

Child Sexual Abuses and POCSO : A Concern for Child Rights Jurisprudence

Dr. Sachin Sharma

Assistant Professor of Law

Rajiv Gandhi National University of Law, Patiala, Punjab, India

Abstract

Children are the mirror of the future, the statement holds practically well in India, the country of youngsters. In order to flourish at sky limits there is need to protect our children, a protection from various prevalent abuses of society. This paper is basically dealing with the issue of sexual abuse of children. Here author is trying to articulate the issue at its various epistemic and ontological aspirations. The paper is basically starting from the point of various jurisprudential, legal aspects of the issue, where author is highlighting a very basic and important proposition that mere formulation of the law is not the solution to the problem. The one part of the paper is dealing with the sociological aspect of the issue, where author is acknowledging the fact that in order to formulate a just and practical proposition there is need to work at the multidimensional level. There is requirement that all stakeholders should work in hand in hand. The next part of paper is providing the overview of existing legal mechanism related to child sexual abuses. Here author is mainly dealing with the provisions of POCSO Act, Criminal Law Amendment Act, 2013 and Immoral Trafficking. The last part of the paper is dealing with the conclusion, where author is testing the existing laws and submitting different proposals for removal of existing problems related to the issue. Hence the paper is ending with a sceptical thought provoking a further step towards the thinking on the issue.

Keywords: Child Abuse, Human Dignity, Democratic Institutions, Implementation of Law

“Children are living messages we send to a time we need not see”.

- John F. Kennedy

Introduction

Great German philosopher Immanuel Kant once stated that, ‘human beings are rational being and are worthy of dignity and respect’. The stated proposition is said to be the foundation of the universal human rights jurisprudence. According to which all human beings including children are equal and autonomous. In this sense it can be argued that, it is the obligation of the state to create an amicable and peaceful environment so that all children can grow and develop themselves. In order to achieve the mentioned purpose, there used to be various governmental efforts at different levels. The founding stones of these

efforts can be traced from regional level to international level. The *Edicts of Ashoka*¹ and *Magna Carta*² are the great example of such efforts, where people from all across the world have recognized the concept and respect for human rights, its values and application. In modern time the point is further recognized by the various modern national and international documents. These includes Constitution³, Human Rights Act, 1996, Juvenile Justice Act⁴, Protection of Children From Sexual Offences Act, 2012 and Universal Declaration of Human Rights, (UDHR)⁵, United Nations Convention on Right of the Child, (CRC)⁶ respectively⁷. Constitution of India guarantees the right to equality, liberty and dignity of individuals including children. Article 21 of the Constitution elaborately talks about the right to life with dignity. The interpretation of this article leads to a very wide ambit as it has been stated as the soul of the part III of Indian constitution⁸. The reason for the same is that there are various connecting rights supported or governed by the said article. Here according to one interpretation⁹ right to life includes the right to childhood and its enjoyment. This is further contingent to right to hygiene and health.¹⁰ It is further linked to friendly ambience/environment¹¹. It can further be related to right to education, as guaranteed under Art. 21 A of the constitution¹². The web of all these mentioned rights must act smoothly¹³, away from any conflict. It is only then there is possibility of achieve the destination called justice for innocent children. Hence in order to fulfil the stated commitments, Article 15(3) empowers the State to make special provisions for children and their better future. Similarly after signing the CRC, it became our commitment and priority to follow the different prescribed standards in the best interest of the Child. In order to achieve the same, we have enacted series of legislations related to *3 Ps Principles*¹⁴ (*Preservation, Protection, Progress of children*) and the Protection Of Children from Sexual Offences Act, 2012 (POCSO) is one of them. It specifically talks about the ‘proper development of the child’; ‘her right to Privacy’; and ‘Confidentiality’ and their protection during any judicial process.¹⁵It guarantees the *Physical, Emotional, Intellectual and Social Development* of the child.

Status Quo: Where are We Struggling?

But despite of having various legislative and judicial tools, we are still struggling to achieve the above

¹ Ven S. Dhammika. The Edicts of King Ashoka. 1994.

<https://www.accesstoinsight.org/lib/authors/dhammika/wheel386.html>

² Shami Chakrabarti. Magna Carta and Human Rights. Magna Carta, British Library, 13-March-2015.

<https://www.bl.uk/magna-carta/articles/magna-carta-and-human-rights>

³ Constitution hereinafter referred to Indian Constitution.

⁴ Juvenile Justice (Care and Protection of Children) Act, 2014.

http://www.law.yale.edu/rcw/rcw/jurisdictions/assc/india/india_juv_just.pdf

⁵ United Nations. Universal Declaration of Human Rights. 10-December-1948.

⁶ Preamble: United Nations Convention on Right of the Child. Canadian Children's Rights Council, 1990.

http://www.canadiancrc.com/UN_CRC/UN_Convention_on_the_Rights_of_the_Child.aspx

⁷ The list of mentioned laws is not exhaustive; here the names (laws) are used for exampalific sense.

⁸ The wide interpretation of right to life is provided by Supreme Court in Menka Gandhi v. Union of India, SCR 621 AIR [1978]. The said trend is still continue in resent cases by supreme court as held in Society for un-aided private Schools of Rajasthan v Union of India, 6 SCC 1 AIR [2012].

⁹ Interpretation is the meaning given to any particular legal term, which has its justification in logic and reasoning. In its strict sense (legal sense), interpretation is given/done by the court of law and in its loose sense (academic sense) by any individual author.

¹⁰ Ratlam Municipal Council v. Vardichand, SC 1622 AIR [1980]; Parmanand Katra v. Union of India, SC 2039 AIR [1989].

¹¹ Here term ‘ambience’ is used in include sociological and physiological sense.

¹² Society for un-aided private Schools of Rajasthan v Union of India, 6 SCC 1 AIR [2012].

¹³ The idea has been drawn from Dowrkin’s statement - Law is a ‘seamless web’.

¹⁴ This is the idea of author’s own thought.

¹⁵ Preamble of POCSO Act, 2012.

mentioned objectives. The *Nirbhya* incident of December 16th 2012 (*Black day for Humanity*) is one such example of failure. The incident generated national and international coverage and was condemned even by the United Nations Entity for Gender Equality and Empowerment of Women. In order to examine the legal situation, Indian government constituted a special Judicial Committee to review the Criminal Laws¹⁶. The Committee submitted its report within 29 days, on 23 January 2013, supposedly after considering the 80,000 suggestions and petitions received from all across the country.

Jurisprudential Argument

‘It is the primary and inescapable responsibility of the State to protect the right to life, liberty, equality and dignity of all of those who constitute it. It is also the responsibility of the state to ensure that such rights are not violated either through overt acts, or through abetment or negligence. It is a clear and emerging principle of human rights jurisprudence that state is responsible not only for the acts of its own agents, but also for the acts of non-state players acting within its jurisdiction. The State is in addition, responsible for any inaction that may cause or facilitate the violation of human rights’¹⁷.

Hence the statement reminds us about the responsibilities of the state. But state alone cannot create or formulate a *just* society, which is based on the all modern policies of a democratic society. Merely creating of democratic institutions is nowhere the automatic guarantee of success. The success of a democracy is not a matter of having the most perfect institutional structure that we think of. It depends inescapably on our actual behaviour patterns and the working of the political and social interactions. There is no chance of resting the matter in the ‘safe’ hands of purely institutional virtuosity. The working of democratic institutions, like all other institutions, depends on the activities of human agents in utilizing opportunities for reasonable realization¹⁸. Hence institutional virtuosity by itself is not enough without individual virtuosity. There is need to give importance to human agency, but in order to achieve the same there is need to work on the grass-root level. This is possible by nurturing the compassionate character among civil society so that they start believing in values enshrined under Article 51 A of the constitution. There is need to educating the citizens in the spirit of the constitution as mentioned by great political thinker Aristotle¹⁹. The point is further supported by German philosopher Habermas in his theory of ‘Deliberative Democracy’²⁰, where he argues that in order to have a true deliberation, there is need to develop true reason for it. In other words, people should participate in democracy with a firm application of reasons. This is the only way to develop our capabilities (as described by feminist scholar Martha)²¹ in a right direction. This ultimately guarantees the human agency for an individual²².

¹⁶ The committee was constituted under the chairmanship of Late J. Verma, 22-December-2012.

¹⁷ Paragraph from NHRC Order dated 1-April-2002 in case no. 1150/6/2001-02.

¹⁸ Amratya Sen. *The Idea of Justice*. Harvard University Press, 2011.

¹⁹ Aristotle. *Politics*. ed. R.F. Stalley, Oxford Publication, 1998.

²⁰ Jorge Adriano Lubenow. *Public Sphere and Deliberative Democracy in Jurgen Habermas: Theoretical Model and Critical Discourses*. *American Journal of Sociological Research*, 2012, 2(4), 58-71, <http://article.sapub.org/pdf/10.5923.j.sociology.20120204.02.pdf>

²¹ Dr. Jan Garrett. *Martha Nussbaum on Capabilities and Human Rights*. The Human Development and Capability Association, 29-April-2008, <http://people.wku.edu/jan.garrett/ethics/nussbaum.htm>

²² The idea is also incorporated in Justice Verma Committee Report, Pages 29-31.

‘Thus the meaning of law and the empowerment which law gives and clothing of man with such constitutional rights is only to make sure that whether it be State or whether it be man, and after all the state contains man, that with Pausanias, King of Sparta, a man feel confidently that “laws should have an authority over man, not man over law” in order to see that a human right is also accompanied by an enforcement modus effectualies, it is necessary to give it in the first instance the prime importance which it deserves and which is merited to it in law, after all law itself recognises the high dimensions and dyophysite existence²³ of rights, the one absolute impregnable and the other subject to social regulation by valid statute law’.²⁴ The paragraph remind author the quote above the entrance to Central Secretariat in New Delhi s inscribed in bold letters: ‘Honour the State, the Root of Law and Wealth’. Though, this requires a small reshuffling of the words as, ‘Honour the law, the Root of State and Wealth’.

But as mentioned above that by simply formulating laws and policies or blaming government for its failure is not the solution to the problem. In order to protect children from abuses, there is need to work at multidimensional level. This is the only way to practically achieve the above mentioned jurisprudential thoughts. In order to develop the mentioned statement reference could be made to the sociological aspect of the issue.

Sociological Foundation and Child Abuses

It is evident from different deliberations that child abuse is a social problem and can only be corrected or rectified through societal interference. In the light of the mentioned statement, it can be said that child is the ‘social actor’, hence an amicable environment will helpful in building her character. This will ultimately resulting into building of a prosperous society²⁵. The point is well recognized by various national and international agencies, for example Economic and Social Research Council, which funded a large programme of research called *children 5-16: growing into 21st century*. The entire programme was focused on treating children as social actors. This will be achieved by treating children as active agents, influencing and being influenced by worlds they live in. The programme was focused to analyse the childhood, its social appearance and children’s sense of belongingness, their expectations and aspirations.²⁶ It has been recognised since long that childhood is fundamentally a social construction, though there is no universal norm to test the experience of childhood, as it always varies and further it is difficult to recognize that when childhood begins and end. Sociological notion about ‘*what it is to be a child*’ is always varies. In broad sense sociological discourses focuses on two important aspects which are very distinct from each other. It includes children as inherently evil, requiring discipline and correction; on the other hand according to another view children are innocent requiring nurturance and protection. This can be concluded in terms of risk anxiety as fear *of* children and fear *for* children²⁷. The aforementioned statements can be further interpreted in a way that if we are not providing a good environment, to children, they might turn into an inherently evil character, a delinquent in legal

²³ The term is related to Theology.

²⁴ Justice Verma Committee Report. The stated paragraph is cited in case of Sheela Barse, January-2013, Pages 32-33.

²⁵ The statement is based on the statement/proposition that, ‘children are the future of our Nation’.

²⁶ Dr. Sally Holland, Dr. Emma Renold, Dr Nicola Ross, Alex Hillman. The everyday lives of children in care: Using a sociological perspective to inform social work practice. Cardiff University, and ESRC National Center for Research Methods, February-2008. <https://eprints.ncrm.ac.uk/id/eprint/466/1/0108%20everyday%20lives%20of%20children.pdf>

²⁷ Sue Scott, Stevi Jackson, Kathryn Backett-Milburn. Swings and Roundabouts: Risk Anxiety and the Everyday Worlds of Children, Sage Journals, 1-November-1998. <https://doi.org/10.1177%2F0038038598032004004>

terminology. It represents the fear of children, which will be felt by society on an advanced stage of delinquency. Hence there is need to work on the second aspect of providing nurturance and protection. This requires collective efforts from state to civic society. Here each of us is the stakeholders, who are affecting by the issue of child abuses. As it evident that state is formulating various policies and laws to deal with the matter, research institutions are running various capacity building programs for judges, police offices, medical practitioners and academicians²⁸. But the real success is only possible when all individuals will join their hands against child abuses in our country otherwise child prosperity and safety will just remain a myth, and we will never be in a position to create a county as dreamed by the forefathers of the Nation.

Child in the Search of an Identity

While deliberating on various sociological factors, it is important to highlight one another point regarding the 'identity of child'. As it is evident that we generally don't give any importance to children in terms of their separate identity. It is always their parents or family members are the key players in dealing with all aspects of their child. Many times this leads to the ignorance of harassment suffered by a child. Here if one considers the Indian family system, especially for the lower-class; lower-middle class families, where parents or family members are usually busy with earning their livelihood, and as a result are ignorant about such complaints made by child. This ultimately leads to serious mental, physiological and physical problems for concerned child, affecting his growth both physical and mental. Hence there is need to give a serious thought to the issue so that child care system can become more efficient and accessible for children in need. The one serious step in this regard could be taking children as a concerning party for deliberations on child rights²⁹. The idea is drawn on the famous slogan about disability jurisprudence, '*Nothing About Us, Without Us*'.

Poverty and its Sub-Clauses: Resulting into Painful Destiny of a Child

In order to deal with child abuses, there is need to work on different ancillary factors. One such factor is poverty. It is pointless to prove that poverty is the first step towards 'helplessness', the *founding stone* of exploitation. In various reports by World Bank, Global Hunger Index, Hunger Notes, it is found that still majority of population in India is suffering from malnutrition and earning very low income, far below from standard income. Here it is evident from the history that no war can be won with an empty stomach. In order to earn the two time meal for himself and for his family, person is eager to do any task of any nature. The gravity of stated proposition can went up to selling of one's own child. It is the humble submission of the author that it must be the most harsh and cruel time for any parent³⁰. Here it can be stated that these days India is becoming the hub of child trafficking, as large number of children are trafficked within and outside the county. The statistics for boarder states is far worse³¹. Despite various governmental efforts, the child trafficking is still flourishing at its heights. Though once in a

²⁸ As author is belonging to Law fraternity, he attended various capacity building programs conducted for above-mentioned officials. One such example is series of capacity building programs for police officers and medical practitioners of Assam, conducted jointly by NLU(s) and UNICEF.

²⁹ The point is justifiable on the ground that in today's 21st century, *one section* of children is much thoughtful and intelligent, the basic prerequisites for any rational deliberation.

³⁰ The point is based on the experience of author, when once he conducted interviewed few poor people of Dharvari slum area, Mumbai, in 2011, and also highlighted in various documentaries, reports, interviews etc.

³¹ Sanjoy Roy. Assam a major source of child trafficking: Satyarathi. The Assam Tribune, 19-September-2010. <https://assamtribune.com/assam-a-major-source-of-child-trafficking-satyarathi>

while we received news regarding rescue³² but all that still raise the very pertinent question that where things are getting wrong? There are only sceptical ideas to the question ending in creating further doubts.

The next reason for child abuses is related to the illiteracy factor; it is the first *sub-clause* of poverty. When people are illiterate they became unaware (2nd *sub-clause*) about any information as there arises a communication gap between them and welfare functions. Though there are provisions for translations etc., but it is not that effective. The point is based on the thought of *nativeness* of language gives a kind of *comfortness* and *belongingness* to person concern. Hence then it became very easy to share our views.³³ Here the unawareness leads to the exploitation (3rd *sub-clause*). Once people become unaware, they become the soft target for exploitation. Interestingly this exploitation used to be done by those who are there to help and protect them³⁴. This further leads to the violation of basic human rights of poor people (4th *sub-clause*) and finally to the death of democracy (5th *sub-clause*). Hence system fails to protect the sanctity of the opening lines of our constitution, ‘*We the People ...*’ The said chain can be elaborated further but the links raised above are fair enough to raise and justify the sociological aspect of the situation.

After highlighting the issue, now it is better to overview the existing legal system.

Legislative Mechanism: An Overview

POCSO Law and its Main Provisions

The Protection of Children From Sexual Offences Act (POCSO), 2012 is one of the keen legislation regarding protection of children from offences of sexual assault, sexual harassment and pornography. The Act consists of IX chapters having 46 sections. All chapters are comprehensively dealing with the different provisions carrying under it. Chapter I is introductory, in chapter II, sexual offences against children are defined along with its punishment. Section 3 defines the penetrative sexual assault, where punishment for the same is seven years to life imprisonment along with fine³⁵. Part B of the chapter deals with the definition of aggravated penetrative sexual assault and punishment there under; it basically talks about the penetrative assault committed by police officers, or different authorities under their office of trust³⁶. Section 6 provides for the punishment for the same that include ten year to life imprisonment along with fine. Further part C of chapter II deals with the definition of sexual assault and its punishment, whereas part D deals with aggravated sexual assault and its punishment³⁷. Finally part E of chapter gives a very elaborative definition of sexual harassment and its punishment³⁸.

³² Bindu Shajan Perappadan. Assam becoming a hotspot for child trafficking. The Hindu, 8-June-2014.

<https://www.thehindu.com/news/cities/Delhi/assam-becoming-a-hotspot-for-child-trafficking/article6094367.ece>

³³ Alicia Copp Jinkerson. Socialization, Language Choice and Belonging, University of Jyväskylä, 2012.

<https://jyx.jyu.fi/dspace/bitstream/handle/123456789/38124/9789513947613.pdf>

³⁴ Reference can be made to the Illustrations of cases where police personals are raping rape victims (long journey from Mathura rape case till today) there is also involvement of various other factors, one important among them is corruption, where officials doesn't take any action against the wrongdoer.

³⁵ Section 4 of POCSO Act, 2012.

³⁶ Section 5 of POCSO Act, 2012. It is having seventeen sub-clauses under it, covering a broad area, including jail, remand homes to hospitals.

³⁷ Section 7 and 9 of the Act, Section 8 and 10 respectively provides for the punishment that includes imprisonment up to three to five years along with fine. Whereas under section 10, punishment is from five to seven years including fine.

³⁸ Section 11 of the Act, and Section 12 provides the punishment which is imprisonment up to three years along with fine.

Chapter III of the Act is titled, ‘Using Child for Pornographic Purposes and Punishment therefore’. Here section 13, 14³⁹ and 15 of the Act deals with definition and punishment of the above, where section 15 specifically deals with the use of such pornographic substance for commercial purposes and provides the punishment up to three years or with fine or with both. Further subsequent chapter (IV), deal with the offence of abetment of and attempt to commit an offence.⁴⁰ Section 18 deals with the punishment for attempt of such offence as defined under the Act⁴¹. The next part of the Act deals with its procedural aspects, which mainly deals with the reporting of the case, provisos regarding statement recording of child, establishment and powers of special courts etc.

Changes Made in Indian Penal Code after Criminal Amendment Act 2013: Provisions Regarding Child Sexual Abuse

As discussed in introduction part that after *Nirbhya* case, a committee was constituted under the chairmanship of Late. J. Verma. It suggested various amendments to criminal and evidence laws. The following is the chart⁴² of the amended provisions of Indian Penal code, as relevant under this topic:

Sr. No.	IPC Section	Name of Offence	Description	Punishment
1	354 A	Sexual harassment	A man committing any of the following acts - a) Physical contact and adverse involving unwelcome and explicit sexual overtures; b) A demand or request for sexual favours; c) Showing pornography against the will of a women; d) Making sexual coloured remarks, shall be guilty of offence of sexual harassment.	Shall be punished with rigorous imprisonment for a term which may be extend to 3 years or with fine or with both Any man who commits an offence defined under (d) shall be punished with imprisonment of either description for a term which may extend to 1 year or with fine or with both.
2	354 B	Act with intent to disrobe a women	Any man who assaults or uses criminal force to any women or abets such act with the intention to disrobing or compelling her to be naked.	Imprisonment not less than 3 years but may extent to 7 years and shall also be liable to fine.
3	354 C	Voyeurism	Any man who watches, or captures the image of a women engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image.	Shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but may extend to 3 years and shall also be liable for fine On 2 nd or subsequent conviction –not less than 3 years , and may extend to 7 years , and shall also be liable to fine.
4	354 D	Staking	a) Following a women and contacts, or attempts to contact such women foster	1 st conviction- may extend to 3 years , and shall also be liable to fine, on 2 nd

³⁹ Section 14(1) provides for the punishment up to five years along with fine and on second or subsequent conviction, imprisonment up to seven years and also be libel to fine.

⁴⁰ Section 17 of the Act read with Chapter V (of Abetment), Indian Penal Code, 1860.

⁴¹ Punishment equivalent to the offence attempted, or for a term which may extend to one-half of the imprisonment of life or one-half of the longest term of imprisonment provided for that offence or with fine or with both.

⁴² Criminal Law Amendment Act, 2013.

			<p>personal interaction repeatedly despite a clear indication of disinterest by such women.</p> <p>b) Monitors the use by a woman of the internet, email or any other form of electronic communication.</p>	<p>or subsequent conviction, - may extend to 5 years and shall also be liable to fine.</p>
5	370	Trafficking	<p>Whoever for the purpose of exploitation, recruits, transports, harbours, transfers, or receives a person or persons by-</p> <p>1st- using threat</p> <p>2nd- force, or any form of coercion</p> <p>3rd- by abduction</p> <p>4th- by practicing fraud, or deception,</p> <p>5th- by use of power,</p> <p>6th- by inducement, including the giving or receiving of payment or benefit, in order to obtained the consent of any person having control over the person recruited, transported, harboured, transferred, or received,</p> <p>Commits trafficking.</p> <p>Explanation: The consent of victim is immaterial in determination of the offence of trafficking.</p>	<p>370 (4): in trafficking of minor, shall be punished with rigorous imprisonment for a term which shall not be less than 10 years, but may extend to imprisonment for life and shall also be liable to fine.</p> <p>370(5): where the offence involve the trafficking of more than one minor-rigorous imprisonment not less than 14 years, but which may extend to imprisonment of life and also liable for fine.</p> <p>370 (6): if a person is convicted of the offence of trafficking of minor on more than one occasion then person shall be punished with imprisonment of life, which shall mean imprisonment for the remainder of that person’s natural life, and also liable for fine.</p>
6	370A	Exploitation of trafficked person	<p>Trafficking of minor, engage such minor in any sexual exploitation in any manner.</p>	<p>Rigorous Imprisonment for a term which shall not be less than 5 years but may extend to 7 years, and also liable for fine.</p>
7	376A	Causing death or resulting in persistent vegetative state of victim	<p>Whoever commits an offence punishable under 376 (1)(2), and in course inflict injury which caused death of a women or cause a women to be in a persistent vegetative state.</p>	<p>Shall be punished with rigorous imprisonment of 20 years, may extend to imprisonment for life, which shall mean imprisonment for remainder for that person’s natural life, or with death.</p>

Here if one compare the two laws as discussed above, it can be easily concluded that provisions of Indian Penal Code, 1860 are more effective in comparison to POCSO law, as it provide more strict form of punishment. Further here it is the humble submission of the author that legislative provisions regarding sexual abuses against children is incomplete without reference to Immoral Trafficking (Prevention) Act, 1956⁴³. This is the one of the big loophole of POCSO Act that it doesn’t specifically deals with the child trafficking and hence reference is made to below mentioned Act.

Child Abuse and Immoral Trafficking (Prevention) Act, 1956

Child trafficking is one of the most serious issues in India. As per one report of NHRC each year ten thousand children goes missing across the country and out of them approximately two thousand are

⁴³ As discussed in the first half of the paper that child trafficking is the main source of child abuses.

never traced back. The sorry state of affairs is luring another sad story of child trafficking for sexual harassment including sex trade. In one documentary named ‘born into brothel⁴⁴’ on sex workers of *sonagachi*⁴⁵, it was found that there is a special demand for teenager sex workers in sex industry. The demand for girls’ child is so prevalent that there is trafficking of girl children from boarder counties specially Nepal and Bangladesh. The entire deal is fixed through middle-man/agents, who in lure of work sell them to brothel owners. Where the *madams* of brothels used to beat them and forced them to have forceful, unethical sexual relation with their customers. These sexually frustrated customers brutally rape and torture them as a result of which they suffer various unidentified injuries⁴⁶. The agony of the situation is that the entire process is regulated in the surveillance of police, who has their fixed amount per brothel and some time the girl of their choice⁴⁷. Though, in order to deal with the situation, Immoral Trafficking (Prevention) Act, 1956 provides various elaborative provisions. As section 5 of the act deals with Procuring, inducing or taking person for the sake of prostitution and according to it if any person who -

- (a) procures or attempts to procure a person whether with or without his/her consent, for the purpose of prostitution; or
- (b) induces a person to go from any place, with the intent that he/she may for the purpose of prostitution become the inmate of, or frequent, a brothel; or
- (c) takes or attempts to take a person or causes a person to be taken, from one place to another with a view to his/her carrying on, or being brought up to carry on prostitution; or
- (d) causes or induces a person to carry on prostitution⁴⁸.

Punishment: Shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years⁴⁹ -

Provided that if the person in respect of whom an offence committed under this subsection, is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life⁵⁰.

Further, section 5A provides for recruitment, transportation, transfers, harbors, of a person for the purpose of prostitution by means of by means of threat, coercion, abuse of power, and after receiving the payments or benefits to achieve the consent of such person having control over another person, commits the offence of trafficking in persons. Any such person who commits the offence under section 5A shall be punished with *on first conviction with* rigorous imprisonment for a term which shall not be less than

⁴⁴ The documentary is directed by an activist and photographer Zana Briski and her friend Ross Kauffman. She through her cameras gave a very live and thoughtful insight of Life of Brothel.

⁴⁵ Sonagachi is the biggest red light area in Kolkatta, India. It is approximately a house of eleven to twelve thousand sex workers, including young girls and children of sex workers.

⁴⁶ These injuries include both physical and mental injuries.

⁴⁷ In Justice Verma committee Report, interviews of rape victims are recorded, where they have narrated the atrocities by police personals, one such shocking interviews is there in Appendix 9 and 10, Pages 475, 511.

⁴⁸ Section 5 of the Immoral Trafficking (Prevention) Act, 1956, Universal Law Publication, 2012.

⁴⁹ Id.

⁵⁰ Id.

seven years and in the event of a second or subsequent conviction with imprisonment for life⁵¹.

The Act further talks about the detaining of a person in premises where prostitution is carried on, whether with or without his consent, shall be liable for imprisonment of seven years to life imprisonment and shall also be liable to fine which may extent to one lakh rupees⁵². The section 6(2) of the act is related with the children, according to it, where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence under sub-section (1). Further section 6(2-A) of the mentioned Act states that, where a child found in a brothel, is, on medical examination, detected to have been sexually abused, it shall be presumed unless the contrary is proved, that the child has been detained for purposes of prostitution or, as the case may be, has been sexually exploited for commercial purposes⁵³.

From the above stated information regarding legislative mechanism, it is clear that there are very profound legal instruments. Where different laws are supplementing each other and trying to provide the strong argument for the victims against heinous offences. But in order to functional, there is need to work on multi-dimensional levels, where different stakeholders including parents, guardian, phycologist, legal and medical experts need to work in harmony and collaboration⁵⁴.

Conclusion

Childhood is one of the most beautiful periods of life. It gives the shape to the modern face of the national power⁵⁵. It is today's *micro power* that becomes *macro power* of tomorrow. Hence there is great need to protect the children in need. As discussed above that formulating laws and policies will only work at philosophical level and in order to see the dawn of success there is need to work down at the ladder. The situation of child sexual abuse is nowhere hidden from all the intellectual thinking tank of our society and there are various efforts been made at different levels. But the truth of the story is that it became more an academic or political thought rather than reality⁵⁶. Without the collective efforts of society even one of the strongest organs of the state are helpless⁵⁷. Further in number of cases related to child sexual abuses police personas refuse to register FIR and instead try to write the complaint under daily dairy⁵⁸. As per the data collected from Ministry of Women and Child Development⁵⁹, till 2013, total 12,363 cases were registered across India under POSCO Act with highest number of cases being

⁵¹ Section 5B

⁵² Section 6(1)

⁵³ Section 6(2), (2-A)

⁵⁴ The point is very well articulated under Justice Verma Committee Report, where emphasis is made on various working of medical practitioner, physiologist etc. that how they should help in protecting the forensic and scientific evidences related to sexual assault cases. For further reading refer to chapter 10, 11 of Justice Verma Committee Report, Pages 260-311.

⁵⁵ Here, the term "power" is used in as a deliberately by the French philosopher Michel Foucault.

⁵⁶ The purpose of said proposition is to highlight the existing 'welfare' programs for child protections which are just contributing towards academia and politics. By this statement author is trying to highlight the point of politicization of the matter, which only deals in statements rather than functioning.

⁵⁷ *Bachpan Bachao Andolan v. Union of India* [2011] 5 SCC 1, in this case, court specifically recognized that child trafficking is the big danger to the country, but despite all guidelines the trafficking of children is still flourishing at a high level. The point is evident from the resent **NHRC report**, according to which every year **44,000** children go **missing** and out of them 11,000 remain untraced.

⁵⁸ The point is strongly raised by one of the key note speaker in police capacity building Training program conducted by NLU Assam and firmly articulated in J. Verma Committee Report.

reported in Madhya Pradesh⁶⁰ followed by Maharashtra⁶¹, Uttar Pradesh⁶², Rajasthan⁶³ and Delhi.⁶⁴

There were total 2,061 persons were convicted in 1,611 cases and the conviction rate was 31.5%. Whereas in 2012, a total 8,541 cases were registered across the country and 1,447 persons were convicted in 1,158 cases recording a conviction rate of 28.2%.⁶⁵ These all are one side of the factual records and it is followed by another side, according to which cases relating to sexual abuses against children are raising at the alarming pace. The statement is based on the incident of resent Bengaluru school rape case, where six year old minor girl was raped brutally⁶⁶. Hence there is need shake our consciousness and raise the basic fundamental question that, ‘whether it is law formulation of its implementation: what is the need of hour?’. Because we can allow a child to commit mistakes, but can’t allow our self to commit mistakes.

⁵⁹ In the year of 2014, till March 2014, there are total 400 cases of sexual assault registered across the country under POCSO. The Economics Times, 17-July-2014. (The number is increasing at alarming pace.)

⁶⁰ 2012 number of cases.

⁶¹ 1546 number of cases.

⁶² 1381 number of cases.

⁶³ 892 number of cases.

⁶⁴ 757 number of cases.

⁶⁵ The Economics Times, 17-July-2014.

⁶⁶ Bangalore’s shame: 6-year-old girl raped twice by teacher on school campus. The Times of India, October-2014.

<https://timesofindia.indiatimes.com/city/bengaluru/Bangalores-shame-6-year-old-girl-raped-twice-by-teacher-on-school-campus/articleshow/44988308.cms>