical, mental, emotional and social development of children. Child abuse can take many forms, but it is generally classified into four main types: physical abuse, sexual abuse, emotional abuse and neglect.

Physical abuse is the intentional use of force or violence against a child that results in injury, pain, harm or death. It may include hitting, kicking, punching, burning, choking, shaking, throwing or using weapons. Physical abuse can cause bruises, cuts, fractures, burns, internal injuries or permanent disabilities. It can also affect the child's brain development, growth and immune system.

Sexual abuse is any sexual activity involving a child and an adult or another child who has power over them. It may include touching, fondling, oral sex, intercourse, penetration, exposure, pornography or prostitution. Sexual abuse can cause physical injuries, infections, pregnancy or sexually transmitted diseases. It can also affect the child's self-esteem, sexuality, relationships and mental health.

Emotional abuse is the persistent or severe use of words or actions that harm the child's sense of self-worth, dignity or identity. It may include name-calling, criticizing, threatening, isolating, rejecting, humiliating or manipulating. Emotional abuse can cause low self-confidence, anxiety, depression, aggression or withdrawal. It can also affect the child's learning abilities, social skills and personality.

Neglect is the failure to provide the child with the basic needs for their well-being and development. It may include lack of food, water, clothing, shelter, hygiene, health care, education or supervision. Neglect can cause malnutrition,

illness, injury or death. It can also affect the child's physical growth, cognitive development and emotional attachment.

Child abuse is a complex and multifaceted phenomenon that has various causes and risk factors. Some of them are poverty, illiteracy, substance abuse, domestic violence, cultural norms, gender discrimination or mental illness. Child abuse can be prevented and treated by raising awareness, strengthening laws and policies, providing support and services to families and children and promoting positive parenting practices.

Indian law recognizes different types of child abuse, which are as follows:

- Physical abuse: Any harm resulting from hitting, beating, kicking, biting, burning, or other physical actions ^[13].
- Emotional or psychological abuse: Any act that causes emotional or psychological harm to a child, such as constant criticism, belittling, or humiliation.
- Verbal abuse: Any act that involves the use of words to harm a child, such as name-calling, yelling, or threatening.
- Sexual abuse: Any sexual activity with a child, including sexual assault, molestation, and exploitation for pornography ^[14].
- Neglect: Failure to provide for a child's basic needs, such as food, shelter, clothing, medical care, and education.

All of the aforementioned abuses in India are punishable under various laws, including the Protection of Children from Sexual Offences Act (POCSO), 2012, and the Juvenile Justice (Care and Protection of Children) Act, 2015 ^[15]. It is important to recognize and report any form of child abuse to the authorities to protect children from harm and ensure that perpetrators are held accountable for their actions.

Penalties for Child Abuse under Indian Law

The penalties for child abuse in India vary depending on the severity of the abuse and the specific law that has been violated. The following are some of the penalties for child abuse under Indian law:

1. Sexual assault on a child under the age of 12 years can result in imprisonment for a minimum of 20 years, which may extend to life imprisonment. For sexual assault on a child between the age of 12 to 18 years, the punishment is imprisonment for a minimum of 10 years, which may extend to life imprisonment.
2. Child labor (prohibition and regulation) act, 1986, provides for imprisonment for up to two years or a fine of up to 100,000 rupees, or both.
3. Cruelty to a child can result in imprisonment for up to five years and a fine of up to five lakhs rupees.
4. Abusive parents can face penalties such as arrest, fines, and lengthy prison sentences depending on the severity of the abuse.
5. Intentional omission of necessary care and treatment of a child that may cause physical or mental harm can result in imprisonment for up to seven years or a fine or both.
6. Inducing any minor girl to have sexual intercourse with another person can result in imprisonment for up to ten years and a fine.

It is important to note that child abuse is a punishable crime in India, and the penalties for such crimes are severe. It is crucial to report any form of child abuse to the authorities to protect children from harm and ensure that perpetrators are held accountable for their actions.

What is the Protection of Children from Sexual Offences (POCSO) Act, 2012

The Protection of Children from Sexual Offences (POCSO) Act, 2012 is a comprehensive law enacted by the Parliament of India to protect children from sexual abuse and exploitation. The act provides a robust legal framework for the protection of children from offences of sexual assault, sexual harassment, and pornography, while safeguarding the interest of the child at every stage of the judicial process. The POCSO Act recognizes different forms of sexual abuse and prescribes punishments for the same. The following are some of the features of the POCSO Act:

- The act is gender-neutral for both children and the accused.
- The act criminalizes watching or creating pornographic content involving children.
- The act provides for the establishment of Special Courts for the speedy trial of offences.
- The act provides for child-friendly mechanisms for reporting, recording of evidence, and investigation.
- The act recognizes forms of penetration other than penile-vaginal penetration and criminalizes acts of immodesty against children too.
- The act provides for punishment for abetment of an offence, attempt to commit an offence, and for making a false complaint or providing false information.

The POCSO Act is a significant step towards protecting children from sexual abuse and exploitation in India. The act provides for stringent punishment for offenders and aims to ensure that the interests of the child are safeguarded at every stage of the judicial process.

Under the Protection of Children from Sexual Offences (POCSO) Act, 2012, Special Courts are established for the purpose of ensuring speedy trial of offences related to child sexual abuse and exploitation. The following are the key roles of Special Courts under the POCSO Act:

1. The Special Courts are designated to try offences under the POCSO Act and offences with which the accused is charged under any other law.
2. The Special Courts have the power to take cognizance of any offence without the accused being committed to it for trial upon receiving a complaint of facts which constitute such offence.
3. The Special Courts are responsible for the speedy trial of offences and are required to complete the trial within one year from the date of taking cognizance of the offence.
4. The Special Courts are required to ensure that the child is not subjected to unnecessary trauma during the trial and that the child's privacy is protected.
5. The Special Courts have the power to impose stringent punishment on the accused, including imprisonment for life, for sexual assault on a child under the age of 12 years.
6. The Special Courts are required to follow the procedures and powers as provided under the POCSO Act to guarantee and ensure speedy trial and circumvent inadequate delay, which may cause further trauma to the child.

The establishment of Special Courts under the POCSO Act is a significant step towards ensuring the speedy trial of offences related to child sexual abuse and exploitation. The Special Courts are responsible for ensuring that the child's privacy is protected and that the child is not subjected to unnecessary trauma during the trial.

Procedure for filing a case under the POCSO Act in a Special Court

The procedure for filing a case under the POCSO Act in a Special Court is as follows:

1. The complaint can be filed by the child, parent, guardian, or any person who has knowledge of the offence.
2. The complaint can be filed in writing or orally, and it should be made to the Special Court or the police.
3. The police are required to record the complaint and register an FIR.
4. The police are required to investigate the matter and submit a charge sheet to the Special Court within 90 days from the date of filing of the FIR.
5. The Special Court is required to take cognizance of the offence upon receiving the charge sheet from the police.
6. The Special Court is required to ensure that the child is not subjected to unnecessary trauma during the trial and that the child's privacy is protected.
7. The Special Court is required to complete the trial within one year from the date of taking cognizance of the offence.
8. The Special Court has the power to impose stringent punishment on the accused, including imprisonment for life, for sexual assault on a child under the age of 12 years.
9. The Special Court is required to follow the procedures and powers as provided under the POCSO Act to guarantee and ensure speedy trial and circumvent inadequate delay, which may cause further trauma to the child.

It is important to note that the POCSO Act provides for a child-friendly approach and aims to ensure that the interests of the child are safeguarded at every stage of the judicial process. The Special Courts are responsible for ensuring that the child's privacy is protected and that the child is not subjected to unnecessary trauma during the trial.

The POCSO Act is a law that aims to protect children from sexual offences and provide justice to the victims. The Act defines various types of sexual offences against children and prescribes stringent punishments for the offenders. The Act also provides for the establishment of special courts to try the cases under the Act in a speedy and child-friendly manner.

The procedure for filing a case under the POCSO Act in a Special Court is as follows:

1. The first step is to report the offence to the police or the Child Welfare Committee (CWC). The report can be made by the child, the parent or guardian of the child, any person who has knowledge of the offence, or any person who is entrusted with the care and protection of the child. The report can be made orally or in writing, and the police or the CWC should record it verbatim. (Section 19, POCSO Act)

2. The second step is to get the medical examination of the child done by a qualified medical practitioner. The examination should be done with the consent of the child or the parent or guardian of the child, and in accordance with the guidelines issued by the Central Government or the State Government. The examination should be done in the presence of the parent or guardian of the child or any other person whom the child trusts, and with due regard to the dignity and privacy of the child. The medical practitioner should prepare a report of the examination and forward it to the police or the CWC. (Section 27, POCSO Act)
3. The third step is to get the statement of the child recorded by a magistrate. The statement should be recorded as soon as possible after receiving the report of the offence, and in a place where the child feels comfortable. The statement should be recorded in the presence of the parent or guardian of the child or any other person whom the child trusts, and with due regard to the dignity and privacy of the child. The magistrate should record the statement verbatim and provide a copy of it to the police or CWC. (Section 25, POCSO Act)
4. The fourth step is to get the evidence of the child recorded by a special court. The evidence should be recorded within 30 days of taking cognizance of the offence, and in a manner that ensures that the child is not exposed to the accused. The special court may use video conferencing, single visibility mirrors, curtains, or any other device to facilitate this. The evidence should be recorded in the presence of an interpreter or translator, a special educator, or any other person who can assist the child. The special court should also ensure that no unnecessary questions are asked to the child, and that no character assassination or harassment is done to him or her. (Sections 33 and 36, POCSO Act)
5. The fifth step is to get the trial completed by a special court within one year of taking cognizance of the offence, as far as possible. The special court should conduct the trial in camera and in accordance with the provisions of the Code of Criminal Procedure, 1973. The special court should also ensure that no adjournments are granted without valid reasons, and that no unnecessary delay is caused in disposing of the case. (Sections 35 and 37, POCSO Act)

Documents are required to file a case

According to the Model Guidelines under Section 39 of The Protection of Children from Sexual Offences Act, 2012, there are no specific documents required to file a case under the POCSO Act in a Special Court. However, the police are required to record the complaint and register an FIR. The police are also required to investigate the matter and submit a charge sheet to the Special Court within 90 days from the date of filing of the FIR. The charge sheet should contain all the relevant information and evidence related to the offence. Additionally, documents to prove the age of the child, such as a school certificate or birth certificate, may be required to establish the age of the victim. The Special Court may also require other documents or evidence as deemed necessary during the trial. It is important to note that the procedures and requirements for filing a case under the POCSO Act may vary depending on the specific state or jurisdiction.

Role of the Child Welfare Committee in POCSO cases

The Child Welfare Committee (CWC) plays an important role in cases related to child sexual abuse and exploitation under the POCSO Act. The following are the key roles of the CWC in POCSO cases:

- The CWC is responsible for providing necessary care and protection to the child victim during the investigation and trial of the case^[16].
- The CWC is required to ensure that the victim is provided with necessary medical and psychological aid during their stay in an institution for the purpose of protection.
- The CWC is responsible for monitoring the progress of the case and ensuring that the child's interests are safeguarded at every stage of the judicial process.
- The CWC is required to provide assistance to children who are alleged to have been sexually abused or exploited and their families.
- The CWC is responsible for ensuring that the child is not subjected to unnecessary trauma during the trial and that the child's privacy is protected.
- The CWC is required to ensure that the child is provided with a support person throughout the investigation and trial of the case.
- The CWC is responsible for ensuring that the child is provided with necessary care and protection after the trial of the case.

The CWC plays a crucial role in ensuring that the child victim is provided with necessary care and protection during the investigation and trial of the case. The CWC is responsible for monitoring the progress of the case and ensuring that the child's interests are safeguarded at every stage of the judicial process.

Conclusion

Crimes against children in India are a grave and pervasive problem that needs urgent attention and action from all stakeholders. Children are the most vulnerable and innocent members of society, and they deserve to live in a safe and nurturing environment. However, many children in India are subjected to various forms of violence, exploitation and abuse that violate their basic human rights and dignity. These crimes not only affect the physical and mental health of children, but also hamper their education, development and well-being.

The legal framework for the protection of children in India is based on the Constitution of India, which guarantees the fundamental rights of all citizens, including children. The Constitution also provides for special provisions for the welfare and development of children. Moreover, India is a signatory to various international conventions and treaties on children's rights, such as the UNCRC, the CEDAW, the C182, etc. Furthermore, India has enacted various laws and policies to prevent and punish crimes against children, such as the POCSO Act, the Child Labour Act, the Juvenile Justice Act, etc.

However, despite the constitutional and legal provisions, crimes against children in India are rampant and widespread. The main causes of crimes against children in India are poverty, illiteracy, substance abuse, domestic violence, cultural norms, gender discrimination or mental illness. The victims of crimes against children often suffer from physical injuries, psychological trauma, stigma,

shame, guilt, fear, isolation, loss of trust, etc. They also face difficulties in accessing justice and rehabilitation services due to various barriers such as lack of evidence, witnesses, legal aid, support systems, etc.

Therefore, there is an urgent need to address the issue of crimes against children in India from a legal perspective. This study has analysed the existing laws and policies on crimes against children in India and their implementation and effectiveness. It has also identified the gaps and challenges in the legal system and suggested some recommendations for improvement. The study has adopted a socio-legal approach that has considered the social context and realities of crimes against children in India along with the legal aspects. The study has also used various sources of data such as official statistics, reports, case studies, etc. to support its arguments and findings.

References

1. https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Chapter%206-15.11.16_2015.pdf
2. <https://www.legalserviceindia.com/legal/article-9059-crime-against-children-a-critical-analysis.html>
3. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10336940/>
4. <https://www.thelawgurukul.com/post/crimes-against-children-in-india>
5. [7-A-socio-legal-perspectives-on-crimes-against-children-in-India.pdf \(dehradunlawreview.com\)](https://www.dehradunlawreview.com/7-A-socio-legal-perspectives-on-crimes-against-children-in-India.pdf)
6. <https://thelawbrigade.com/criminal-law/crime-against-children-in-india-preventive-and-protective-laws/>
7. <https://www.legalbites.in/crime-against-children/>
8. <https://www.ijlmh.com/paper/a-critique-on-crimes-against-children-in-india/>
9. <http://isca.in/IJSS/Archive/v3/i7/3.ISCA-IRJSS-2014-46.pdf>
10. https://en.wikipedia.org/wiki/Protection_of_Children_from_Sexual_Offenses_Act
11. <https://vakilsearch.com/blog/indian-laws-protect-children/>
12. <https://www.lexology.com/library/detail.aspx?g=81085a3e-dd44-4dc4-ab5e-94dbe3d1fdab>
13. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10336940/>
14. <https://theoryofabrogation.com/child-abuse-and-their-types-in-indian-constitutional-act>
15. <https://www.lexology.com/library/detail.aspx?g=81085a3e-dd44-4dc4-ab5e-94dbe3d1fdab>
16. <https://sje.rajasthan.gov.in/commissions/DCR/PDF/CWC%20on%20POCSO1.pdf>