

**LEGAL PROTECTION OF CHILDREN AGAINST SEXUAL ABUSE- A
CRITICAL STUDY WITH SPECIAL REFERENCE TO DIBRUGARH,
TINSUKIA AND DHEMAJI DISTRICTS OF ASSAM**

ABSTRACT

Children need special care and protection because the future of a nation and hope of tomorrow rest on them. Abuse of children in any form which has a tendency to exploit them either physically, mentally or otherwise is intolerable. However, children are not safe anywhere in the world and India is the best example of it. In India a child is very often abused due to their vulnerability and among the various recognized forms of abuse, sexual abuse is the most devastating one as it hampers the child physically, psychologically as well as emotionally.

Any child below the age of consent may be deemed to have been sexually abused, when a sexually mature person has by design; or by neglect of the usual societal; or specific responsibilities in respect of the child engaged; or permitted engagement of the child in activity of a sexual nature, which is intended to lead to the sexual gratification of the abusive person.

A report prepared by the Ministry of Women and Child development, Govt. of India on 'child abuse in India' in the year 2007 clearly indicates that sexual abuse of children in India is no longer gender centric as young boys are sexually abused more than girls. The report has further indicated that the cases of child sexual abuse(herein after CSA) are increasing year after year in an uncontrolled manner in the Indian states.

Sexual abuse is of multiple forms like, sexual assault, sexual exploitation, sexual grooming & child marriage. There are multiple causes responsible for commission of such crime against children like; poverty, lack of parental control, lack of sex education, religious practices, sex tourism and so on. However, it is observed that those children who

are born and brought up under conflicting conditions; particularly the orphans, alone, uncared, weaker, are open for exploitation in every form including sexual abuse for exploitation in every form including sexual abuse. An NGO named Prerna working in India stated that, *“India is rife with trafficking and exploitation which involves prostitution, pornography and sex tourism, and traffickers often target women and children of low social standing living in poverty as they are vulnerable to exploitation”*.

CSA specially in the form of trafficking, prostitution and pornography was addressed as a severe crime at the international level was only in the later part of 20th Century through the Convention on the Rights of Child, 1989 and the Optional Protocol on the Sale of Children, Child Prostitution & Child pornography in the year 2000.

On the other hand in India, CSA was dealt in by provision of the IPC and other laws like the Child Marriage Restraint Act, 1929(later replaced by the Prohibition of the Child Marriage Act, 2006), Immoral Trafficking (Prevention) Act, 1956 & Information Technology Act, 2000. All these law were not enough to protect the children from sexual offences as these provisions under these laws are not addressing all forms of sexual abuse that may or are committed against children. Moreover, these are gender centric and are not specific to offence against children but are general in nature. Thus to sought out these problems and give better protection to children from heinous offence like sexual abuse the Govt. of India enacted the Protection of Children from Sexual Offences(POCSO) Act in the year 2012. This act was enacted as a self contained comprehensive legislation to provide for protection of children from the offence of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and well being of child at every stage of judicial process after victimization. The act provide not only to report and punish those who sexually abuse the innocence of children, but also to effective curb the occurrence of these offence.

However, in spite of such an legislation the cases of CSA are not reducing in India and Assam is not an exception to it. Therefore, the question arises, ‘where lies the problem? Is it in the law or in its enforcement?’ Thus, in search of answer to these questions the researcher had undertaken this research find out the adequacy of the legal measures(substantial law and procedural law) including the newly added POCSO Act and the role of enforcement machinery / stakeholders in compliance of the law. As it is not possible for conducting empirical research in the entire state of Assam, the researcher had limited the study to three district of Upper Assam namely; Dibrugarh, Tinsukia and Dhemaji.

Research Questions:

- Whether the provisions of the municipal laws more specifically the POCSO Act are sufficient enough for the protection of children from sexual abuses in India?
- Whether the state machineries established by the Government of Assam to deal with the incidence of child sexual abuse are adequate enough to implement the laws against sexual abuse of children?
- Whether all the provisions of the POCSO Act are genuinely enforced by the state machinery empowered under the POCSO Act?
- Whether the enforcement machineries face any problem while discharging their functions?

Hypothesis:

Defect in the legal measures and lack of government initiative is primarily responsible for the failure of municipal laws in protecting the children from sexual abuse in India.

Objective of the Research Work:

- To examine all the existing laws dealing with child sexual abuse.
- To find out whether the legal measures both substantial and procedural laws are adequate to curb the menace of child sexual abuse.

- To find out, whether the provisions available under various laws including POCSO Act are actually implemented in the grass root level of the society or is it just lying within the pages of the statute books.
- To analyse the role of enforcement machinery such as Police, District Child Protection Unit(DCPU), Child Welfare Committee, District Legal Services Authority, NGO's, Special Public Prosecutor and Special Court under various statutes in protection of children from sexual abuse.
- To find out the procedural compliance of Police, District Child Protection Unit(DCPU), Child Welfare Committee, District Legal Services Authority, NGO's, Special Public Prosecutor and Special Court while enforcing the special laws in POCSO cases while dealing with the child victim.
- To find out the challenges faced by Police, District Child Protection Unit(DCPU), Child Welfare Committee, District Legal Services Authority, NGO's, Special Public Prosecutor and Special Court while discharging their duty under special laws such as POCSO Act.
- To give suitable suggestion to sought out the problems.

Methodology & Sources of Data:

The proposed research work comprises of both doctrinal as well as non-doctrinal methods. Doctrinal research method was used to gather information and data stored in library, archives and other databases, which are already in existence. The researcher as a part of doctrinal research visited number of University, Law College and Bar Association libraries in Assam. As a part of empirical research, the researcher had adopted qualitative research methodology to study the system of working of enforcement machineries in practice in the district of Dibrugarh, Tinsukia and Dhemaji of Assam In order to collect the primary data as a part of empirical study the researcher has visited Police Stations, Child Welfare Committee(CWC), District Child Protection Unit(DCPU), District Legal

Services Authority(DLSA), Special Public Prosecutor(SPP) and Assam State Commission for Protection of Child Rights(ASCPCR)

Thus, the study is based on two sources- Primary and Secondary.

Primary sources are -

- primary authorities such as, Constitution of India, International Instruments (Conventions, Declarations, Protocols), statutes, rules, Case laws(cases decided by the Higher Judiciary) and
- qualitative data collected by the researcher with the help of questionnaire and interview.

Secondary sources include Books, Reports, Unpublished Thesis, Research Papers presented in National Seminar, Articles, Commentaries, Journals, News Papers (Editorials and Articles) and Online Databases.

CHAPTER PLAN:

The present study consist of eight(8) chapters for the convenience of the researcher. They are-

Chapter I of the research work is '**Introduction**' which unfolds the theme of the thesis by highlighting the key concepts of child, abuse, child sexual abuse, types of sexual abuse and the picture of CSA in Indian context. It contains the factors leading to the choice of the problem and the purpose of the study. It gives a glimpse of what the researcher has done by introducing the research problem with its nature, significance and relevance in the present situation. It also covers the aspects like the Research Questions, hypothesis, Objectives, Research Methodology & tools of Data Collection, Limitation of the study, Literature Review, and the chapter plan.

Chapter II of the research work is '**Historical perspective of Child sexual abuse and global consensus**' wherein the researcher studies the prevalence of CSA in the historical period and the gradual efforts of the international organisations to curb such menace world wide.

In the historical part the researcher analysed the various instances of sexual abuse of children across the globe which are available in the literature and the laws available to punish such crime such as the Babylonian code proclaimed by Hammurabi the Babylonian King during 1792 B.C.

Whereas, in the second part of the chapter the researcher, discussed the various international instruments that spoke about the rights of child in general and protection of children from sexual abuse in particular. Hence, the researcher explored the historical imprints of child sexual abuse and the effort of international community to recognize the problem as a global problem and the measures adopted to minimize or rather curtail the same.

Chapter III of the research work is '**Legal provisions against sexual abuse of children in India**' where the researcher discusses the various provisions under different laws starting from constitutional provisions to Prevention of Child from Sexual Offences (POCSO) Act, 2012. However, the researcher makes a detail analysis on the recent POCSO Act, 2012 and the POCSO Rules as it is the sole gender neutral legislation enacted specifically to address the problem of child sexual abuse in India. The researcher chronologically studied the development of statutory laws for addressing the problem of CSA along with the rules and guidelines issued by the Govt. from time to time with an object to identify the lacunas in the existing law if any. The researcher minutely analyses the provisions of these laws in order to find if there is any drawback in the law.

Chapter IV of the research work is '**Causes and Consequences of child sexual abuse**' that is devoted towards the analysis of various causes responsible for increasing number of child sexual abuse in the society and to analyse the consequences of CSA on the child victim as well as on the society. A few of the important causes that were identified in the chapters are poverty, urbanisation & industrial development, influence of intoxicants, non reporting of cases, low conviction rate, virtual media display, lack of parental control, lack of sex education, religious & cultural evil practices, high demand for young girls, lack of awareness, high life style, illegal immigration and war. On the other hand it was

found that the consequences are basically of three types namely; physical consequences, psychological consequences/ mental health disorder and behavioural consequences which are again sub-divided into various other types.

Chapter V of the research work is **Enforcement machinery and their challenges**. This chapter seeks to understand the role of various enforcement agencies under different statutes and their compliance towards enforcement of these laws. For this study, the researcher has collected qualitative data in the form of interview and questioner from police, CWC, DCPU, DLSA, SPP of Dibrugarh, Tinsukia and Dhemaji and Assam State Commission for Protection of Child Rights. Further, the researcher has also tried to find out the problems faced by these enforcement agencies in implementing the laws as provided under the statutes.

Chapter VI of this research work is **Judicial findings on child sexual abuse**. In this chapter the researcher focus on the judicial attitude and findings on the matters of CSA. Here the researcher analysed the role of higher judiciary in implementation and development of the existing legislations. Judiciary has always played a pivotal role in laying guidelines regarding child sexual abuse cases giving direction to the government, executive and courts to take necessary steps in better implementation of the laws. Thus in this chapter the researcher will analyze a few landmark judgments dealing with child sexual abuse cases where the judiciary has interpreted the various provisions of law relating to sexual abuse giving it wide meaning.

Chapter VIII of this research work is **Summary and concluding** wherein the researcher conclude the research with a brief summary of all the chapters along with the findings and his observation based on the entire study. It is difficult to bring to light the findings and concluding observation in one or two sentence. Hence the key findings are highlighted below under a separate heading findings.

Chapter IX of this research work is **Suggestions** which is the last chapter of the thesis. A research is incomplete and is of no value if it is without suggestion. Hence, in the last

chapter the researcher has provided with a list of suggestions for removing the drawbacks of the existing legal measures and better enforcement of the law to curb the problem of sexual abuse of children. The suggestions are provided under different headings like; suggestion to the Govt. of India & Parliament, suggestion for State govt. of Assam, suggestion for Assam State Commission for protection of Child Rights, Suggestion for Police, suggestion for DCPU, suggestion for Assam State Legal Services Authority, suggestion for special court and suggestion for Gauhati High Court.

FINDINGS OF THE STUDY:

- ❖ Among the various municipal laws, it is only the POCSO Act & Rules that are specifically meant for protection of children irrespective of gender from sexual offences that are committed against them because all other laws prior to 2012 are gender centric and not children specific *i.e.* mostly applicable for all females. However, the POCSO Act along with all other legislation like the IPC, Cr.P.C, I.T Act, Prohibition of Child Marriage Act, Immoral Traffic (Prevention) Act and JJ Act supplement the POCSO Act to some extent. To meet the need of the hour and make the laws suitable for the protection of children from sexual offences it is necessary that the provisions of various laws, which are found to be problematic and insufficient, be amended.
- ❖ The State machinery established to deal with the incidence of CSA in Assam as per the statutes are not adequate which is clear from the following findings of the research.
 - a) Full-fledged POCSO mechanism is not established in the districts of Biswanath Charaideo; Hojai; South Salmara-Mankachar; West Karbi Anglong; and Majuli in the State of Assam.
 - b) Lack of office staff in the ASCPCR and need for appointment of a Legal Consultant.
 - c) Vacancy in the post of Chairperson of CWC, Dibrugarh.

- d) Vacancy in the post of Protection officer(Institutional Care) & office staff in DCPU Dibrugarh and Tinsukia. Vacancy in the post of Counsellor, Social Worker, Field Worker in Dhemaji.
 - e) Insufficient number of Child Care Institutions in the three districts.
 - f) Insufficient number of women police officer and Sub-Inspector in Police Dept.
 - g) No Special Public Prosecutor appointed in the District of Dibrugarh and Dhemaji.
 - h) Designated Special Court does not exclusively deal with POCSO cases.
- ❖ The provisions available under the various laws including POCSO Act for protection of children are not applied/ enforced in strict sense, which is confirmed from the findings on procedural compliance of various enforcement agencies in the State especially in the three districts of study. The Glimpse of the findings are:
- a) The ASCPCR had not taken any specific initiatives for spread of awareness about the POCSO Act and formulation of guidelines for the use of stakeholders like NGO, teachers, support persons etc. Moreover, no step had been taken for collection of data to prepare report on various aspects of CSA in the state of Assam.
 - b) The DCPU of Dibrugarh and Tinsukia do not have updated list of Support person, expert, translator etc. & DCPU of Dhemaji had not prepared any such list till 2020.
 - c) DCPU of Dhemaji do not organise any training and awareness programme.
 - d) Police does not comply with the provisions of Section 24(1), 24(2), 26(1) of POCSO Act, 2012 and Rule 4(1) of POCSO Rules 2020.
 - e) Only in rare case, the police use to give information regarding free legal aid and Victim compensation to the child family or any other person of child trust.
 - f) Sometimes, direct question are put to the child in trial if the prosecutor do not oppose.
 - g) Frequent break to the child during trial is not a regular practice.

h) The ratio of timely disposal of POCSO cases is very marginal.

❖ The enforcement machineries faced several challenges in various aspects of enforcement of law and while discharging their duties under the special law in the three districts of study, such as; POCSO Act which, is evident from the glimpse of the findings highlighted below:

1. There is no NGO specifically working in the field of sexual abuse of children to assist the govt. machinery except CHILDLINE in Dibrugarh and Tinsukia whereas, in Dhemaji there is neither CHILDLINE facility nor any NGO.
2. No training is provided to the CWC members, Legal Aid Advocates engaged for child victim, Police officials investigating cases of POCSO and SPP appointed or designated in the Special Courts.
3. In none of the police station in the three district there is facility for audio-visual recording of statement of the child victim.
4. Frequent transfer of the police officers is identified as one of the major problems for delay in justice or no justice as they could not complete the investigation within time.
5. Except the Sadar Police Stations all other stations are in short of vehicles which is very necessary for production of the child in need of care and protection before the CWC and other investigation purpose.
6. Lack of man power specially in the rank of Sub-Inspector, due to which the I.O are over burden with multiple duty as a result they could not give time in investigation.
7. Non-regular funding and lack of infrastructure of the existing Child Care Institutions.
8. There is only one(1) of forensic science laboratory in the State of Assam for the entire state which is not sufficient resulting in delay of report and sometime spoil the samples sent for testing by Police.

9. Facility of video-conferencing not available for recording the statement of child victim without bringing him to court during trial.
10. The design of the court room are not child friendly mostly because of lack of sufficient infrastructure.
11. Force full compromise with the accused resulting into hostile witness.
12. Lack of awareness among the public regarding POCSO Act many times result in non-reporting of offence or late reporting which create problem in investigation.

SUGGESTIONS:

Suggestions to Govt. of India and the Parliament:

1. The definition of rape should be amended to such an extent that it is made gender neutral, so that; a victim irrespective of his gender can lodge a FIR
2. Section 273 of Cr.P.C should be made gender neutral so it will have wide application and would cover even male child or a transgender child within its scope
3. Section 3 of Prohibition Of Child Marriage Act should be amended so as to replace the word 'voidable' to '*void ab initio*'.
4. Non performance or neglect of duty by the Child marriage Prohibition Officer should be made a punishable offence under the said Prohibition Of Child Marriage Act.
5. The definition of child under section 2(aa) of the Immoral Traffic (Prevention) Act should be amended to increase the age from 16 to 18 years for defining a child.
6. Section 75 of the Information Technology Act and section 188 of the Cr.P.C are to be reconciled by necessary amendment of Cr.P.C.
7. India should take steps for entering into treaties with as much country as possible to protect children from cyber pornography by widening the criminal jurisdiction.
8. Apart from the condition put forth in section 3(1) of the POCSO Act all other condition should be made applicable to male, female as well as transgender culprits.

9. Section 24(1) should be amended and provisions should be such that for male victim below 14 years and all female victim the investigating officer should be a female police officer but in case of male child victim above 14 the investigating officer recording the statement should be a male police officer.
10. Section 26(4) should be amended and makes it mandatory for the police or magistrate to use audio-video means while recording statement.
11. Minimum punishment shall be prescribed for offences under Sec. 12 of POCSO Act.
12. Exception 2 of section 375 of IPC should be replaced by the following words to prevent Child Marriage - *“Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape”*
13. Section 32(2) of POCSO Act should be immediately amended to increase the experience to 10 years instead of the existing 7 years to bring harmony with Cr.P.C.
14. Section 28(1) of the POCSO Act should be amended so that it becomes mandatory for the State Govt. to establish separate Special Court.
15. The guideline issued by the Apex Court in the case of *Re-Alarming Rise in the number of Reported Child Rape Incidents* should be complied with.

Suggestions for State Government of Assam:

1. To reduce the burden of police the Govt. should- increase the number of Sub inspector for sharing the burden of investigation, separate investigation wing should be established in each police station, and a officer appointed to the investigation branch shall not be transferred to any other branch of police.
2. A separate fund should be created for every district headquarter which may be utilised for urgent cases or recovery of child by the Police officers.
3. The number of Women Police officer should be increased to deal with child victim.
4. Sufficient number of vehicles should be provided to each police stations.
5. The Investigating police officer specially engaged in investigation of offence related to sexual abuse of child should not be transferred frequently.

6. Child Care Institutions should be established in sufficient number in every district with proper facilities as per the guidelines provided under the JJ Act and rules.
7. The Schedule in force of the Assam Victim Compensation Scheme, 2012 should be amended so that the victim of non-touch sexual offences under POCSO Act are also eligible to get compensation for the psychological injury that they suffered.
8. A post of legal consultant should be appointed in the ASCPCR.
9. Number of office staff in the ASCPCR should be increased.
10. Chairperson should be appointed to the CWC of Dibrugarh .
11. Protection Officer(Institutional Care) and other office staff should be recruited in Dibrugarh and Tinsukia DCPU whereas, Counsellor, Social Worker and Outreach worker in Dhemaji, DCPU.
12. Separate building should be constructed for sitting of Special Court.
13. The number of Forensic Science Laboratory should be increased.
14. In Dibrugarh and Dhemaji Special Public Prosecutor should be appointed.

Suggestions to the Assam State Commission for Protection of Child rights(ASCPCR):

1. The commission shall adopt measures for spreading awareness among the public.
2. The Commission shall formulate guidelines and publish handbook on POCSO Act and Rules for the stakeholders like; Teachers, CCI, NGO's, Police and so on.
3. Data on various aspects of POCSO Act shall be collected and reports should be prepared preferably on an annual basis.

Suggestions to Police:

1. The Superintendent of Police of each district should keep a check on the compliance of POCSO Act by an investigating officer within his district.
2. Every police officer should comply with the provisions of Rule 4(1) of POCSO Rules 2020 and Section 24(1), 24(2), 26(1) of POCSO Act, 2012

3. The officer in charge shall make necessary arrangement for production of the child in need of care and protection before the CWC within 24 hours.
4. The guideline issued by the Hon'ble Supreme Court for the police in the case of *Alakh Alok Srivastava V. Union of India* should be complied.

Suggestions for DCPU:

1. The DCPU should update the list of support persons, experts, Counsellors, translators etc. periodically and the same should be circulated to SJPU of the District, Police stations, CWC and Special Court.
2. DCPU of Dhemaji should make arrange district level training programme for the stake holders like; police, teachers, social workers, panchayat members and so on.