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## Future of nation at stake

**Manoj Kumar Pathak, Srishti Rai, Shashank Shekhar Jha and Madhu Kumari Upadhyay**

### Abstract

A child is most precious asset of the nation. A physically, mentally and socially healthy child is a valuable resource of the country. But rising trend in various types of crime against children and child delinquency is posing a threat to the development of the nation. Even after enactment of various laws and acts still the situation is very grim and various types of crimes against children are giving alarming figures and it has increased by 53% in last 10 years and national rise is recorded to be 83%. No age is spared from being victimized in various physical or sexual manners.

**Keywords:** POCSO, NCRB, Child Abuse, trafficking, juvenile, petty offence

### Introduction

According to the definition by WHO, a child is a person 19 years or younger unless national law defines a person to be an adult at an earlier age. However, in these guidelines when a person falls into the 10-19 age categories they are referred to as an adolescent.

Childhood is divided into the following periods:

Infancy (up to 1 year of age), Neonatal period (first 28 days of life), Post-neonatal period (28<sup>th</sup> day to 1 year), Pre-school/Toddler (1-4 years) and School age (5-14 years) <sup>[1]</sup>.

The POCSO act defines a child as any person below the age of 18 years likewise the juvenile justice act defines a child as a person who has not completed the age of 18 years <sup>[2]</sup>.

The relevant age limit above which a subject is assumed to have legal responsibility is the 7 years of life (section 82 of IPC). The irrefutable principal of Indian criminal law states that a child less than 7 years old is generally underage for criminal responsibility and is thus granted impunity even when an offence has been committed. According to Indian factory act 1948, a child is a person who has not completed 15 years. An adolescent is a person who is above fifteen years but less than 18 years. An adult is a person who has completed 18 years. According to "Juvenile Justice Act 2000", juvenile means a boy or girl who is less than 18 years of age. Their personality is assessed in terms of moral and mental development to decide whether juvenile or general adult penal law is applicable to them <sup>[3]</sup>.

Paediatrics covers the age group less than 18 years of age. Adolescence is a stage of transition from childhood to adulthood. During this stage of life, a youth undergoes rapid changes in body structure, mediated by the sex hormones. The appearance of sexual characters is coupled with changes in cognition and psychology. Whereas adolescence refers to this entire process, puberty refers to the physical aspect. As we already know the age group 10-19 years is considered as the period of adolescence, and puberty marks the early half of adolescence. Though it is a continuous process, for sake of convenience, adolescence is generally divided into three phases: early (10-13 years), mid (14-16 years) and late (17- 19 years) puberty. <sup>[4]</sup> Secondary sexual characteristics only give a very vague idea of age and are obviously not very helpful from a medicolegal angle. Sometimes, however, they can provide good corroborative evidence. Hair first appears around the pubes, then in the axilla and finally over the face. In males- fine, downy pubic hairs appear around 14 year and in the axilla by 15 year, and on the chin and upper lip between 16- 18 yr. Hair on the inner sides of thigh and on the scrotum may appear after 18 yr. The Adam's apple becomes more prominent by 16-18 year. In females the order of development is –Thelarche (11-12yr) → Pubarche (12-13yr) → Menarche (13-14yr) Of course there may be variation of age in different persons <sup>[3]</sup>. A child is a nation's most precious resource. Families are considered incomplete without a child who is loved and nurtured in a family. In 2007, the then president of India, Dr. A P J Abdul Kalam had said, "The rights of women and children and their aspirations are of paramount importance in our match towards an inclusive and equitable society <sup>[5]</sup>."

Children under 15 years of age comprise about 30% of India's population. <sup>[6]</sup> Despite the numerous measures taken in the country, Indians hardly ask the question- How safe is my child? And there is no wonder that child abuse is highly misunderstood in India. In poverty stricken families, these children are nothing but an alternate source of income. This

reality in India has not only made children a commodity which is bought and sold but also contributes to the lost innocence of children.

#### Classification of offences <sup>[7]</sup>

**Table 1**

Type	Offences	Punishment
Petty offences	Sexual harassment, Voyeurism, Stalking etc.	Up to 3 Years
Serious offences	Penetrative sexual assault, Aggravated penetrative assault, Sexual assault, Aggravated sexual assault, Use of child for pornographic purpose	3-7 Years
Heinous offences	Kidnapping and abduction, rape, gang rape and human trafficking	More than 7 Years

#### Material and Method

A thorough search related to Crimes and Acts related to children in India was done from various sources like Bare Acts (IPC 1860, Cr. PC 1973 and Indian Evidence Act 1872), POCSO Act 2012 and The CLAA (2013 & 2018), The Gazettes of India were systematically reviewed. Crimes in India 2016, National Crime Record Bureau statistics were thoroughly reviewed. The crime against children are done under three main headings i.e. (i) Child trafficking (IPC 370) & kidnapping (IPC 361-366A & B), (ii) Child abuse (POCSO Act) and (iii) Child labour (dealt under Child labour act 1986, amended in 2016).

#### Observations and Discussion

Various acts related to child safety in India:

##### 1. The Children Act 1960

The Children Act, 1960 in India (amended in 1977) provides for the care, maintenance, welfare, training, education and rehabilitation of the delinquent child. It covers the neglected and destitute, socially handicapped, uncontrollable, victimized and delinquent children. In Article 39 (f) the Constitution of India provides that "the state shall in particular direct its policy towards securing that childhood and youth are protected against moral and material abandonment."

##### 2. National Policy for Children 1974

Keeping in view the constitutional provisions and the United Nations Declaration of the Rights of the Child, the Government of India adopted a National Policy for Children in August 1974. The Policy declares: "It shall be the policy of the State to provide adequate services to children, both before and after birth and through the period of growth, to ensure their full physical, mental and social development. The State shall progressively increase the scope of such services so that, within a reasonable time, all children in the country enjoy optimum conditions for their balanced growth."

##### 3. Juvenile Justice Act 1986

With the implementation of the Juvenile Justice Act, 1986, all Children's Acts applicable in different parts of the country have been repealed. The new Act, apart from rectifying the inadequacies of Children's Act, provides a comprehensive scheme for care, protection, treatment, development and rehabilitation of delinquent juveniles. The new Act has come into force from 2nd Oct 1987. Some of the special features of the Act are:

- It provides a uniform legal framework for juvenile justice in the country so as to ensure that no child under any circumstances is put in jail or police lock-up;
- It envisages specialized approach towards prevention and

treatment of juvenile delinquency in keeping with the developmental needs of children;

- It establishes norms and standards for administration of juvenile justice in terms of investigation, care, treatment and rehabilitation;
- It lays down appropriate linkages and coordination between the formal system of juvenile justice and voluntary organizations. It specifically defines the roles and responsibilities of both.

##### 4. The Child Labour (Prohibition and Regulation) Act 1986

Except in the process of family-based work or recognized school-based activities, children are not permitted to work in occupations concerned with:

- Passenger, goods mail transport by railways
- Carpet weaving
- Cinder picking, cleaning of ash-pits
- Cement manufacturing
- Building construction operations - Cloth printing
- Dyeing, weaving
- Manufacturing of matches, explosives, fire-works
- Beedi making
- Mica cutting, splitting
- Abattoirs
- Wool cleaning
- Printing
- Cashew descaling and processing
- Soldering process in electronic industries.

Child labour is rooted in poverty, unemployment and lack of education. A great deal of effort is needed to eliminate these basic causes. It is felt that instead of proliferating the laws relating to children, all the statutory provisions of the various Acts relating to children should be grouped in one comprehensive code of children. It is not feasible to abolish child labour entirely in the present context, but it is expedient to protect such children against abuse, exploitation and health hazards, and regulate the conditions of work in occupations where child labour is permitted.

##### 5. Juvenile Justice Act 2000

Juvenile Justice (Care and Protection of Children) Act, 2000 (now Amendment Act 2006) is an Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their developmental needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation. The

Act defines a juvenile/child as a person who has not completed the age of 18 years. It has two separate chapters - one for juveniles in conflict with law and the other for children in need of care and protection. It also contains an exclusive chapter concerning rehabilitation and social reintegration of children. The Act defines Juvenile in conflict with law as a child who is alleged to have committed an offence and Children in need of care and protection broadly as children who are neglected, abused, abandoned, victim of any armed conflict or natural calamity amongst others. Offences committed against a child as listed in the Act, are cognizable and punishable under the provisions of this Act.

In order to implement its provisions and procedure, the Act provides for:

- i. Juvenile Justice Boards
- ii. Child Welfare Committees
- iii. Institutional care through children's homes,
- iv. observation homes, shelter homes, special homes and
- v. aftercare organizations
- vi. Non-institutional care through Adoption, Foster Care,
- vii. Sponsorship Act and After Care
- viii. Special Juvenile Police Units
- ix. Juvenile Justice Fund
- x. Central/State/District Advisory Boards

- xi. Selection Committee
- xii. Inspection Committee.

**6. Goa Children Act 2003 (amended in 2005)**

In 2003, the state government of Goa, legislated and passed the only State Level Child Welfare Act in existence. The Goa Children Act was amended two years later in 2005. The act defines a child as any person who has completed the age of 18, while the child in case of child labour is any person who has not completed the age of 14. The act calls for the state to ensure children are protected against any form of abuse, exploitation and neglect.

**7. Juvenile justice (Care and protection of children) act 2015**

Juvenile justice (care and protection of children) act 2015 came into force from Jan 15, 2016. The act allows children 16-18 years having conflict to law to be tried as adults in cases of heinous offences. When pronounced guilty, such children can be detained in a place of safety until they reach the age of 21 years. If still not found to have reformed by 21, they can be sent to jails housing adults.

**8. Kidnapping and abduction**

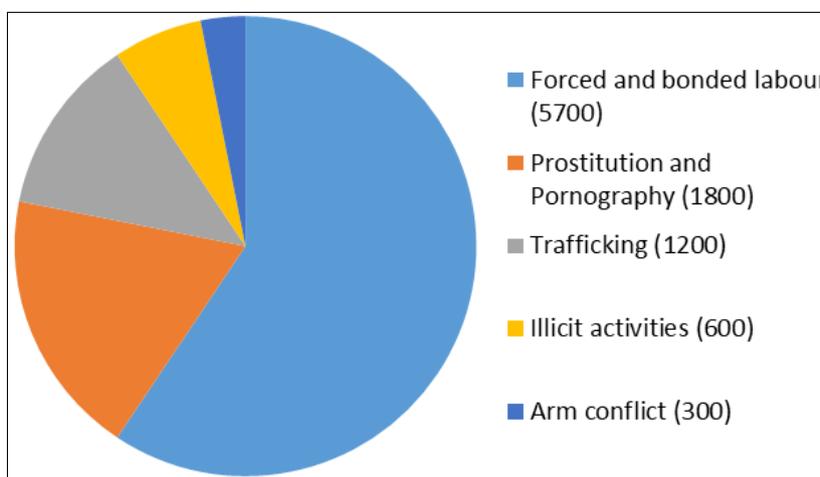
**Table 2**

IPC	Offence	Punishment
SECTION 363	Punishment for kidnapping	7 years and fine
SECTION 363 s/s A (1)	Kidnapping or obtaining the custody of a minor in order that such minor may be employed or used for begging	10 years and fine
s/s A(2)	Maiming a minor in order that such minor may be employed or used for begging	Imprisonment for life
SECTION 364	Kidnapping or abduction in order to murder	Life imprisonment or rigorous imprisonment for 10 years and fine
SECTION 364 s/s (A)	Kidnapping for ransom	Life imprisonment and fine or death
SECTION 366	Kidnapping, abducting or inducing women to compel her marriage etc.	10 years and fine
SECTION 366 s/s (A)	Procuration of minor girl	10 years and fine
SECTION 369	Kidnapping or abducting child under 10 years with intent to steal from its person	7 years and fine

**Trafficking**

Trafficking of children takes many different forms. Some children are forcibly abducted, others are tricked and still others opt to let themselves be trafficked by promise of earnings, but not suspecting the level of exploitation they will suffer at the other end of the recruiting chain. Trafficking always involves journey, whether within the country or across

the international border. The relocation takes children away from their families, communities and support net-work, leaving them isolated and utterly vulnerable to exploitation. Collecting data about these children is very difficult. It is estimated that trafficking affects about 1.2 million children each year. Following figure shows children in worst forms of child labour and exploitation.



**Fig 1**

**Table 3**

IPC	Offence	Punishment
Section 366 s/s (b)	Importation of girl from foreign country	10 years and fine
Section 370 s/s (3)	Trafficking of minor	10 years to life imprisonment and fine
Section 370 s/s (4)	Trafficking of more than one minor	14 years to life imprisonment and fine
Section 372	Selling minor for purpose of prostitution	10 years and fine
Section 373	Buying minor for purpose of prostitution	10 years and fine

**Child abuse**

In ancient times, general opinion accepted that children could be beaten and abused. The industrial exploitation of children after the middle Ages was commonplace, with no widespread protest. The prevention of cruelty to children, as to animal, was beginning to be a matter of public concern in the 18th century, but birch and cane lingered on and were brandished righteously at home and at school, well into the present century. The broader concept of child abuse (which includes battering) is of recent origin. Its recognition by the caring professions has brought a spate of conferences, symposia and publications. The concept itself has been broadened to include not only physical violence, but sexual abuse, mental and emotional maltreatment, neglect, deprivation and lack of opportunity. The consequences of physical battering - death, blindness, mental and emotional retardation, stunting of growth - is only one part of the whole picture of child abuse. Some contributory factors of child abuse are poverty, alcohol and other drug abuse, loneliness, immaturity and a host of other factors. Many causes are embedded in the family and in its function of child rearing. During the year 1991, there were one million cases of child abuse and neglect in the USA, i.e., an incidence of about 2 per cent children being subjected to physical and/or sexual abuse. Countries around the world report comparable figures. Studies carried out throughout the past two decades have shown that the provision of supportive home visitors, either public health nurse or trained lay people, to families who are at risk of using violence against children can prevent the abuse from happening. However, we have not yet reached a similar level of confidence about our ability to

prevent the sexual abuse of children, which is also a worldwide phenomenon. Suggested remedial measures include increased legal help, more case workers, and educating young people to postpone having children until they are sufficiently mature to be adequate parents. Attempt to strengthen the individual and his family may prove helpful. The problem is complex and reflects merely one facet of the larger issue of violence in the home and in society at large

**POCSO Act 2012**

This Act has been drafted to strengthen the legal provisions for protection of children from sexual abuse and exploitation. It provides protection to all children (both male and female) under the age of 18 years from sexual abuse.

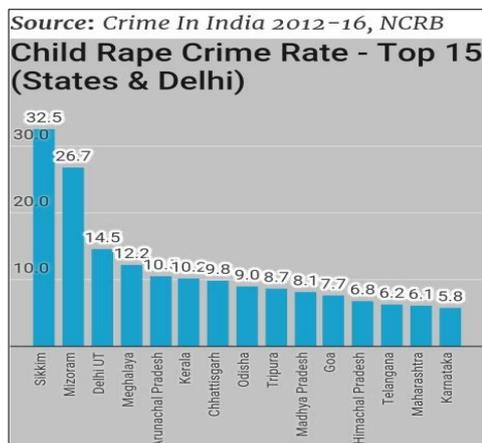
POCSO is in line with Article 15(3) of the Constitution of India, which permits the State to make special provisions for children. POCSO is the acronym for ‘Protection of Children against Sexual Offences Act’ of 2012. With its enactment, India now has one of the most comprehensive laws that not only allows justice for children who are victims of sexual offences but also takes into account the best interests and well-being of the child. It is landmark legislation in the area of child protection.

In fact, before 2012, there were no specific laws in India that addressed sexual crimes against children. Sexual offences against children were booked under the Indian Penal Code (IPC). Further, many forms of sexual abuse, like showing pornography to children could not be prosecuted; unless there was penetrative sexual assault. There were no provisions that could prosecute sexual offences against boys.

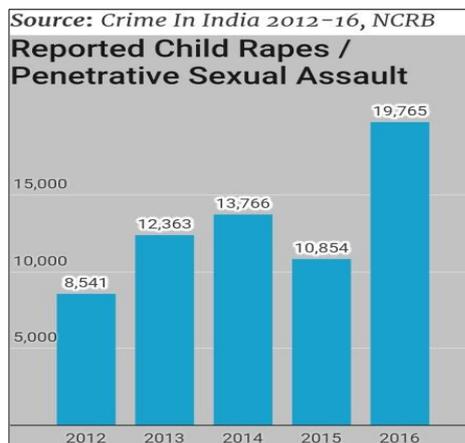
**Table 4**

Offence	Minimum Punishment	Maximum Punishment
Penetrative sexual assault	7 years + Fine	Life imprisonment + Fine
Aggravated penetrative assault	10 years rigorous imprisonment + Fine	Life imprisonment + Fine
Sexual assault	3 years + Fine	5 years + Fine
Aggravated sexual assault	5 years + Fine	7 years + Fine
Sexual harassment		3 years + Fine
Use of child for pornographic purpose		5 years + Fine

(Source: Review of Forensic Medicine and Toxicology (4<sup>th</sup> edition) Gautam Biswas)



**Fig 2**



**Fig 3**

### 9. The Criminal Law (Amendment) Ordinance, 2018

The ordinance passed in April 2018 enhanced the minimum punishment for rape to 10 years and death penalty to those

convicted of raping children below 12 years of age. The following changes have been included:

**Table 5**

IPC	Offence	Punishment
Section 376(1)	Rape	Rigorous imprisonment for 10 years extending to life imprisonment and fine, which was minimum for 7 years in previous amendments i.e. CLAA 2013
Section 376(3)	Rape on a women under 16 years of age	Rigorous imprisonment for 20 years extending to life imprisonment and fine
Section 376-AB	Rape on a women under 12 years of age	Rigorous imprisonment for 20 years extending to life imprisonment and fine or death.
Section 376-DA	Gang Rape of women under 16 years of age	Life imprisonment and fine
Section 376-DB	Gang rape of women under 12 years of age	Life imprisonment and fine or death

(Source: Review of Forensic Medicine and Toxicology (4<sup>th</sup> edition) Gautam Biswas)

#### Other salient features of the ordinance

Fine should be just and reasonable to meet the medical expenses and rehabilitation of the victim and paid to the victim; investigation in rape cases to be completed within 2 months; no anticipatory bail can be granted to a person accused of rape of girls of age less than 16 years; appeals in rape cases to be disposed within 6 months.

#### Conclusion

Children in India are deprived of even some of their basic rights which include: prohibition of employment of children below the age of 14 in factories, prevention of abuse of children of tender age and free and compulsory education for all children until they complete the age of 14 years. Some of the frightening facts are; in India, a child is sexually abused every 15 minutes according to the latest government figures. As per report on Crimes in India for 2016, released by Indian Home Minister Rajnath Singh in Delhi, 106,958 cases of crimes against children were recorded in 2016. Out of these 36,022 cases were recorded under POCSO Act. Government data has revealed that trials of pending cases of child sexual abuse will take over 50 years in some states to be completed, even if no further case is registered. Though the modern era boasts of women empowerment and enhancement in literacy rate, there is no reduction in the rate of crime against children. Maximum crimes under POCSO Act were reported in U.P (4954), followed by Maharashtra (4815) and Madhya Pradesh (2467). Maharashtra has highest incidents of sexual assault (2370). Among the sexual crimes committed against children maximum incidents are of child rape. Among crime against children maximum cases reported were of kidnapping and abduction. Sexual harassment was reported highest in Telangana while immoral trafficking was highest in Maharashtra. Uttar Pradesh is the most unsafe state for children. The alarming scenario of crime against children indicates its high time for government to wake up and take stringent measures to curb the menace of child abuse in protecting not only the precious childhood of the country rather protecting the future of the nation. As per the age old dictum that is "child is the father of the nation".

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