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## YOUTH EMPOWERMENT AND THE CHILD WELFARE LEGISLATIONS: PROTECTING MINORS AND ENSURING JUSTICE

### ABSTRACT

*Life is precious in itself. But life is worth living because of the freedoms which enable each individual to live life as it should be lived. The best decision on how life should be lived are entrusted to the individuals. They are continuously shaped by the social Mileu in which individuals exist. The duty of the state is to take step to safeguard the ability to take decisions- the autonomy of the individual – and not to dictate those decisions.*

~ CJI D.Y. Chandrachud

Youth are often considered as a vulnerable group in the society, facing multitude of challenges that jeopardize their wellbeing and development. Therefore, Youth Empowerment is of paramount need for safeguarding minors and ensuring justice. This paper examines the Multifaceted dimensions of Youth empowerment under the *Protection of Children from Sexual Offences ACT, 2012* (hereinafter, as POCSO ACT) and Juvenile Justice (Care and protection) Act, 2015 (hereinafter as JJ ACT), focussing on the role of this very legislations in protecting vulnerable children from sexual exploitation and abuse while promoting their rights and access to Justice. POCSO Act and JJ ACT emphasis on creating a safe and supportive environment conducive to disclosing instances of abuse and seeking redressal. This involves fostering a culture of trust, confidentiality, and empathy within families, communities, and institutions, where victims are encourages to come forward without fear of stigma and reprisal. Furthermore, youth empowerment under the POCSO & JJ ACT encompasses comprehensive measures to ensure the holistic rehabilitation and reintegration of survivors into society. This includes providing access to medical-care, psycho-social support, education, vocational training and legal assistance tailored to their specific needs and circumstances.

In conclusion, youth empowerment under this two legislations represents a cornerstone to protect minors from sexual offenses and uphold their rights to Safety, dignity and Justice . By nurturing a supportive ecosystem that empowers Youth, The act not only serves as a bulwark against exploitation but also lays the foundation for a society where every child can thrive free from harm

**KEYWORDS** : Youth Empowerment, Justice, Exploitation, Minors, Vulnerable group

## **INTRODUCTION**

1. **C**hildren as one important Marginalized Groups who, in lieu of being carefully playing

in the sun and going to school, quite often suffer from various types of maltreatment, exploitation mostly Sexual. Thus, they are marginalized not only in terms of their access to the basic human needs, but also expressing freely their views and getting this properly accepted on the issues vital to them. Out of all these sufferings, the sexual exploitation and abuse are considered as the most heinous crime by the perpetrators as it bears huge impact on the mental and physical conditions of the victims. Recognizing the importance of this crime and vulnerability of the children, The Parliament formulated two legislations namely, *Protection of Children from Sexual Offences Act, 2012 (POCSO ACT)* and *The Juvenile Justice (Care & Protection) ACT, 2015 (JJ ACT)* to protect the interest of the children who are on the verge of development.

2. **P**ROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 : The

Protection of Children from Sexual Offences (POCSO) Act, 2012<sup>1</sup> is a landmark legislation that aims to protect children from Sexual assault, Sexual harassment and Pornography. The Act defines a child under section 1(c) as *any person below the age of 18 years* and provides for stringent punishments for the perpetrators of such offences. The Act also recognizes that boys can be victims of sexual violence as well and is gender-neutral in its approach. The POCSO Act is a vital legal framework that protects the rights and well-being of children from sexual offences. One of the key features of the POCSO Act is that it does not

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<sup>1</sup> The Protection of Children from Sexual Offences (amendment) Bill, 2019 was introduced in Rajya Sabha by the Minister of Women and Child Development Ms. Smriti Zubin Irani and finally received the assent of the president on 5<sup>th</sup> July 2019. The Act amends the Protection of Children from sexual offences act. 2012. This Act, 2019 seeks to protect children from offences such as sexual assault, sexual harassment, and pornography.

allow for the compounding or settlement of cases, which implies that *once a case has been registered under POCSO Act, It does not allow for the compounding or settlement of the case*, i.e., the victim cannot withdraw the case or reach a compromise with the accused. The rationale behind the provision is to prevent the victimization of the child and to ensure the perpetrators gets punished and not get away by paying heavy money. The fundamental principle to be followed in the determination of a case involving a sexual offense against a child have been laid down in various international instruments and Preamble to the POCSO Act, 2012 itself. The State governments, Child Welfare Committees (CWC), The police, The Special Courts, and all other government functionaries as well as Non-Government Organisation , and all professionals and experts assisting the child at the trial and the pre-trial stages are bound to abide by these principles.

These principles are:

- a) ***Right to life and survival:*** Every child has the right to life and survival and to be shielded from any form of hardship , abuse or neglect, including physical , psychological, mental or emotional abuse. In the case child who has been traumatized, every step should be taken to enable the child to enjoy healthy development
- b) ***The best interest of child:*** Every child has the right to have his/her best interest to be given primary considerations, This includes: The right to protection and to a chance for harmonious development . Protecting the child's best interest means, not only protecting the child from secondary victimization <sup>2</sup>and hardship while involved in the justice process as victim or witness, but also enhances the child's capacity to contribute to that process.
- c) ***The right to treated with dignity and compassion:*** Child victims should be treated in a caring and sensitive manner throughout the justice process, taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity . Interference in the child's private life should be limited to the minimum needed information shared on a need-to-know basis. Efforts should be made to reduce the number of professionals

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<sup>2</sup> Secondary victimization refers to the victimization that occurs not as a direct result of the criminal act through the response of institution and individuals to the victim.

interviewing the child. At the same time, however it is important that high standards of evidence collection are maintained in order to ensure fair and equitable outcomes of the justice process. In order to avoid further hardships to the child, interviews, examination and other forms of investigations should be conducted by trained professionals who proceed in a sensitive, respectful and thorough manner in a child-friendly environment

- d) ***The right to be protected from discrimination:*** The justice process and support service available to Child victims, Witnesses and their families should be sensitive to the child's age, wishes, understanding, gender, sexual orientation, ethnic, cultural, religious, linguistic, and social background, caste, socio-economic condition as well as the special needs of the child, including Health abilities and capacities. Professional should be trained and educated about such differences. Age should not be a barrier to a child's right to participate fully in the justice system. Every child should be treated as a capable witness according to his/her age and level of maturity
- e) ***The right to special preventive measures:*** Children may already face twice as much as risk of repeated victimization as adults because they often are perceived by a potential offender as being vulnerable, unsure of how to defend themselves or unable to properly assert themselves and take a strong position against an adult. A preventive measure that could be used to protect children is to demand references and a criminal background assessment before hiring personnel likely to work with children such as school teacher
- f) ***The right to privacy:*** The child's privacy and identity must be protected at all stages of the pre-trial and trial process. The release of information about a child victim/ witness in particular, in the media may endanger the child's safety, cause the child intense shame and humiliation , discourage him from telling what happened and cause him severe emotional harm.
- g) ***The right to safet :*** Where the safety of a child victim may be at risk , appropriate measures should be taken to require the reporting of those safety risk to appropriate authorities and to protect the child from such risks before , during and after the justice process. Professional should be trained in recognizing and preventing intimidation, threats and harm to the child victims and witnesses
- h) ***The right to compensation:*** The child victim may be awarded compensation for his/her relief and rehabilitation. This compensation may be awarded at an interim stage, during the pendency of the trial, as well as the conclusion of the trial. procedures for obtaining and enforcing reparation should be readily accessible and child sensitive. Victims may

be repaid for material losses and damage incurred receive medical and/ or psycho-social support and obtain reparation for ongoing suffering

- i) ***The right to be informed:*** There are two aspects of child victims' and witnesses' right to be informed, the first aspect is the more general one and consists of informing child victims and witnesses about the assistance they are entitled to, the way legal proceedings are organized and the role they can play in those proceedings if they decide to do so. The second aspect is more specific and relates to information on the particular case in which the child is involved, it implies being informed about the decisions tendered about the status of the offender and so forth.

The POCSO Act reflects the commitment of the Indian Government to safeguard the rights of the children and in accordance with the Constitution of India<sup>3</sup> and The United Nations Convention on the Rights of the Child.<sup>4</sup> (UNCRC), Convention on all forms of discrimination against women (CEDAW) and the Convention against transnational Organized Crimes (UNTOC) and its protocol to prevent, suppress and punish trafficking in persons, especially women and children (Palermo Protocol)

### 3. **JUVENILE JUSTICE (CARE AND PROTECTION) ACT, 2015**<sup>5</sup>: JJ Act, 2015

replaced the erstwhile Juvenile Justice Act, 1956. The current 2015 Act aims to consolidate and amend the law relating to child in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social-reintegration by adopting a child-friendly process of adjudication in disposing of matters in the best interest of child and for their rehabilitation through processes provided through institutions and bodies established. The 2015 Act defines the term "child" under section 2(12) as a person who haven't completed the age of 18 years. It also defines different orders of children such as: ***Children in conflict with law, Children in need of care and protection, Children in contact with the law and children at risk.*** The

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<sup>3</sup> The constitution of India guarantees various rights and freedoms to children as Citizens under Article 21 (Right to life and liberty), Article 14 (Right to Equality), Article 21A Right to Education, Article 15 (3) (special provisions for children), Article 24 (prohibition of trafficking of children), Article 24 (prohibition of employment of children in hazardous occupation, Article 39A (directive principle of the state to ensure children are given opportunities and facilities to developed in a healthy way, Article 45 (free and compulsory education till 14 years), Article 47 (duty of the state to raise the level of nutrition),

<sup>4</sup> Convention On the Rights of the Child : The Children's version UNICEF. Ratified by India in 1992

<sup>5</sup> JJ ACT received the assent of the president on 22nd December 2015 and came into effect from 1<sup>st</sup> January 2016.

Act has also been praised for introducing some innovative features , similar to the conception of primary assessment for heinous offences by children above 16 years , the provision for relinquishment for orphaned , abandoned and surrender children, the recognition of colourful forms of indispensable care, similar as foster care, the establishment of Child Welfare Penal, Juvenile justice boards for dealing with different orders of children and the creation of special offense against children , similar as carnal discipline, child marriage, child labour etc. Despite its positive aspects, the act has faced several challenges. Some of them are:

- i) *The Act is considered to be discriminatory for categorizing criminals on the basis of children below 16 years and above. This provision is arbitrary, illogical and unconstitutional. Moral rights activist, advocates, academicians, child rights activist argue that, this provision goes against the object of JJ ACT. As it ignores the factors that impact the gender of children, similar as their socio-profitable background, family terrain, peer pressure, internal health etc.*
- ii) *The Act has been blamed to be ineffective in addressing the root causes of juvenile delinquency and child vulnerability*
- iii) *The Act does not give any comprehensive solution with respect to the issues that deal to child in conflict with law or being or being in need of care and protection.*
- iv) *The Act has been questioned to be impractical and illogical in its approach and prospects*
- v) *The Act also does not give for any medium for monitoring and assessing the impact and issues of its perpetration on children's rights and welfare.*

#### **4. CHILD WELFARE & INDIAN LEGAL SYSTEM**

The modesty of a woman's body Malnutrition, illiteracy, trafficking, drug abuse pornography etc are not uncommon among the children in India. Child sexual abuse includes physical or psychological maltreatment of a child usually by a person who is in a position of trust and confidence in relation to the child.

National study undertaken by Ministry of Women and Children development defined Sexual assault as making the child fondle with his/her private parts or making the child exhibit private parts and being photographed in nude. However, the report did not exhibit the true reality because most of the cases go unreported because of the stigma attached in our society.

Before May 2012, various sections of the IPC dealing with Sexual Offences were applied to the cases of child sexual abuse resulting in serious miscarriage of justice as the provisions were not reasonable sufficient for the application to cases of child sexual abuse.

## **5. EFFECTIVENESS OF THE ACTS**

The Aforementioned Acts are considered to be the primary legislation that comprehensively deals with the rights and interest of the child and child in conflict with law. The positive aspects are mentioned below:

- The POCSO Act has increased the reporting of child sexual abuse cases, as it provides a comprehensive and gender – neutral definition of various forms of sexual offences against children, and mandates the reporting of such cases by any person who has knowing of them.
- The POCSO Act has also enhanced the protection and support for child victims and witnesses, as it provides for special courts, special public prosecutors, special juvenile police units, and Child Welfare Committees to deal with such cases in a speedy and sensitive manner. It also provides for Medical Examination, Counselling, compensation and other assistance to the child victims.
- The Juvenile justice act has also introduced some reforms in the juvenile justice system such as the provision for preliminary assessment of child aged 16 – 18 years who are alleged to have committed heinous offences (such as rape, murder) and the possibility of transferring them into adult court as if they are found to be mature enough to understand the Consequences of the action. This provision aims to balance the principles of accountability and rehabilitation of such children.

- The Juvenile Justice Act also provided a child friendly approach in dealing with children in conflict with law and children in need of care and protection. It provides for the various institutions and bodies to cater to the need of these children, such as juvenile justice boards, child welfare committees, observation homes, observation homes, special homes, special homes, Childrens' home, fit facilities, fit persons, foster care. It also provided for various care measures to rehabilitate and reintegrate these children into society, such as education, vocational training, counselling, social work, community service etc.

## **6. Way forward**

### **Some possible suggestions for improvement are:**

- Strengthening the capacity building and training of all stake holders involved in the process, such as judges, prosecutors, police officers, medical practitioners, social workers, counsellors etc.
- Enhancing the awareness generation and sensitization campaigns among the Public, especially parents, teachers, children and community leaders about the provision and procedures of these laws
- Improving the infrastructure and resources for the special courts, special public prosecutor s, Special Juvenile police units and child welfare committees.
- Ensuring timely completion of the investigation, trial and disposal of cases
- Ensuring adequate witness protection services for children in institutions and alternative care arrangements
- Ensuring quality care and protecting service for children in institutions and alternative care arrangements
- Ensuring regular data collection and monitoring mechanisms



- Ensuring coordination and collaboration among different agencies involved in the process
- Ensuring proper collection, preservation and analysis of evidences.

## **7. Conclusion**

Children are the greatest asset and resource of the nation. Therefore care, protection and proper counselling are very important for their upbringing the society. They should be given the opportunity to of a fair and congenial atmosphere to grow up to become good citizen being physically and mentally fit and healthy endowed skills and efficiency required by the society. Equal opportunities to all citizens with no discrimination should be provided for reducing inequality and curbing the delinquency in juveniles to establish social justice.

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