

Sexual Offences On Children- Activeness of Indian Judiciary

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Abstract

Children are the valuable asset of India. There is provision in the constitution of India to give protection to the children under Article 15 of the Constitution. Sex crime on child being committed during Vedic Period, during princely rule in India, during Mohammedan dynasty and in British rule in India. There being provision of severe punishment to the offender in past period to up to now but even this sex crime on the child are increasing rapidly so to prevent the sex crime on child sex education should be given to the students in the aided and unaided school in India. Courts of Justice are regularly doing its responsibility to stop the sex crime on children so Pocso statutes, 2012 is partially successful to prevent the sex crime on child so enactment of new statutes may be helpful to stop the sex crime on child.

Keywords: Child, Sex Crime, Sex Education, assault, Indecent, consort, punishment

1. Introduction

This research study focus on the activeness of Indian Judiciary on issue on sex crime on child into India. Courts of justice has been actively doing all that is required to fulfill (a responsibility) judicial legal obligation from Vedic Period to up to now. King was the courts of justice during Vedic Period. Rule of Conduct are mentioned in the law code of Manu that he should tale true. He must not consort with an enemy, a friend of an enemy, an unrighteous person, or a thief-as also with another man's wife. A man should live pious life but even this there was presents the sex crime on child during Vedic period. As stated by Manu Code whenever man do sexual abuse with woman of another category, king owe mutilate this physique added to commit merciless dealings with whichever possibly result in very fear within memory to another men together with put to death him. During princely rule in India Chanakya Arthasastra was the source of legal statutes. Chanakya give the name of Offence "Sahasa" and he classified the offence into first degree, Second Degree and Third Degree and he give name to eliminate the offence as "Kantak Shodhan" in his Book that is Arthasastra. During Mohammedaan dynasty Koran being ground for criminal matters. During British rule in India Indian penal code was enacted and after it India have ratify and sign the Convention on the Right's of the Child and Pocso Statute was enacted the by parliament of the India. In recent time Indian Penal Code is repealed by the Parliament of the India and New Code The Bharatiya Nyaya Sanhita, 2023 is enacted by the parliament of the India. Chapter 5 of this Sanhita is related to the offence against women and child. Minimum punishment for

imprisonment is increase for sexual offences on child from time to time which is different according to the nature of the crime. But even giving severe punishment to the offender number of sex crime on child are increasing rapidly in India. Jaipur become the first in sex crime on women according the information disclosed by the state Government of Rajasthan in the Rajasthan State. Courts of Justice are aware about the sex crime on the child and regularly giving punishment to the offenders.

This research problem being a combination of three distinct concepts: sex crime on child, severe punishment to offender who commits the sex crime on the child, child's right against the sex crime on the child. Every effort is done by the Courts of Justice to minimize the crime which may be socially acceptable under the conditions of increasing sex crime on child. So, as a prior condition, prior to going into details of the responsibility of court of justice, reason relating to sex crime on children is to be discussed in association with these distinct concepts.

Sex Crime on child being committed during Vedic period, princely rule in India and in Mohammedan dynasty and during current time also. To minimize the sex crime on child the there being provision of severe punishment on the offender and harsh treatment was given to the offender. It is noted the India has ratify and sign the Convention on the Rights of the Child but sex crime on the child are increasing rapidly. Woman can be of any age.

Supreme Court give Judgment in "Anurag Soni versus State of Chhattisgarh (2019)" that her Consent which is based on misconception of fact is Rape and court of justice inflict severe punishment on the offender.

Parliament of India have enacted Pocso statutes, 2012 to prevent the sex crime on the child and court of justice perform their responsibility of prevent the sex crime on child. There are some provision in the Pocso Statutes to prevent the sex crime on child which are indecent assault in relation to child, unjust hire child even through a prostitute, unjust hire children upon pornographic performance. As per information given by the Government of Rajasthan in the legislative assembly number of sex crime against child are increasing rapidly in the state and as per news published by the News Paper Courts of Justice doing the responsibility to minimize the sex crime on child. Some factors are responsible to increase the sex crime on child that is loneliness of children, poverty of children and failure of efficient machinery to prevent the child rights. So Courts of justice are partially successful to protect the child rights which are given to children in the Constitution of India. This study centralizes the issues related with sex crime on child and the responsibility of Courts of Justice so as to prevent sex crime on child.

STATEMENT OF THE PROBLEM

Foremost discussion for the whole of the research paper is on sexual offences on the children and careful effort done by Courts of Justice to restraint sex crime on Child within India. Courts of Justice are careful to prevent the sexual offences on the children but crime are increasing rapidly in the Country so for this I have to focus upon the following issues,

- . Are children are safe from sexual offences in the Country in the present time?
- . Are legal development related to child rights are successful to obtain the desired result?
- . Are work of Courts of Justice have been to the acquired degree so as to restrain sex crime on child?

REVIEW OF LITERATURE

The Review of literature has been an explanation belonging to text relevant so as to role of Courts of justice to stop sex crime on child with the resolve to keep safe from harm the child's right. Text gives a general review of what effort being done through court of justice throughout the time of Vedic period till up to now. The literature can be traced on three connected object that is to say child's right, legal statutes, activeness of Courts of justice to prevent sexual crime on child. In this research all these three purposes are taken.

Patrick Olivelle(2009) The Law Code of Manu, Oxford University Press United Kingdom.

This literature gives understanding of role of Court of Justice during Vedic Period conduct of men is mentioned in this literature that is He must not consort with an enemy, a friend of an enemy, an unrighteous person, or a thief-as also with another man's wife; for there is nothing in this world as sure to shorten a man's life as consorting with someone else's wife. It is mentioned in this literature that in cases related to assault against women. On condition that any unmarried sexually assault a different unwed, female offers being financial penalty two hundred thola, recompense tripartite reverse dowry, added to obtain 10 whip. During the time that any women sexually assault any unmarried, nevertheless, female person skull should being trimmed at once together with take in turn, 2 connected with female person digits owe being disinherit together with female owe being march upon any ass"[1]. Further in this text activeness of Court of Justice is being explained.

Shri Narain Gaur(2005) IPC(Act 45,1860) : Divedi & Company Law Publishers & Book sellers Civil Lines, Allahabad-In this text knowledge regarding role of Court of Justice during princely rule connected with India has been elaborated.Chanakya's Arthasastra, being the source of penal statutes and according the Arthasastra punishment was given to the offender.Chanakya use word 'Sahasa' for offence and to give punishment to the offender word "Kantak shodhan" were used

During Mohammedan Dynasty Koran was the source to give punishment to the offender and Trial was held by Kazis and punishment was inflicted by Mir Abdul. Severe punishment was given during that period.[2]

During British rule in India Indian Penal Code was enacted in that period and Chapter 16 is relating to the Sexual offences against women and child and there was provision of severe punishment on the offender according to the nature of the offence.

It is mentioned in a case that corroboration is not necessary for the evidence of prosecutrix [3]

In the "Convention on the Rights of the Child-it is mentioned in this Instrument that child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the charter of the United Nations and in particular in the spirit of peace,dignity,tolerance,freedom equality and solidarity. it is mentioned in the declaration of the Rights of the Child,"the child by reason of his physical and mental immaturity needs special safeguards and care, including appropriate legal protection, before as well as after birth"."

In the Pocso statutes 2012 it is mentioned that child should be protected from all types of sexual crimes and Special Court is established by the State Government to protect child rights and children should be protected from pornographic performance and severe punishment provision are mentioned in this statutes. Compensation provision are made for rehabilitation of the victim [4].

In a case “A court in Odisha’s Mayurbhanj District sentenced a 60-years-old man to life imprisonment for raping a specially abled girl last year. Fast Track Special Court pronounced accused guilty of raping the 12-year old girl, and also imposed a fine of Rupees 10,000 on the convict Special Public Prosecutor said. Accused was booked under sections of the POCSO Act. The Court also directed the Mayurbhanj District Legal Services Authority to pay Rupees 4 lakh as compensation to the survivor, Special Public Prosecutor Said. Convict had raped the girl on June 17, 2024. The Survivor’s family had lodged an FIR with Badampahar Police Station, following which the accused was arrested.” [5]

In “The Bharatiya Nyaya Sanhita,2023 Chapter 5 is related to the Offences against Woman and Child in which Section 63 give the definition of rape and consent have no legality in the matter of sexual intercourse with the child in this statutes so consent which is based on misconception of fact is rape which is mentioned by supreme court in Anurag Soni versus State of Chhattisgarh, 2019[6]”

In Nagaland, Nagaland police have busted an organized sex trafficking network operating in Kohima, rescuing a minor girl and arresting nine people, including key masterminds, an official statement said. The operation was initiated after an FIR was registered suo motu by Kohima Women Police station, following a missing complaint, it said. The victim was traced and rescued from a hotel in Kohima on August 30, and she was provided with medical care and counseling. The victim, in her statement claimed that she was coerced into sex work and was sexually exploited by several persons.[7]

In a Question asked by the Member of Legislative Assembly of Rajasthan Jaipur Report top most rape cases in the Rajasthan state. Rajasthan reported 2,966 cases of rape, 12 cases of murder after rape, 187 cases of dowry murder, 36 cases of abetment of suicide, and 6,192 cases of harassment of women over dowry from January 1 to June 30 this year, the Government told Rajasthan Assembly this week. of these, Jaipur district reported the highest number of rape cases at 392, and dowry harassment cases at 747. In response to MLA question in the Assembly the government said that out of a total of 2,966 rape cases, a challan or chargesheet was filed in 1,387 cases, 1,187 FRs (final reports) were filed and 392 cases were pending. Of a total of 12 cases of murder after rape chargesheet were filed in 8 cases, 3 FRs filed, and 1 case is pending. The reply stated that out 187 cases of dowry murder, chargesheets were filed in 92 cases, FRs filed in 31, and 64 cases are pending. Out of 36 cases of abetment of suicide, chargesheets were filed in 7 cases, FRs filed in 5 cases, and 24 cases are pending. Of the 6,192 cases of women harassment (dowry), chargesheets were filed in 3,004 cases, FRs in 1,863, and 1,325 are pending. In Table 1 Number of rape and other cases are mentioned in Rajasthan from (January 1 to June 30) are mentioned, and in Table 2 Rape cases in Jaipur are mentioned as is given below.

TABLE 1.

OFFENCE	NUMBER OF CASES
RAPE	2,966
MURDER AFTER RAPE	12
DOWRY MURDER	187
ABETMENT OF SUICIDE	36
DOWRY HARASSMENT	6,192

TABLE 2.

JAIPUR DISTRICT	CASES	CHARGESHEET	FRS	PENDING
JAIPUR WEST	90	29	46	15
JAIPUR EAST	101	37	46	18
JAIPUR NORTH	50	29	15	6
JAIPUR SOUTH	99	42	24	33
JAIPUR RURAL	52	30	18	4
TOTAL	392	167	149	76

[7]

In recent case “in Bhadrak District in Odisha in Chand Bali area rape with murder case occurred with 10 year old girl her dead body found in bushes due to which heavy anger spread in the area. Police have arrest to the accused within 24 hours. Angry persons have demolished the house of the accused and do demonstration on the road. Chief Minister have announcement to give 10 lakh rupees monetary assistance to the family of the victim.”[8]

In recent case “ Chattishgarh High Court have convict the accused for imprisonment of 1 years under section 354 of Indian Penal Code when a 19 year old boy pick the hand of school girl and pull her toward him and say “ I LOVE YOU” to the girl. Subordinate Court give him Sentence of 3 year imprisonment and High Court reduce the Sentence for 3 year to 1 year for do insult the modesty of the girl by the man.”[9]

SCHOOL MUST TEACH KIDS ANTI RAPE LAWS :- In a recent case” Supreme Court express concern over the stringent protection of Children from Sexual Offences(Pocso) Act being invoked in cases of consenting adolescent romantic relations, Supreme Court said that there was a need to spread awareness among students about the issue and hinted that it would pass directions.”The Pocso Act is being misused in cases of marital discord and matters pertaining to consensual relationship between adolscents.The laws is being thrust upon boys. We should spread awareness among boys and men about the legal provisions,” the court said. The Court directed States to file responses to a PIL seeking its intervention to direct the government to make people aware about the law. Advocate of Petitioner said the country continues to witness a disturbing surge of rapes and crimes against women and girls.”It must be made mandatory in all schools whether aided or unaided, whether they have classes on sex education

or not, to educate the children about the folly and drastic consequences of rape, including creating awareness that violating the privacy of the other sex would be considered wrong and derogatory and that it amount to a crime, “the petition said, “school should make students aware about anti rape laws at a young age so that they understand the consequences of committing such offences, including different kinds of rape as per the amended definition under section 375 IPC,” it further added. SC has repeatedly highlighted the problem of consenting adolescent romantic relations being criminalized. Last week Court invoked its extra ordinary powers under Article 142 of the Constitution and acquitted a man charged under the Pocso Act after noting that the couple was happily married. It said the crime was not the result of lust but love, and the rigidity of law should not be allowed to cause injustice. “We are thus persuaded to hold that this is a case where the law must yield to cause of justice,” Supreme Court had said after the man’s wife told the court that she wanted to lead a happy, normal and peaceful life with him and the child born out of their wedlock.”[10]

This study is limited to the analysis of activeness of Court of justice to protect the best interest of child so as to prevent sex crime on child in India with reference to Rajasthan state and further to enact the alternative law which may be helpful to prevent sexual crime on children which would protect the right of the child. Last mentioned fact- finding analysis have been its origin with respect to 3 conception that is to say sex crime on children, laws enacted by parliament and the rights of the child which have been protected through court of justice. But associations among these different concepts are based on the fact that sex crime on child cannot be stop but courts of justice are trying to minimize it. Enactment of new law can also be helpful as need of the time.

As far as empirical part of this study is concerned, it includes two groups i.e. Group of Police personnel and the Counsel Group. Both Group of Police Personnel and Counsel Group have been selected from five District of Rajasthan. Group of Police have practical experience of investigation of the case and Counsel Group have practical experience to prosecute the case on behalf of the State side and to defend the case as Counsel of the accused. Use of Empirical Methods in this research study is subject to the availability of relevant data.

OBJECTIVE OF THE STUDY

Importance of this study is to have a detailed investigation and analysis so as to address challenge of sex crime against child with reference to Rajasthan state from a legal prospective and to ascertain the success of the court of justice to stop sex crime on child through taking inspiration from international law. Therefore one of the objectives of this study is to find out relation between Pocso statutes so as to prevent sex crime on child with respect to India and to evaluate the success of this Statute so as to safeguard the child rights. Later on this study trace out the changes brought over the years in the criminal laws to prevent sex crime on child with respect to India and evaluate the relationship between these legal measures which are required to prevent the sexual offences on children with a balanced approach which is a fair combination of above laws and rights of the child.

The Objective of this study is.

- To study the nature and extent of sex crime on child which are to be stop with the help of international legal instruments
- To study the existing laws and regulatory mechanism in India with reference to Rajasthan State.
- To evaluate the approach taken by the Courts of Justice to prevent the sex crime on child.
- To know whether Courts of Justice have been successful so as to safeguard the child rights with respect to India.

With respect to last mentioned analysis doctrinal and non doctrinal method are applied in this study. Further material taken from detailed examination of available literature, identification of constituents present in a substance, quantitative data classifying without expressing judgment and inferential orderliness of thought have been collected and relevant system of doing systematic study of materials and sources in order to establish facts and to reach new conclusion.

Facts and statics are used for reference or analysis with regard to learning so as to reach new conclusion which have been derived to the following sources-Judgment of Courts of Justice International legal Code, Reports of various of various institutions News papers, National crime Records Bureau Reports, NGO'S Reports, Books and expert Committee Reports, Law Ministry of Central government report, Law Court recommendation etc. ,In addition to ,Constitution of India, Magazines, PhD thesis, International convention etc. Are also referred so as to obtain outcome of a detailed investigation and analysis so as to connect a relation between sex crime on child and child rights. Researcher performs a detailed investigation and analysis of material belonging to principal and outcome of principal sources with regard to achieving a reason for children's sexual crime. The result pertaining in such situation is depicted here.

The second portion is based on detailed investigation and analysis of subject wherein, source to obtain principal facts and statistics of research are two Groups i.e. , (i) Group of Police Personnel and (ii) Counsel Group. The Group of Police Personnel is expert in the investigation when information of alleged offence is given to the officer in charge of the Police station and police start to collect the evidence against the accused. The Counsel Groups are expert in the subject-matter of law. Counsel Perform duty as a public prosecutor on the State side and defend the accused on the defendant side and contradict the statements of the witness of prosecution. The experience of both the Groups is very vital for this study.

DATA ANALYSIS

For the empirical research questionnaire is being used to collect data. Two expert groups are chosen by the researcher and separate questionnaire are prepared by the researcher for both expert group. Question framed are of objective type of questions for both two groups. researcher have do visit to take response of police personnel ,and do visit to the police station, police choki of medical colleges of five District in Rajasthan State, office of the District Superintendent of police. Researcher has prepared separate Questionnaire for Counsel Group and have prepared Objective type question for the counsel group and have do visit to the Five District Sessions Court. Both Group express their opinion the there is more

requirement to enact new laws which may be helpful to minimize the sexual offences against children and present Statutes are partially successful to prevent the sex crime on child. For Doctrinal research Researcher use relevant lawful principle, theories of expert, judgment of Supreme Court of India, High courts, statutes enacted by parliament, international convention report etc., are used. Data are collected in table form and comparative analysis has to be done of the study of both Doctrinal and non Doctrinal research and conclusion is drawn.

ETHICAL CONSIDERATIONS

As a researcher has included individual participants for empirical study and collected primary data from them, it is the responsibility of the researcher to uphold ethical consideration. Researcher has assured to the Member of expert group that their identity will not be disclosed. Rajasthan is large state so researcher have chosen only five District to do study on the subject.sex crime on child is big issue so five District is chosen for study. Time, money are another limitation of this research study.

CONCLUSION

On basis of information revealed through Law Ministry, central Government, NCW and direction given by High Court indicate that Sex education should be given to the students in both aided and unaided school. Good touch, bad touch sensation should be taught to the students in the school. Chance of mediation can be given to the consenting parties .money given to the survivor may be increased for the rehabilitation of the victim.Pocso Act is partially successful to prevent the sex crime on child so Enactment of new law may be helpful to prevent the sex crime on child.

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