

CHILD VICTIMIZATION AND THE CRIMINAL JUSTICE SYSTEM IN INDIA: AN ANALYTICAL STUDY OF LEGAL FRAMEWORK AND PRACTICAL CHALLENGES

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Abstract : Children are in a special status in the society and the kind of damage that they are subjected to in criminal activities has implications that are far-reaching beyond the actual incidence. The issue of crimes involved in children has received increasing legislative and judicial focus in India in the last twenty years but the discrepancy between law and enacted policies on the one hand and the realization of justice on the ground on the other is a burning subject. The research on the issue of child victimization presented in this paper is based on the criminal justice system that exists in India, and the aspects of the legal framework in the country addressing this issue are the Protection of Children against Sexual Offences Act, 2012, and the Juvenile Justice (Care and Protection of Children) Act, 2015, as well as the constitutional framework the country is founded on in the context of the rights of children. Basing on a doctrinal and analytical approach, the research conducts a survey on the data on trends in crime, measures structural and procedural obstacles, which impede effective justice, and offers institutional reforms aimed at the project of turning the process of justice into responsive to the needs of child victims. The paper states that no matter how well law is written, no laws can replace the need to act in a coordinated manner, to have trained personnel and a justice system that does not assume that children will only be witnesses or complainants, but as persons who bear rights, should be treated with dignity and have an opportunity to be repaired.

IndexTerms – *child victimization, POCSO Act, juvenile justice, criminal justice system, child rights.*

1. INTRODUCTION

Something about the notion of the locations where the child will most certainly suffer- the home, the school, the neighbourhood- are the locations where the society has traditionally thought of as protective places. However, the evidence, and a thousand court histories, recounts just this. Victimization of children in India is not a fringed issue. It is positioned at the crossroads of a profound social injustice, unequal application of law and a justice system that has long had a problem of making itself available and sensitive to its youngest complainants.

The scope of child victimization is what makes this issue especially hard to solve. It includes physical abuse, sexual abuse, emotional abuse, child trafficking, child neglect, child labour, and most recently, digital abuse (use of online platforms). Both of these types of harm have their own legal architecture, their own evidentiary problems, and an institutional actor of their own. The thing that brings all these together is the fact that the victim is an individual who, based on old age alone, is incapable of defending himself or herself, of dealing with adult-oriented legal procedures or in most instances, even of articulating what has befallen him or her.

The legal response of crimes against children in India has become quite strong since the beginning of the twentieth century. In 2012, with the adoption of the Protection of Children from Sexual Offences Act, the situation changed - a statement of offences, special procedural provisions, and a dedicated institutional structure (the Special Courts) were united under a single law, specifically drafted to apply to child victims of sexual maltreatment. This was later reinforced by the Juvenile Justice Act of 2015, which created Child Welfare Committees, formalized care and rehabilitation and further imposed on the State the *parens patriae* duty, which was previously restricted to juvenile offenders, to those children who are just in need of care. These statutes are anchored on the normative scaffolding of the constitutional provision Articles 15(3), 21A, 24, 39(e)-(f).

But something is obviously not going on as expected. The yearly crime in India reports of the National Crime Records Bureau has recorded an increasing rate of registered crimes against children. It is hard to tell with confidence whether this is a real rise in the rate of occurrence of such crimes, better reporting or a combination of both. What cannot be refuted is that a very high percentage of crimes go unreported, that the rate of conviction in cases involving children are not very encouraging and that the child victims still have to contend with a poorly adapted justice system that, by all measures, is not well-equipped to deal with their special needs. This paper tries to view this issue through the prism of totality, that is, the conceptual and legal aspects of the child victimization issue, the structure of the response by the criminal justice system, the most enduring structural challenges, and the recommendations as to what type of reforms will be effective. It is a doctrinal, analytical method: it is based on statute, case law, official reports and academic literature. Yet the purpose all along is to ensure that the lived experience of the child victim is in the focus of the inquiry.

2. AWARENESS OF CHILD VICTIMIZATION: CONCEPT, FORMS AND CAUSES.

Victimization of children as a concept, although it is an intuitive concept in its broadest sense, needs to be defined with care with a view to legal and policy considerations. According to most international and Indian domestic laws, a child is anybody who is below eighteen years of age. In this respect, victimization can be seen as all the actions or omissions that end up harming such an individual-physically, psychologically, sexually, economically or socially. The scope of protection as outlined in the United Nations Convention on the Rights of the Child, 1989 (UNCRC) is broad in its definition and as such the state parties must protect children against all types of physical or mental violence, injury or abuse, neglect or negligent treatment and also against maltreatment or exploitation; such as sexual abuse (Article 19). The international standard has also influenced the architecture of the domestic Indian legislative system, but translation of the treaty commitments into domestic practice has been disproportionate.

2.1 Major types of victimization: physical, emotional, and sexual.

Physical abuse - force of a body on a child resulting in injury or a high-risk of injury - is one of the more open manifestations of victimization, but it is commonly masked by the cultural justifiedness of corporal punishment. Research on child maltreatment in India has continually demonstrated the existence of high levels of physical punishment in both the family and the school, with a significant proportion remaining unreported and unpunished. The lack of an Indian law equivalent of a distinct and discrete offence of physical child abuse (in contrast with general law provisions on assault and grievous harm) is a vacuum to which the court has occasionally been unable to provide.

The category of sexual abuse is especially harmful. The most comprehensive statutory framework is the POCSO Act, 2012, which states the definition of penetrative and non-penetrative sexual assault, sexual harassment and the use of children in pornography as distinct and graded offences. More importantly, the Act is gender-neutral concerning the victim- this is unlike the previous stand prior to the Indian Penal Code. It also creates the presumption of guilt in instances of penetrative sexual assault where the prosecution has proven foundational facts, and partially helps to meet the historic evidentiary disadvantage of child complainants. The 2019 amendment also intensified the punishment, such as the introduction of the death penalty on aggravated penetrative sexual assault, an amendment that is still controversial among the legal scholars.

Trafficking and exploitation - taking children over the geographic borders to labour, sexually exploit, beg, or serve as a domestic worker is a victimisation process where organised crime offenders overlap with state failure. Trafficking of children on a large scale even exists despite the provisions of the Indian Penal Code on kidnapping and abduction, the Immoral Traffic (Prevention) Act, 1956. The legislative inactivity of the Trafficking in Persons (Prevention, Care and Rehabilitation) Bill is an indicator of the challenge in having a complex anti-trafficking law legally agreed upon as a political compromise.

Child marriage, though commonly treated as a social, more than a criminal matter, is clearly a victimization, but in this case, disproportionately that of girls, which denies them an education, control over their bodies, and health. Prohibition of Child Marriage Act, 2006 states that child marriages are voidable and not void, which courts have become ever more challenged to balance out with the constitutional rights of individuals. The Independent Thought v. was recognized by the Supreme Court. A major judicial correction of this discrepancy was the Union of India (2017) that stated that sexual intercourse with a wife under the age of eighteen years would be rape.

Online and digital exploitation has become a new category of harm and is increasing at a high rate. Higher internet penetration, decreasing smartphones and the relative anonymity of the internet has introduced new avenues of grooming, sextortion, cyberbullying, and the creation and distribution of child sexual abuse content. The Information Technology Act, 2000 has section 67B which explicitly criminalises the electronic transmission of child sexual abuse content and the POCSO Act has been extended to cover the digitally stored and transmitted content. Nevertheless, the investigative and prosecutorial capability to deal with cybercrime against children is still low especially in non-metropolitan areas.

2.2 Contributing Factors

There is no particular factor that can be used to explain why children fall victims of crime. Studies in this field have continuously indicated a convergence between individual, family, social and structural variables. Poverty is a unifying factor, economic vulnerability exposes more people to child labour, trafficking, early marriage and neglect. The dysfunctional family environment, such as the household where there is substance abuse, domestic violence, or a mentally ill parent, preconditions an environment where abuse may and may not be detected. Physical punishment which is normalized as a social norm or where family honour takes precedence over the rights of individual members, or where being a victim of sexual abuse is considered a stigma, are all reasons that aid in underreporting and poor institutional response. On a systemic level, the lack of funding of child protection services, insufficiently trained law enforcement officers, and sluggish court procedures further exacerbate the situation to significant proportions.

3. Indian Law on child protection.

The constitutional basis of the US is deeply rooted in the fundamental principles of higher education. The US constitutional basis of higher education is deeply entrenched in the principles of higher education.

In the Constitution of India, there is no specifically established right of the child in the sense of a separate chapter with children's rights provisions, but the provisions in the Constitution provide a formidable normative foundation of child protection. Article 15(3) also allows the State to impose special treatment of children and thus offers constitutional protection to the protective laws that would otherwise be subjected to equal treatment. The right to free compulsory education between the ages of six and fourteen years is enshrined in article 21A, which was added to the Constitution in 2002 by the Eighty-Sixth Amendment. Article 24 forbids the use of children under the age of fourteen years in factories, mines, and dangerous jobs. Directive Principles provide in Articles 39(e) and 39(f) the direction to the State to make sure that the children are not subjected to an abusive condition and provided with a chance to be developed in a healthy way.

The Supreme Court has looked into these provisions in order to interpret a strong right of child protection in the basic rights framework. In Bachpan Bachao Andolan v. The Court ruled that extensive steps had to be undertaken to rescue and rehabilitate the circus children who had been subjected to such exploitation by the State as they were obligated by the provisions of Article 21 to provide conditions in which children could live with dignity (Union of India, 2011). Victim-sensitive procedures have become a

common element of the basic rights of the child in the court as courts have become increasingly sensitive to the importance of the victim-sensitive procedures in the case of child sexual abuse.

3.1 Protection of children against sexual offences, 2012.

POCSO act is the largest child protection law to be enacted in post independent India. Before its enactment, the sexual offences committed against the children were dealt with largely under the Indian Penal Code and provisions of the Indian Penal Code were not geared towards the unique nature of child sexual abuse. The Act brought a number of significant deviations of the general criminal law system.

The first one is that it took a broad-based method of definition as it differentiated between penetrative sexual assault, aggravated penetrative sexual assault, sexual assault, aggravated sexual assault, sexual harassment and the use of a child to solicit pornographic material- with varying degrees of punishment corresponding to each. Second, it introduced Special Courts to make exclusive trial of POCSO offences, and has the obligation to dispose of the case within a period of one year after taking cognizance. Third, it included a series of procedures that were child friendly: the taking of evidence at the residence of the child or somewhere of the choice of the child, the banning of cross-examination that is aggressive or attacking character, the use of intermediaries where deemed necessary and the right of the child to persons present in the proceedings. Fourth, it required the reporting of suspected sexual offences and failure by persons to do so made it a criminal offence.

POCSO amendments of 2019 are worth considering. They increased the severity of penalties, added the death sentence in aggravated penetrative sexual assault in instances where the victim is under the twelve-year age, and made specific additions to the child pornography. The decision to extend capital punishment to this type of crime has sparked controversy between scholars and law enforcers, detractors postulate that increased penalties would not necessarily lead to an increased number of cases being confirmed and that the opposite would also be true in the context of family members as the victims to the offender.

3.3 Juvenile Justice (Care and Protection of Children) Act, 2015.

The Juvenile Justice Act of 2015 superseded the previous Act of 2000 and radically changed the institutional structure of children in conflict with the law and children in need of care and protection. The latter category is more directly applicable nowadays. The Act has a broad definition of what is meant by a child in need of care and protection that spans to cover children who are victims of abuse, exploitation, trafficking, or neglect; a child who has gone missing or whose parents are incapable of taking care of them; a child who is at risk of child marriage, or as a means of anti-social activities.

The Act creates Child Welfare Committees in each and every district and has mandate to guide assessment, placement and rehabilitation of children who require care and protection. It also gives a provision of Child Care Institutions, After-Care Organizations and a Central Adoption Resource Authority on adoption issues. This focus on rehabilitation and reintegration, as opposed to strictly punitive reactions, is an illustrious philosophical commitment, not always well kept in practice since there are always funding shortfalls and institutional capacity shortfalls.

3.4 Other Relevant Legislation

In addition to these two main laws, the protection of children in India is facilitated by the system of complementary laws. The Child Labour (Prohibition and Regulation) Amendment Act, 2016 enhanced the ban on the usage of children under fourteen years and limited the exploitation of adolescents under fourteen to eighteen in the hazardous jobs. The educational access as one of protection factors is discussed in the Right of Children to Free and Compulsory Education Act, 2009. The Prohibition of Child Marriage Act, 2006, regardless of the limitation, offers some legal grounds in cases of early marriage. Immoral Traffic (Prevention) Act deals with commercial sexual exploitation. When combined, these tools have the potential to form a fairly complete framework.

4. HOW THE CRIMINAL JUSTICE SYSTEM RESPONDS TO CHILD VICTIMIZATION.

Most child victims have the police as their first institution contact. Whether the complaint is registered promptly, whether the investigating officer is sensitive to the child, whether forensic evidence is preserved in a proper manner, all these have an over-represented influence on the course of the whole case. It has been observed in a number of studies and court observations that even at this stage there have been chronic failures such as delays in establishing FIR, insensitive handling of child complainants, lack of forensic capacity and failure to take cases to court against accused persons who have influence in the society or family affiliations with the victim.

4.1 Policing and Investigation

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Children friendly policing Model Guidelines to Children Friendly Policing have been issued by the Ministry of Home Affairs and a number of state police forces have established special units within their police forces, such as Child Welfare Police Officers and Special Juvenile Police Units, to deal with child related cases. Nevertheless, the application of these units is highly uneven in different states and even within the same states, and their performance is often limited by staffing shortages, insufficient training, and ineffective coordination with other child protection agencies.

4.2 Prosecution and the Special Courts.

The idea behind the creation of Special Courts through POCSO was to deal with the issue of long trial procedures in child sexual abuse cases. The Act gives courts that are designated under the Act a period of one year to execute proceedings. This target is hardly achieved in practice. The causes of the delays are a mix of factors including; adjournments, poor court infrastructure, lack of judges in the specific courts, difficulties in acquiring witnesses and the number of cases pending. Other charges have also been assigned to them in some states, on top of POCSO cases, which further undermines the one-year requirement.

The prosecutors play a critical role in POCSO cases, but the quality of prosecution is varied. Loss of cases has been caused by poor examination-in-chief, lack of proper preparations of witnesses and inability to counter the aggressive cross-examining by defence. The procedural protections of POCSO Act, which forbid enquires into past sexual behavior of the victim, demand special attention

in how they are worded, are good, but their application requires prosecutors and judges who have become familiar with them and are willing to use them.

4.3 Victim Support and Rehabilitation.

The victimization injury does not cease to end with the conclusion of a legal case. Victims of child abuse will need psychological support, medical attention and social recovery - preferably since the moment of disclosure until the end of the proceedings. This is acknowledged by the legal system: POCSO offers the option to use the services of support persons at the time of trial; the Juvenile Justice Act creates the system of rehabilitation and reintegration; the One Stop Centre scheme and Sakhi Centres offer interdisciplinary support to women and children's survivors of violence.

There is however unmet provision of these services that are well documented. Many areas within the country do not have qualified child psychologists or counsellors to handle child victims. One stop centre that are supposed to offer instant police, legal, medical and psychological assistance are unevenly spread and sometimes unevenly resourced. In the victim compensation schemes provided under section 357A of the code of criminal procedures the compensation is still inconsistently given with a lot of variation in the amount provided and the accessibility given in the various states.

5. CONTINUED PROBLEMS AND STRUCTURAL LOOPHOLES.

In spite of the above-discussed advancements in the legislature, there are still a number of structural issues that hinder the full protection of the child victims in the criminal justice system. These challenges are worth finding out directly since the temptation of child protection policy debate is to look at legislative victory at the expense of underestimating the implementation deficit.

The greatest issue is likely to be underreporting. The systems leading to the silencing of the reporting process include family-related violence, stigma, fear of misdiscover or retaliation, cultural beliefs concerning family privacy, and the personal bafflement and reliance of the victim on the abuser; the official statistics only reflect part of the actual victimization. This is not an Indian phenomenon but the conditions are especially sharp in a society where extended families are well-developed and social stigma of sexual victimization is rather high. This gap between actual and reported incidence will be large unless there is improved community-level awareness and reported mechanisms, which are non-stigmatizing.

The secondary victimization of child complainants in the legal process is an issue that the legislation tries to solve yet has not achieve successful completion. The use of POCSO has not ensured that children in practice are not subjected to repeated interrogation, lengthy waits in court rooms, and face to face contact with the accused at their hearings. The clause allowing the statements to be recorded through video conferencing or in camera proceedings has not been consistently applied. The survivors of abuse who have disclosed the situation can be pressurized by relatives to take back their statements and in some cases, the pressure is encouraged by poor witness protection systems.

Another system weakness is institutional coordination or rather the absence of it. A child victim can deal with the police, the child welfare committee, medical professionals, the prosecution, the court and the social welfare authorities in one case. These organizations have varying administrative systems, reporting lines and incentive systems and communication is poor amongst them. Lack of cohesive case management system implies that the responsibility of navigating through the system at times rests with the child or the family of the child.

These challenges are added by the lack of information and investigation. India does not have a strong, publicly available database on the outcomes of POCSO cases, such as the rate of conviction, the time taken to dispose of the case and the use of victim support systems. The NCRB Crime in India reports give aggregate data on registration but little data on cases-outcomes. In the absence of improved data, the institutions cannot be held accountable and the locations of most urgently needed interventions can hardly be found.

6. TOWARDS A MORE EFFECTIVE RESPONSE: REFORM PROPOSALS.

These most urgently needed reforms are not necessarily legislative. In India, there is a statutory framework which is reasonably comprehensive. What is required is a concerted action to bridge the gap between implementation by institutional, training, and resource actions. Compulsory, professional training of police officers, prosecutors, and judges dealing with child-related cases needs to be viewed as a requirement before they can be assigned to these cases as opposed to an option to further their professional development. This training must include child development and trauma psychology, disclosure/recantation dynamics, child friendly interviewing and requirements of POCSO procedures. The major role in this is played by the Judicial Academy and the State Police Training Academies.

The avenue about child-friendly infrastructures in courts and police stations is a practicality and not a luxury. A set of waiting rooms, ensuring children witnesses do not have close contact with the accused, or with the general court traffic, a room equipped with the necessary facilities to conduct the forensic interview, and a set of video-conferencing equipment that can be relied upon to record the statements - these are not targets to be met in the future, but minimum specifications that are already being considered by the legal framework. It would be a huge step forward to undertake systematic audit and investment to achieve this standard of all identified POCSO courts and police stations.

The victim compensation system needs to be strengthened by legislative efforts as well as administrative efforts. The existing disparity between different states in terms of payment and availability is hard to explain. Some of the material aspects of post victimization harm would be mitigated with a nationally harmonized structure with reasonable compensation quantum, simplified processes and interim compensation programs to assist victims prior to the case being disposed of.

The establishment of the national child protection data system, which would monitor cases since registration till their disposal, victim support measures used, and the outcomes of the convictions made, would go a long way in enhancing the evidence base to policy. It is a suggestion, previously made, but not followed, but whose value is worth reasserting.

Lastly, the community-based prevention and awareness should be equal to the legal and institutional response. This implies personal safety and child rights school-based programmes, community level education to the parents and caregivers and the participation of civil society bodies in prevention as well as post victimization help. The justice system is a reaction to the harm; the most efficient strategy of protecting children is one, which minimizes the cases of harm.

7. CONCLUSION

Child victimization is not a recent development, and the legal action of it in India is not a recent venture. What has evolved, however, in the last twenty years, is the openness with which the issue is admitted and with which it is handled, in the legislative and judicial arenas. All these laws, including the POCSO Act, the Juvenile Justice Act, and the constitutional framework reflect a true determination to provide the children with protection and make the culprits accountable.

The commitment which is outlined in statutes is a mere start of what is needed. The gap between the text of the POCSO Act and the experience of a child who has to work through the criminal justice system in a rural Indian district court is still great. That gap is occupied by underreported crimes, inefficiency, incompetency of staff, insufficient support, and organizational disintegration. The gap between that and good legislation will take more than good legislation to bridge that gap, it will take the sort of long-term institutional investment, training, coordination and accountability which is more difficult to legislate than the substantive offences and procedures.

The child victim is entitled to a justice system that is able to gauge the full extent of the damage inflicted on them not just the direct crime committed but the developmental interference, the psychological damage and the social ramifications that ensue thereof. The creation of such a system is a project, which is long term, yet the tools of analysis, the legislative foundations, and in most instances, the institutional frameworks are in place. Now is required the will and the resource dedication to put them into good use. Ultimately the safeguarding of children indicates values of the society, which either grants or withholds it.

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