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After Effects of Goa's Children Act, 2003

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Goa children's act 2003 is one of the statutes which India has for the protection of its young generation of children. The concurrent rise in the case of crimes against children is drastic and the number of trial cases is increasing day by day. Child abuse is a very serious issue as the harm done at a younger age can leave a mark on the future. The current analysis emphasizes the rise in child abuse cases prosecuted in Goa under the 2003 Goa Children Act. Goa is a small state that still could ensure its youngest citizens via the code. Child abuse charges in the state of Goa were solely prosecuted under the Goa Children Act 2003 until the POSCO Act 2012 (Protection of Children from Sexual Offenses) was introduced. However, today's child abuse cases are heard in court under the POSCO Act 2012 and the Goa Children Act 2003. Despite the fact that legislation to protect children from abuse has been passed at the federal and state levels, the crime of child abuse is frighteningly on the rise.

Keywords: *child abuse, POCSO, Goa children's act, crime, children.*

INTRODUCTION

The journal article provides the different aspects and perspectives on the Goa children's act. Goa children's act 2003 was the first law that had protection norms for children in India and was enacted in the state of Goa. The act was also used as a precedent to create the protection of children from sexual offenses, 2012 (POCSO). Goa's children act, 2003 and rule 2004 was the only act that was present for the safety of children under the IPC 1860, and such offenses are

covered under 375¹ (sexual intercourse without assent), 354² (Outrage of modesty), and 377³ (Criminalize of homosexuality). Goa's children act completed 15 years in its enactment but the implementation lacks planning and groundwork. Financial provisions were not made which would have led to the base of the infrastructure. The notion of awareness is still lacking among school students concerning malicious touch and gestures⁴. With regards to the current scenario, the judiciary of the country is still under the view of the interpretation of the law as in the case on a case basis, the court provides the notion on the human bias of "Let the men have another chance". In regards to data, Maharashtra has the highest number of pending trial POCSO cases⁵.

NOTION OF AGE

Goa children's act 2003 was formed with due diligence from the state of goa itself only. The law was one of the state-made special laws which had provided specific protection for children. The provisions of the goa children's act 2003 had been one of the only Indian statutes which provide the legal definition of trafficking too, in regards to child-specific calls⁶. The statute is more than a decade old and the legislation has been in call of the court being misused and from the perspective of interpretation led to non-justice for the victims. It is detailed legislation that has 40 sections that cover different aspects concerning children as protection from abuse (sexual and physical), education, health, and nutrition. The act as any other penal provision also provides punishment for the crimes committed against children. In regards to the definition of child in regards to the act is marked as below the attained age of 18, while the stakeholders call for deleting this provision from the act and amendment it to "The one who has not completed 16 years

¹ Indian Penal Code, 1860, s 375

² Indian Penal Code, 1860, s 354

³ Indian Penal Code, 1860, s 377

⁴ 'Govts Fail to effectively implement Goa Children's Act' (*Herald Goa*, 10 Febraury2019)

<<https://www.heraldgoa.in/Goa/Govts-fail-to-effectively-implement-Goa-Children%E2%80%99s-Act/142496>>
accessed 15 July 2022

⁵ Department of justice ministry of law and Justice, *Scheme on fast track special courts (FTSCS) for expeditious disposal of cases of rape and protection of children against sexual offences (POCSO) Act, 2019*

<<https://cdnbbsr.s3waas.gov.in/s35d6646aad9bcc0be55b2c82f69750387/uploads/2021/10/2021102971.pdf>>
accessed 15 July 2022

⁶ P.M. Nair & Sankar Sen , *Trafficking in women and children in India* (Orinet Longman 2005) 141

of age.”⁷ The notion of removal of this proposal has the perspective concerning the misuse of the act. The references for this call for the removal of the age provision and amendment to the age of 16 are from a pure view of misuse. In many cases, it has been found that the case registered under such provisions like even under POCSO (protection of children from sexual offenses) have the basis of the facts same that the girl has given complete consent with being completely conscious and has accepted/ knowledge of the such act and what will be the consequences of their actions.

The call of punishment will eat the life of the accused slowly and steadily ending in being alienated from society. The argument presented above is only respected in certain cases where just because the statute calls for the age of 18, the culprit will be put behind bars. Even if it is made certain that the mental capacity of the girl is in full presence. The conversation provides the idea that there are nearly two arguments that can be used to protect the defendant's side. One is that the girl has attained the age of 18, in cases of such scenarios if the birth certificate of the child missing then it is examined as per the norms “Bone ossification test”, a test which is used to determine the age children in the basis of “Degree of fusion of bones” by collecting X-ray of some specific bones the body.⁸ One of the most used methods in the determination of age in such cases is the help of radiography of the hand and wrist. The outcomes of such readings are given in ranges. For example, a child is to be called between the age of “12-15” which will clear the doubt of age, and in this scenario, the culprit will be awarded punishment as the range calls that the age is below 18. But what if, in a case where the reading of the child is within the range of “16-18”, then what will happen?

Under the POCSO act Section 2(d), a child is a person below the age of 18 years old while in Goa children’s act section 2(d), a child is a person who has not completed 18 years of age. This might seem that both acts have a similar definition of a child, but no. Under POCSO, if any crime has

⁷ Prakash Kamat, ‘Goa Children’s Act set for overhaul’ (*The Hindu*, 4 Febraury2019) <<https://www.thehindu.com/news/national/other-states/goa-childrens-act-set-for-overhaul/article26177805.ece>> accessed 14 July 2022

⁸ Urmi Chudgar, Bahuli Sharma & Bharti Ali, *Handbook for Public Prosecutors: Issues under the Pocso Act: A Compilation of Legal Cases and Facts* (HAQCRC, Dec 2019) <<https://www.haqcrc.org/wp-content/uploads/2019/12/handbook-for-pps-on-csa-1.pdf>> accessed 10 July 2022

taken place the age of the child has to be below 18⁹ as it will generate the crime under POCSO while under proviso to section 2(d) of the goa children act¹⁰ if the offense is Rape, a child would be considered someone who has not completed 16 years of age while in POCSO it is 18 years.¹¹ While under the cases of child labor, the person who has not completed his age of 14 years is to be considered under the norms of child labor.¹²

PAVEMENT, GROUNDWORK, AND REALITY

The simple question “*what is the age of the child*” is enough to destroy a person’s life and cored it from the inside out for his lifetime. The benefit of the doubt is used by culprits to be released from the chain of law while in some cases... The person is wrongfully attainted as the rage of age “16-18” creates the doubt, whether the child was an adult or not. The sections of the Goa children’s act have completed their nearly 15 years of enactment which even now lacks the planning and groundwork for its functional mandate. State-level legislation also deals with sex tourism. During the recent calls, it was found that financial provisions were not made which would have led to the base for the infrastructure. The notion of awareness is still lacking among school children/Students concerning malicious touch and gestures.¹³ Whenever the goa children’s act is discussed its concurrent law is also discussed to provide the idea of how a new law has emerged from the roots of the goa children’s act 2003. The difference which can be seen and how much have they changed and altered with the due course of society and law.

⁹ Protection of Children from Sexual Offences Act, 2014, s 2(d)

¹⁰ *Ibid*

¹¹ MsVandana Tendulkar, ‘Challenges faced in ensuring compliance with the Goa Children’s Act, 2003 and the POCSO Act, 2012’(HAQCRC) <<https://www.haqcrc.org/juvenile-justice/children-from-sexual-abuse-presentation/challenges-faced-ensuring-compliance-go-a-childrens-act-2003-pocso-act-2012-ms-vandana-tendulkar>> accessed 10 July 2022

¹² Protection of Children from Sexual Offences Act , 2014 , s 2(e)

¹³ Department of Justice Ministry of law and Justice (n 5); *See also*, Govts Fail to effectively implement Goa Children’s Act (n 4)

The main process of how the burden of proof is exercised under both POCSO and Goa children's act work:

UNDER POCSO

- There are merely 2 defenses that can be taken ;
 1. The age of the person is above 18.
 2. There was no commitment to such offenses.

These 2 points are what is, it is what it is. As for the interpretation if the age of the person is above 18 the provision of the POCSO act won't be charged as discussed above of how the age determination case based is the point of doubt which creates both benefits for the culprit and how it saves the innocent defendant on case to case basis. The burden of proof is to be called under the clauses of abetment or attempt to commit serious offenses under sections 3,5,7 and 9 (section 29 POCSO)¹⁴. The addition to this burden is the addition of mental state. The call of the malice culpable mental state is pushed upon the accused to disprove the notion regards section 30 POCSO¹⁵. The implementation of the provision of the act POCSO is mainly based upon the Sakshi guidelines; which provide the process, how, when, where, and what is to be done upon getting a case under POCSO.

While under the goa children's act the burden of proof lies upon;

UNDER GOA CHILDREN'S ACT

The burden of proof calls upon the accused only as he/she/they have to provide that the child was not with them during the offense; sense to defense. While providing that the child was in his custody at the time of offense or rescue.¹⁶ For the trial of these cases specific children's court had been placed and has all the powers of a session's court.¹⁷ The goa children's act, of 2003 was

¹⁴ Ms Vandana Tendulkar (n 11)

¹⁵ *Ibid*

¹⁶ Goa Children's Act, 2003, s 32(1)

¹⁷ Goa Children's Act, 2003, s 30(1)

amended to place more regulation on child abuse, as the law is to regulate hospitals, children's homes, and even non – governmental organizations to keep the check and balance any malicious activity.

PAEDOPHILES AND CHILD TRAFFICKING

The state of Goa is famous for the fun which it has and the beaches which it has. The other side of the coin is that the state is also famous for children being used for Pornographic means and being under the eyes of a pedophile. One of the first cases which were exposed, the racket of pedophiles which had been working for the last 10 years came to the limelight in the year 1991, the case of Freedy Peats¹⁸. These people were never caught, or put behind the bars. The lack of legislation in these years led to many unreported cases of abuse. The call for minor girls was higher as the cases of trafficking and sexual offenses were being reported daily. The girls were kidnapped and flourished across international borders on the false promise of “*LIFE WHICH YOU COULD NEVER EVEN IMAGINE*”. Especially girl children are subjected to rape, sexual assault, and molestation by pedophiles, these people in many cases are in the family itself or an acquaintance.

Children's right in goa to curb these issues had produced the notion of (DO and DON'ts) for the Goa police, as to protect children from the ground level itself. Now, the property owners are to be held liable and accountable for the safety of children who are on the property¹⁹. Goa children's act was forward with due course of time as in regards to the Indian laws in 2003, the definition of trafficking was never defined under the Indian laws but it was done in the Goa children's activities in specific notion to the state of Goa²⁰. To curb all of these problems another preventive measure is the United Nations declaration on the rights of the child (1989) which calls for the notion of protection against exploitation and to curb trafficking. Certain articles,

¹⁸ *Werner Wulf Ingo v State of Goa* (2009) SCC OnLineBom 383

¹⁹ P.M. Nair & Sankar Sen (n 6) at 156 , 171 ,172

²⁰ *Ibid*

such as 34 provide a profound view of measures that are to be taken to prevent such happening²¹:

- Mandatory reporting via photographer-owned studios and agents likewise are to provide information if they are being asked to click photographs of a child.
- Legislation passed via the control of the central government to try any citizen who is within the national territory or if ran off after committing the crime to try them in person in India itself.

The current state of society shows that the number of such cases is rising and in many of the big states the courts are not able to compete with this increasing number of cases. Maharashtra has the highest number of pending cases and the number of such cases is on the rise²². The data provides that the cases have increased at a rate of 30% while the cases pending in court have been rose to 94%. The daily average of these cases is 129 daily, nearly 47,000 cases had been reported under POCSO in 2020 than in 2019. From the year 2017-2019, nearly 97% of the cases were of girls children while nearly 3% of boys²³.

SHORTCOMINGS AND INTERVENTIONS

The goa children act is one of the most important pieces of legislation which stood for the important needs of society. From the viewpoint of the writer, the legislation is being presented as:

The notion that goa was the first state to produce such a statute back in 2003, shows how much the government had placed its importance which led to this legislation. With regards to the call of shortcomings, the definition of child under the goa children's act 2003. The provision of age

²¹*Ibid*

²² Department of Justice Ministry of Law and Justice (n 5)

²³ Parvithra K M, 'Data: POCSO cases increased by 30% in 5 years while pendency rate in courts crossed 94%' (*Factly.in*, 14 June 2022) <<https://factly.in/data-pocso-cases-increased-by-30-in-5-years-while-pendency-rate-in-courts-crossed-94/#:~:text=NCRB%20started%20recording%20the%20cases,129%20cases%20reported%20under%20POCSO>> accessed 12 July 2022

should be below 16 years of age is required to be removed in regards to the cases of rape, as it will allow the victims below 18 years to get protection in every kind of sexual offense.

As POCSO provides rehabilitation for the victims of crime, the Goa children's act does the same but there is no provision for the longer period term as to how the victim should be treated. The act is to be amended and new provisions are to be added with regards to this concurrent situation as the law is dynamic the changes in society should be reflected within the laws of the society. Goa children's act was created to environment a child-friendly society in which the culprits will be put behind the bars and the child be living in a safe vicinity. The act has nearly failed to promote the "*Child-friendly*" Norms as the act didn't even define what Child friendly is. The interpretation of the law might be used against the victim in different cases to explain "*What is child friendly?*". The question might seem small or just, common sense. But, there have been cases where only due to interpretation of the law the victim has to face mental stress.

RECOMMENDATIONS AND CONCLUSION

- The knowledge of laws such as POCSO and the Goa children's act is necessary as it will allow them to protect their rights and with basic information regarding other similar legislations.
- Self-defense techniques and training should be put forward and the means to protect oneself in any such kinds of situations are to be learned.
- The difference between the malicious intent of touch and "the touch" is to be known to differentiate the right and wrong one.
- Social media footprints; The term might seem vague but holds importance. In the current era, your social media presence can be taken or be used as a marker to create a psychological identity of your mindset which could be used against you in pushing you towards the direction which you would have never taken.
- Speed dial numbers: Police, Child helpline, parents, and emergency contracts. Which can be dialed in an instance to provide information about the whereabouts.

- Sex education is to be taught to children with the knowledge of what is to be done in such a situation to protect oneself and also the repercussions of indulging in sexual activities at a younger age.
- Parents are to be open about such cases and have a talk about the rights and wrongs of society and parents should not discriminate between the genders, especially towards the third gender.
- The notion is still present in society that girls are to be kept inside homes and also that boys are not part of such sexual assault cases is to be changed and acceptance of the idea of an equal basis for all is to be done.

The paper ends with the idea of what is goa children's act, with the idea that there are far more aspects that are to be explored to gain the idea of how society to moving towards the darker side where the cases of POCSO are rising day by day, minute by minute... \ The aspect of how Goa was the first state to provide such legislation, and how it was the only legislation a decade before where it was only one which expressed the idea of trafficking and provided the provisions for the term itself. While the statute does lack some areas of the age notion of being 16 years of age in rape cases and other crimes being under 18 years of age creates a drawback in itself. Overall the code is placed at its best with a lack of financial help for the creation of infrastructure required for the development. Summing up, it's important that such laws are amended in due course of time to cope with the Changing criminal and malicious minds of society and awareness of such acts to be taught and the idea of "Protecting oneself" in such situations is required.