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A Study on Child Abuse in the State Of Goa

Saprem Shirvoikar¹, Satyam Shirvoiker²

¹Assistant Professor of law, Commerce Department, Khandola Government College of Arts Commerce and Science, Goa, India.

²Assistant Quality Assurance, Schiffer & Menezes India Pvt Ltd, Goa, India.

ABSTRACT

Child Abuse is one of the serious problems not only in India but the entire world. Though legislation for protection of children from child abuse has been established at national and state level, the crime of child abuse is increasing at an alarming rate. Goa is small state, but still there is increase in the crimes of child abuse. Due to this increase the number of cases pending in Goa Children Court is increasing. Earlier the offences of child abuse is tried under only under Goa children Act 2003, in the state of Goa but after implementation of POSCO Act 2012 (Protection of Children from sexual offences), cases of child abuse are also tried under both Goa Children Act 2003 and POSCO Act 2012. The maximum punishment awarded to the offender under both this Act is 10 years. But in spite of the maximum punishment awarded there is rapid increase in cases of child abuse in the state of Goa. The current study highlights the increase in cases of child abuse cases tried under Goa Children Act 2003 in the state of Goa.

Keyword: POSCO, Children Court.

1. INTRODUCTION

One of the major offences in India is Child Abuse. The offence of child abuse not only affects the physical health of the child, but also affects its psychological behaviour. Earlier people used to live in a joint family. In such Joint family elders like grandfather, grandmother etc used to look after the children and they used to give them the protection and moral values etc. The children were in the safe hands each member of the house used to divide their work which made their work easy. Now the system of joint family is most rarely found. Most of the people have shifted to nuclear families. Living in nuclear family is not an easy task; there are lot of expenses such as electricity bill, water bill, education of the children, domestic consumption, and other household expenses etc. In order to overcome this expense both mother and father of the child goes to work. The child is kept alone in the house or left in the neighbours, friend etc. Since the child is small anyone can take advantage of the child and threaten him not to disclose the incident. When the responsibility of child is given to person who is not the family member there is possibility that child will be subjected to child abuse since there is lack of knowledge about the behaviour of such person in whose guardianship of child is given.

Goa is a place with lot of religious tradition cultures believes and faiths. The rise in child abuse cases in Goa is a matter of great concern. It is not true to say that crime of child abuse came to Goa because of increase in migrant's population. Goa is a place with a scenic beauty, so most of the people who visit Goa have desire to live in Goa so more and more construction projects are coming to Goa. Most of these construction projects are near to the beaches. This migrant goes to work leaving their children alone at the place where they stay this children become victim of child abuse. When the incidence of child abuse is narrated by the child to his/her parents they rush immediately to the police station and register the complaint.

Child abuse can be stopped if each individual treat the child as his own friend, relative, daughter, sister etc. People must change their point of view of distinguishing his own child and other child. Even after so many decades of

Independence this problem of child abuse is still in India as the punishment for the child abuse is prescribed in Indian penal code (IPC) and many other law which deals generally and specifically but still this crime of child abuse is increasing rapidly. The government and non-government organisation are unable to protect the child from child abuse.

1.1 OBJECTIVE Of The STUDY

To find out whether there is increase in child abuse cases in the state of Goa.

1.2 METHODOLOGY

Primary data was collected directly from the records of the court.

2. LITERATURE REVIEW

2.1 Indian Constitution

The constitution of India is a fundamental legal document containing elaborated details for the good governance in the country. It has 395 articles and 12 schedules. The constitutional provision not only protects adult man and women but also children. Part-III of the constitution (Articles 12 to 35) speaks about the fundamental Rights which guaranteed to every citizen of the country. The word citizen is included not only Adult but also children irrespective of their religion, race, caste, sex, place of birth or any of them. When any of this fundamental right is violated by the state there are remedies available to citizens in the form of writs, i.e. Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari. The right to equality, protection of life and personal liberty, and the right against the exploitation are enriched in Article 14, , 21, 21(A), 23, 24, 39(e), 39(f) and reiterated India's commitment to the protection, safety, security and wellbeing of all its people, including the children[1].

Part-IV of the Constitution (Articles 36-51) of India set out the aim and objectives to be taken up by the states. If the state is unable to implement this provision no action can be taken in any court of law but still the state want to bring this principles into force in order to create trust in the people that the government is working for the welfare of the people [1].

Article 15(3) gives special attention to the children through necessary and special law and policies safeguarding their rights. Article 15(3) says that nothing in the article shall prevent the state from making any special provision for women and children [1]. Article 21 of the constitution of India protects the life and personal liberty of all person including children [1]. In Sakshi case Supreme Court dismiss the PIL and issued important guideline for trial of rape and sexual abuse cases which concerns children. In first guideline the Supreme Court said to make arrangement of thing were the victim or the witness is not able to see the body or the face of the accused. In second guideline the Supreme Court said if the question put in cross examination is directly related to the incident must be given in writing to the presiding officer of the court who may put this question to the victim or witness in the language which is clear and not embarrassing. In third guideline the Supreme Court said that victim should be given sufficient breaks as and when required during the testimony [2].

2.2 IPC

Indian penal code 1860 (IPC) is a general legislation that deals with Child Abuse. Section 312 of IPC says that if miscarriage of women is caused not with the good intention then it is punishable with imprisonment of a term which may extend to three years or with fine or both. Section 315 of IPC says that any act done to prevent the child being born alive or to cause it to die after birth, if such act is not done with good faith for the purpose of saving the life of the mother, be punish with imprisonment of either description of the term which may extend to ten years, or with fine or both. As per Section 316 whoever does any act which causes death of quick unborn child would amount to culpable homicide shall be Punish with 10 years and shall also be liable for fine. Section 317 of IPC speaks about the Exposure and Abandonment of the child this is generally resorted to mothers delivering the illegitimate child. The newly born children are found abandoned or murdered or thrown in Nallahas this is mostly done by women whose child is born by illicit relation, without marriage, widow or divorce women. Such act is an offence under section 317. Further the section 317 says that whoever being the father or mother of the child under the Age of 12 years and the persons who are having the care of the child lives the child abandon in a place with intention shall be punish with seven years' imprisonment or with fine or with both. Section 318 of IPC provide punishment to the person who secretly burying or otherwise disposing the dead body of the child, whenever the child die before, after or during the birth of the child, intentionally conceals or endeavours to conceal the birth of such child, such person shall be punish with imprisonment of either description of a term which may extend to two years or with fine or both. Section 361 of IPC deals with Kidnapping from lawful guardianship of such a person who is minor or the person of the unsound mind without the consent of guardian is said to be kidnap such minor or a person from the lawful guardianship. Except to a person who believes himself to be the father of illegitimate child or a person in good faith believes that he is entitle for the lawful custody of the child. Kidnapping

or abducting a child under ten years of with an intention to of taking any movable property from the parent of the child is punishable offence under section 369 of IPC, shall be punish with imprisonment of the term which may extend to seven, and shall also be liable to fine. Section 366-A of IPC deals with, inducement of a minor girl under the age of eighteen years to go from any place or to do any act with the intention that that such girl may be force or seduce to illicit inter course with other person shall be punishable with imprisonment of ten years and shall also be liable to fine. Section 372 of IPC provide punishment for selling a minor for the purpose of Prostitution shall be punish with either description of the term which may extend to ten years and shall also liable to fine. Section 376 of IPC provide punishment for the person who had commit Rape, Such person shall be punish for a term which shall not be less than seven years but which may be for a life or for a term which may extend to ten year and shall also be liable for fine. Section 377 deals with unnatural offences which says that whoever voluntarily has carnal inter course against the order of the nature with any man, women and animal, shall be punish with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also liable for a fine. Sodomy is an offence which is worse than the rape against the male child which is punishable under section 377[3].

2.3 The Goa Children's Act 2013, and rules 2014

The Goa children court is the specific act that deals with child related cases in the state of Goa. Goa children's court is the only court in the state of Goa having the jurisdiction of entire state of Goa the main objective for formation of this court is to dispose the child related cases in a speedy manner. This Act is the specific Act that deals specifically on the issue of child abuse, Section 8 of Goa children's court deals with the child abuse under this Act if a person is found guilty for the offence of child abuse such accused person shall be punished with imprisonment of either description for ten years. The minimum punishment for child abuse is ten years and shall also be liable for a fine of RS. 2, 00,000/-. The punishment awarded by the Goa children's court is the highest as compare to other state. Child abuse is a heinous crime and need to be effectively addressed. In order to archive this objective the government of India had passed the protection of children from sexual offences Act 2012[4]. The said Act provide for constitution of the special court for trial of child abuse and other sexual offence. If such type of court is already constituted then such court will be the special court under the said Act. In the state of Goa children's court has already been constituted which shall the special court which needs to be establish under the POSCO Act 2012.

Section 8 of the Goa Children's Court Act 2003 deals with Child Abuse specifically this section is described in the following manner.

All children should be assured of a safe environment. A safe environment is an environment in which he/she will not be abused in any way and his/her development will be nurtured.

Sub section (1A) which says that Child Trafficking shall be an offence punishable under this act. Any person who commits or aids or abets in the child trafficking shall be punishable with imprisonment for a term which may extend to seven years and a fine which may extend to Rs 1,00,000/-

Sub section (2) which says that whomsoever commits any child abuse or sexual assault as defined under this act, shall be punished with imprisonment of either description for a term that may extend to three years and shall also liable to fine of Rs 1,00,000/-. whoever commits any grave sexual assault shall be punished with imprisonment of either description for a term that shall not be less than ten years but which may extend to life imprisonment and shall also liable to a fine of Rs 2,00,000. whomever commits incest shall be punishable with imprisonment of either description for a term that shall not be less than ten years but which may extend to life imprisonment and also a fine which may extend to Rs.2, 00,000/- (statement of the child victim shall be treated on par with the statement of a child rape victim) under section 375 of the IPC, as laid down by the supreme court of India.

Sub section (3) which says that In case of sexual assault on a child, the investigating authorities shall ascertain the need to medically examine the child victim in consultation with the medical authority. In case of child abuse or grave sexual assault on a child, such medical examination of the victim child shall be compulsorily done.

Sub section (4) which says that No person shall reside with or keep with him, either wholly or partly, one or more children who are not related to him by blood, unless prior permission has been obtained by him from the Director after furnishing due information to the director in the prescribed form. It shall be the responsibility of such person, desirous to reside with or keep child or children not relate to him by blood, to inform the Director and to obtain prior written permission from the Director for doing so.

Sub section (5) Provided that a period of 3 months from the commencement of this act will be allowed to inform the director.

Sub section (6) which says that the competent authority, the Director and the special officers shall have the powers to authorise the officer-in-charge of the nearest police station or District Inspection Team to inspect and check the child/children in each case under sub-subsection (4) and to submit a report with recommendations, if he considers it necessary.

Sub section (7) which says that the competent authority or the director or the special officer, as the case may be, shall, after considering the report of the police or the Distinct inspection team and having been satisfied of the

necessity to do so, issue an order to remove the child and place him in a registered children home or state run institution.

Sub section (8) provided further that nothing in this section shall apply to cases where reasonability exist such as when the child/children are staying with their friends or visiting them on holidays for short period, or students are in a group, or the child is legally adopted etc.

Sub section (9) which says that whichever resides with or keeps with himself one or more children not related to him by blood without the prior written permission of the Director or whoever prevents officers from discharging their duties under subsection (6) shall be punishable with imprisonment for a term which may extend to three years and to a fine which may extend to Rs. 1, 00,000/-

Sub section 10 says that onus on Establishment:-

(a) All hotels and other establishment which provide boarding or lodging or any similar facility shall ensure that children are safe and not at risk of child abuse within their premises including all adjoining beaches, parks etc. if they have access from such establishment.

(b) No child shall be allowed to enter any room of any hotel or establishment which provides boarding or lodging or any similar facility unless the child is registered as staying in that room with family, relatives or person related by blood: Provided that nothing in this sub-section will be deemed to apply reasonable areas such as groups of school children accompanied by a teachers, children who may be staying with their friends and families, etc.

(c) All hotels and other establishments which provides boarding and lodging or any similar facility shall ensure that no child has access to any internet facilities which are not fitted with filters and to any objectionable material including through film or video, disc-players, cable or any other medium provided by the establishment.

(d) The owner and the manager of the hotel or establishment shall be held solely responsible for any contravention of this section.

(e) Whoever fails to comply with or contravenes the provision of sub-section shall be liable for a punishment with imprisonment for a term which may extend to three years or a fine which may extend to RS. 100,000/-.

Sub section (12) which says that any form of soliciting or publicizing or making children available to any adult or even other children for purpose of commercial exploitation is prohibited. This includes hosting websites, taking suggestive or obscene photographs, providing materials, soliciting customers, guiding tourist and other clients, appointing touts, using agents, or any other form which may lead to abuse of a child.

Sub section (13) which says that whoever commits the offence of the sale of children or abets the sale of child or the body part/organ of child, or where there is sufficient reason to believe is keeping a child for a purpose of using or selling any body part of a child including its blood shall be punished by imprisonment for a period of not less than three years and a fine which may extend to RS.1, 00,000/-.

Sub section (14) which says that It shall be mandatory for a development of photographs or films, if he finds that photo / film developed by him contain sexual/obscene depiction of children to report this to the officer in charge of the police station failure to report the discovery of such photo/films shall attract a penalty of an imprisonment of description which shall not be less one year and which may extend to three years and minimum penalty of RS. 50,000/-

Sub section (15) which says that the District police, airport authorities, border police, Railway police, and traffic police shall report any suspicious cases of (a) child abuse, (b) an adult travelling with or keeping a child under suspicious circumstances or (c) sale of child or (d) sexual offence with a child or (e) child trafficking, to the officer-in-charge of the nearest police station who shall immediately take cognizance of the said case and proceed with investigation. He shall also report the case to the special officer or to the Director for action under sections 14 and 15 if so required.

Sub section (16) which says that Sale of children shall be prohibited. For the purposes of this Act, sale of children takes place.

(a) Where there is trading i.e. Selling children.

(b) When a pregnant mother executes an affidavit of consent for adoption, for a consideration.

(c) When a person agency, establishment or child-caring institution recruits women or couples to bear children for the purpose of child trafficking.

(e) When a Doctor, hospital or clinic official or employees, nurses, midwife, local civil registrar or any other person registers birth records for the purpose of child trafficking or

(f) When a person engages in the act of finding children among low income families, hospitals, clinics, nurseries, day-care centers or other child caring institutions, which can be offered for the purpose of child trafficking.

Sub section (18) which says that in all matters, the consent or willingness or otherwise of the child to be party to any offence under these act will not be a consideration.

Sub section (19) which says that the state shall provide for setting up for one or more victim assistance units which shall facilitate the child to deal with the trauma of abuse and assist the child in process involved with appearing as a witness before any court or authority handling a case of abuse of a child.

Sub section 20 which says that the Act shall carry out child sensitisation programmes for police officer at all levels which shall include an orientation on child right law. Child right laws and the method of handling child abuse related cases shall also be specifically included in the police training school curriculum.

Sub section (21) which says that the shall undertake child sensitisation training for those involved in healing and rehabilitation and other assistance programmes for children who are victims and promote programmes of information support of such children.

Sub section (23) of the Goa Children's Act, 2003 government shall have the power to appoint person to go undercover and pose as prospective clients for child prostitutes, as employer of child labour etc. and nothing done in course of such operations shall be construed as a contravention of the provision of this Act

2.4 Protection of Children from Sexual offences (POSCO) Act 2012.

The Protection of Children from Sexual Offences Act, 2012, specifically address the issue of sexual offences committed against children, which until now had been tried under laws that did not differentiate between adult and child victims. The punishments provided in the law are also stringent and are commensurate with the gravity of the offence. Under this act, various child friendly procedures are put in place at various stages of the judicial process. Also, the Special Court is to complete the trial within a period of one year, as far as possible. Disclosing the name of the child in the media is a punishable offence, punishable by up to one year. The law provides for relief and rehabilitation of the child, as soon as the complaint is made to the Special Juvenile Police Unit (SJPU) or to the local police. Immediate & adequate care and protection (such as admitting the child into a shelter home or to the nearest hospital within twenty-four hours of the report) are provided. The Child Welfare Committee (CWC) is also required to be notified within 24 hours of recording the complaint. Moreover, it is a mandate of the National Commission for the Protection of Child Rights (NCPCR) and State Commissions for the Protection of Child Rights (SCPCR) to monitor the implementation of the Act [5].

3. RESULTS

3.1 Cases registered before Goa Children court.

Table – 1: Cases filed under Goa Children Act, 2003

Year	No of cases filed under Goa Children Act 2013	No of cases pending	No of cases decided
2010	70	29	41
2011	56	43	13
2012	76	69	7
2013	114	111	3
2014	144	143	1

All the cases of child abuse which are registered in various police stations in Goa are brought before the Goa children court. The above table No. 1 depicts that at the initial stage the number of cases of child abuse brought before the Goa children court in the year 2010 and 2011 was 70 and 56 respectively. Subsequently in the year 2012, 2013, 2014 there was drastic increase in the number of cases of child abuse which is 76,114,144 respectively.

The table – 1, also depicts that large number of cases are pending in Goa children court. In the year 2010 the number of cases pending was less than that is out of 70 cases 41 were disposed and only 29 cases were pending. There After in the year 2011 there was a increase in the pending of cases out of 56 cases, only 13 cases were disposed and 43 cases were pending. There after the number of pending cases goes on increasing. In the year 2012 out of 76 cases only 7 cases were disposed and 69 cases were pending. In 2013 out of 114 cases only 3 cases were disposed and 111 cases were pending. In the year 2014, there was a drastic increase in the number of cases pending. Out of 144 which were brought before the Goa Children's court 143 cases of child abuse were pending and only one case was disposed.

3.2 Acquittals and Convictions of cases under Goa Children Court.

Table – 2: Cases Pending and Disposed under Goa Children Act, 2003

Year	No of cases disposed	Acquittals	Convictions	Transferred to of respective jurisdiction	Abated	Cases discharged
2010	41	21	12	7	1	-
2011	13	08	05	-	-	-
2012	07	02	02	2	-	1
2013	03	0	03	-	-	-
2014	01	0	01	-	-	-

From the above table – 2, it is clear that the rate of conviction in child abuse cases was low from the initial years that are from the year 2010. In the year 2010, out of 41 cases disposed in 21 cases the accused were acquitted and only 12 were convicted. In 2011 out of 13 cases disposed only in 5 cases the accused were convicted and in remaining 8 cases the accused was acquitted. In 2012 only 7 cases were disposed out of which in 2 cases the accused were acquitted and 2 were convicted. Thereafter in the year 2013 and 2014 the number of cases disposed was very low and the disposal of cases was equal to number of cases convicted.

The Table – 2, also depicts that in the year 2010, 7 cases were transferred to the court of respective jurisdiction and one case was abated. In 2012 one case was discharged and 2 cases were transferred to the court of respective jurisdiction. In 2013 one case was discharged.

4. CONCLUSION

Since Goa Children's Court is the only court in the state of Goa, all the cases relating to the children brought before Goa Children court results in large number of cases. The time given by the Goa children court for the each case is reduced which results in delay in disposal of cases. It is clear that there is an increase in the number of cases pending before the Goa Children's Court. Thus there are low conviction rate in spite of the legislation.

5. REFERENCES

- [1] The Constitution of India.
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