

## **Pocso: “A terror free childhood”**

*By Bhawani Prasad Pandey*

*From Lucknow University*

***“Laughter is timeless, imagination has no age and dreams are forever”***

*Walt Disney*

We human beings face seven stages in our life. These very seven stages are from birth till death of the individual and these are the only seven ages that maintain the existence of the individual its relations and its intercourse. Shakespeare was a very famous poet and writer of British influence and in his very famous poem he has talk about the seven ages that a man is gone through or faces in. He in this poem in the third stanza and the last stanza has mentioned two things that it is the cycle of stage means whatever I was in my childhood that thing again come in my old age and the next thing is that we are the role players and we all have to play our roles on the drama stage and life is just like the theatre art.

These two lines have become a source of inspiration for me and I was able to speak and present my very skewed knowledge about this topic. But before going in furtherance of the topic I want to tell u that now the time has changed and now the sacrament has also changed, this is because of the fact of globalization, new gadgets and much more. But the question which arises is with the change of time the feelings towards the childhood and nature which we had in our childhood changed. From my point of view and the small research which I had performed among mu university friend I come to the conclusion that the answer to this very question is no. We all in the childhood have played the chupan chupai, pakdam pakdai sap seedhi and all the games and we all want to prove us correct in front of our mother. But the question is why suddenly I am talking about the memories of childhood in the legal paper. The childhood is deemed to be the most important period of individual life; This is not only important but interesting as well. This is the period which we love the most and this is the period when we do not hesitate to say anything, we can say that this is the period what we can say is the golden age or era..

The industrialization globalization and privatization and the lust to create and earn more money has in some or the other way affected the whole Diaspora of the world. There are

many incidents to be discussed in so on and so forth manner. Among these the living condition of children is the best example of the present scenario.

According to the psychologist this lust of creating more and more and earning more and more in some or the other way has aroused the grievous tendencies and inhuman tendencies of the individual. The capitalist class wants the profit in any situation and circumstance and the frustrated mind of the laborers both are contributing equally in the furtherance of the exploitation of the children or child as one and whole.

### **Exploitation and assault:-**

These two words exploitation and assault are the most familiar word of legal aspirant in case of studying the IPC and CrPc. But here my motive to use this word is to endorse the information and to co-relate with the existing condition of the children and this capitalist class. As in the earlier page I have written that the psychological conditions and the mental unsoundness due to the increasing capitalism and the privatization along with the globalist approach.

Actually as the time is changing the moral values are depriving and hence the individual in order to get rid of this anger delivers his frustration on his wife, children that have led to domestic violence. But the major factor comes or the issues arise when he deliver or open the loop on a girl or the children in the form of sexual offence.

Here I want to clear you that not only the privatization world or the moral psyche of the individual is right the major cause but the feeling of might is right is also important. This very feeling of might is right and I am powerful has lead the individual to give the physical and mental torture to the female to prove them strong. This is also one of the very major fact to be consider.

In the current scenario this exploitation has changed its form and trend and now the people are more prone to make the children exploited either physically or biologically and to complete there or we can say that to fulfill their lust. According to the psychologists this is also a psychological disease. Actually the excess of alcohol and drugs have lead the people to not control their nerves and to fulfill their lust they target on the age group that will not oppose it because they are too weak and ineligible to understand.

According to Nation crime record bureau of India in the year 2005 to 2010 sexual offence cases are more with the children then with adults. According to the rough report it is exceeded by 25 percent hence that was the time to take a firm step in this regard and in the year 2012 an act was passed that has lead the major work on the exploitation of children and it was after the act reduced by 27.3 percent in the Uttar Pradesh itself. But before going to the further data and discussion we have to know or to do the critical analysis of the act.

Then only we will be able to understand the facts and circumstances of everything. This paper not only contain the critical analysis but being the presenter I would like to inform that it contain a lot of things good for children and a safe life.

### **Protection of child against sexual offences act -2012**

The protection of child against sexual offence act is the very milestone that our parliament has created on the path of free and fair life of the children. In the short terminology and within the academicians and the general public it is known as POCSO. This very law was enacted and come into force on 14 November 2012. This was the day when a major breakthrough of this mental imbalance is been set up and created a mile stone But let us study it minutely.

The POCSO act 2012 is a comprehensive law that is made by the parliament in order to curb the problems and psychological harassment with the children which causes a traumatic disorder to them. This very act not only give the judicial justice but also help in the psychological goodness and wellbeing of the individual. This very POCSO act protects the child from sexual harassment, sexual abuse and pornography. Moreover the Pocso takes care about the psychological condition of the children at every judicial stage. This act is mainly concerned with the child and the very word child is human being below 18 years of age. This mean whosoever is below the period of maturity if he has faced any sort of the sexual offence then he can get the relief from this act.

The main thing which we have to consider on that the limit or the scope of this act is very vast. It not only gives the protection to mentally capable children but also to the mental incapable children. Moreover it creates a restriction on the family members or any judicial officer or law abiding person who has assaulted a child.

This pocso act is a landmark act as said earlier is proved by the very fact that this act has created the police or the police officer in the role of the guardian and not the investigative professional. Actually the psychological details show us the fact that not only the criminal act done with the children affect them but also the post-traumatic stress disorders.

The stages of filing a case and the judicial proceeding are quite a very different manner than any other judicial interventions. Actually after getting the first information report registered the case will go the child welfare committee of the state, the full report is to be submitted by the officer in charge to the head of child welfare committee and then the child welfare committee will look up and take into the matter.

As we all know that the medical examination is the very important part of the legal proceedings in case of assault. This is because of the very fact that the medical examination proves the physical assault and the degree. But in this case of POCSO act the medical examination procedure is changed in a quite good way and is beneficial for the child to act. It is in pocso act written that the medical examination of the male child will be done in the presence of the one on whom the person rely most or victim rely the most. This is because of the fact that in psychological trauma situation the feeling of faith is lost and is very common. So in that situation the presence of the one individual is needed. Moreover if we talk about the cases of girl child then it should be medically examined by the female doctors.

The next thing or step goes on the judicial trail and the procedure of the same. The judicial procedure is been take into account in the special court in which the trail should be done in the camera and through the video recording and calling system. Moreover it is strictly said and mentioned that the whole judicial procedure will be done without disclosing the identity of the individual keeping it safe and secure this is because of the fact that it is presumed that if it will be done then then it will be a violation of his life and living standards rights and his image and this is the condemnation of rights because then he will lifelong not able to face the world.

Further in the act it was said that the judicial trail should be done within the presence of any one whom he rely the most and the educationist and the psychologist can be used to make the child able to identify the convicts or any proof . Further it was said that the child will not be called in the court but he may be asked a question or round of questions through the video

link.

In the act it is mentioned that the case must be registered within the one year of the sexual assault happened. This is because in the one year time period the medical marks that prove the act may be reduced and the justice may fall so for the betterment of the child it is further said about the compensation as well. It is said to the special court to determine the compensation so that this compensation will be reached to the child for his benefit itself. Moreover it is assumed that this benefit will make the child to regain his or her moral mental or psychological status by the medical treatment.

Thus there is a need of multi sectorial approach and the developing phase with the care taking medium in the situation. Moreover it was a probable chance that the individual or that child will face it again. Hence the situation and circumstances are foreseen and the standards should be made and maintained so that the child should not face it again and to make the mental physical and psychological development of the child.

Not only the law and order should be maintained but the society should be embraced upon to make the child feel like yes I am here.

*“mamtamai ankhone se dekhon ..... mujhe ab to jeene do”*

### **General principles and grounds on which pocso stands**

#### **(1) Right to life and personal liberty:-**

This right is very much mentioned in article 1 of the Indian constitution. It is written that every person has the right to life and personal liberty and he can live his life the way he wants and this right is subject to the restriction on the procedure established by law. Actually this was the main ground on which pocso stands. Before the enactment of the pocso it was said in many cases by the different courts that the case is rarest of rare and is the violation of article 21. When the pocso judgment was given and it was asked for the standing and statutory law then it was again said that by this approach of the parliament the child's right to life is very much secure.

**(2) Right to be treated with dignity and compassion:-**

It was said that every child and every individual has the right to be treated with the dignity and compassion. The dignified life of every individual is very much must because the dignity of the individual is very important. Moreover the question on the individual personality is something called most challengeable in this respect hence we can say that this is an important paradigm of challenge.

**(3) Right to be protected from discrimination:-**

Right to be protected from discrimination is very important. This is a true factor which is seen in every legal caricature and law making process. This very law protection of child against sexual offences act has a very important ground of this. Gain I would like to refer to the backlog or the episode that has made its focus very strong and that is the time period of the cases before the enactment of pocso.

Actually with the enactment of pocso the children are feeling very safe and society is also dealing in a very clear and cooperative manner and there is no any sort of discrimination which is been made by the society. Hence in the pocso act there is a major change which is made and is a landmark ideology enshrined under the act and that is that age is not a matter in the criminal cases in case of witness any child could be a witness irrespective of their level of maturity and understanding.

**(4) Right to special preventive measures:-**

Children always face more problems of reported victimization then the adults because they are seen as a measure which can be easily exploited and moreover it is often seen by the society that they cannot defend themselves in the society. Hence in the pocso act a new innovative thing which come is the way in which children are given counseling and that is that the professional which we engage with the children should be asked to submit their criminal records or any sort of allegations this means police verification, there ability should be checked and moreover there references should be made to understand with.

## **The demerits of the act**

As already the topic suggest which is given by amity is the critical analysis of the act. This critical analysis should also comprise of the negative elements of the ac. It is very soothe when we criticize something because the criticism make a thing or a subject much more strong and strength. So here I am presenting some loopholes or the pitfalls of the act.

(1) **A strong setup:** - In the pocso act a strong setup to be made by the police and organization along with the governance. But this tends and stands to be the most difficult feature for Indian scenario. This is because of the loose law and order system along with the long time taking processes. Hence this tends to be a great challenge for the governance to stand a strong setup.

(2) **Knowledge about the act:-** This is also a very important thing to consider in the act and that is the knowledge about the act. In our society there is no knowledge among the people about it. Moreover it is also a true fact that there is no awareness among the people. This is also a tragedy with the pocso act because the people of this country firstly do not accept the truth of molestation or assault with the children and on the second concern is are not aware about it and even the government is also not making any awareness programme.

(3) **No or lack of special court:-** As I have already mentioned in my paper that in the pocso act there is a need of the special act and hence the special court to be made to deal with but till date after 2012 the year of enactment of pocso there is a lack of the special court which is need of the hour. Hence in lack of all these court there is a lack of adjudication system,

(4) **Governance is not able to secure discrimination:-** In pocso act it is an important aspect that the children should be made secure in case of discrimination there is a role plays of the governance and its authorities through which the discrimination among the children and within the society but this is very tragic episode and miscellaneous truth that our governance is not able to cope up with this tragic problem.

5) **Further molestation:-** Another thing in this to safeguard from the further molestation of the child because it is of seen that the molestation is very common with children and when the child become victim then it is very easy for the fickle minded people to use and abuse that child. Hence our governance and system is also not able to safeguard the child on this.

## Conclusion

Hence before concluding the paper I want to say that it is a very important step which is taken by the government of India because the society is changing day by day and the cases of molestation with the children is also increasing day by day hence taking the step is often very great.

But before concluding I want to put few of the suggestion:-

- (1) The government in order to make the people aware about the act should organize seminars.
- (2) The children should be taught of good touch and bad touch in the schools and colleges.
- (3) The parents should bridge the gap between them and their children.
- (4) Make the children aware about their family background there resources and the social happenings.
- (5) Make the children aware about the the government plans and things and abilities.
- (6) The new thing of rural children empowerment should start.