



A STUDY OF SPECIAL COURTS FOR ENFORCEMENT OF CHILD LAWS IN INDIA

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Abstract

For every country, its future lies in the children which it nurtures. It is the duty of every nation to not just provide but also to protect every child under its care, as they are the children of today and citizens of tomorrow. Family is the strongest unit and institution for upbringing of the child and for overall development of the child. But, where the family as a unit is either missing or hampered, it becomes the responsibility and duty of the government to provide for the 'best interest of the child'. Hence, it is significant to study the law and policies made by the State to protect, provide and nurture its children. It is imperative that the state should take these children within its umbrella cover and shelter them from the evils and unwarranted circumstances that these children may be exposed to. However, where the children have been exposed to such circumstances, it becomes the responsibility of the State to provide them with justice, and justice in the most child friendly manner, protecting and upholding the rights and dignity of the children. This paper studies the need of special courts for the enforcement of child laws in India. It takes an objective look at the POSCO Act¹, and need for setting up special courts for the implementation and upholding of justice for the children. The secondary data has been collected from the journals, newspapers and government reports etc.

Keywords: POSCO Act, Special Courts, Sexual Offences, Juvenile Justice Act.

1.1 Introduction

With the coming of the welfare state into existence, its work, in terms of the ambit and nature has undergone innumerable changes. It is the responsibility of the State to not just provide for the growth and wellbeing of the human resources, but also to ensure that justice is delivered not only in word, but in spirit too. It is here, that the

¹The protection of children from sexually offences Act, 2012 is an act to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of special courts for trial of such offences and for matters connected therewith or incidental thereto.

justice delivered to child victims assumes importance, as the process of justice delivery has the potential of affecting their personhood. This responsibility extends to protection and nurturing the child to grow up into responsible adults, contributing positively to the society (Balakrishnan, 2011). If the State does not take upon itself this task, or does not perform well in the same, it exposes itself to the threat of added burden and liability of future criminals and social threats. However, if it protects and nurtures such children, it stands to profit in the long run in both social and economic terms. Hence, childhood being a universal human experience, every society has a vital stake in its children. The future and stability of a society depends upon the quality of its children and their childhood.

1.2 Objectives of the Study

The objectives of the study are enumerated as follows:

- To examine the law and the policies enacted by the Government of India for justice delivery to the sexually abused children.
- To examine the judgements and judicial observations for the implementation of the POSCO Act.
- To examine the need of creating special courts for justice delivery to children.
- To give suggestions for improvement in policy and law implementation.

1.3 Significance of the Study

A study on the legal and policy initiatives of the Government of India with respect to the children is mandated as number of children being subjected to the risk of abuse is increasing. According to the Ministry of Women and Child Development, 170 million children in India are vulnerable to or are experiencing difficult circumstances, such as violence at home, separation from family and street life. In addition to this, number of children being sexually abused is large and a still larger number of abuse cases are not being reported due to various factors like affinity of the abusers, scare of the judicial proceedings and involvement of the police and subsequent social stigma attached alongwith.

1.4 Research Methodology

For the present study, secondary data was collected from various government records, journals, law books, legal judgements and other relevant sources.

1.5 Legal Framework

According to section 28 of the Protection of Children from Sexual Offences Act, 2012, (POCSO Act), the State Governments, in consultation with the Chief Justice of the High Court, are required to designate a Sessions Court to be a Special Court, which shall try only the offences under the POCSO Act. This provision has been made with the intention to facilitate speedy trial. If a Session's Court has been notified as a Children's Court under the Commissions for Protection of Child Rights Act, 2005, or if any other Special Court has been so designated with similar purposes under any other law, it shall be regarded as a Special Court under the POCSO Act.

The POCSO Act requires that judges, prosecutors, and lawyers should modify their practice and attitudes in order to ensure that proceedings are sensitive to the needs and rights of children. The main objective behind having special courts for children is that without requiring a structural change in the courtroom, measures be undertaken to prevent the exposure of the child to the accused. At the same time, it shall be ensured that the rights of the accused are not compromised. Hence, a fine balance between the two is mandated. For this, it is necessary that the Central Government and State Governments take necessary and adequate measures to make sure that government servants, police officers and other concerned persons are imparted periodic training on matters related to the implementation of the Act. The term “child-friendly” has been adequately defined and explained in the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015) to mean “any behaviour, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of the child”.

Internationally, the *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crimes, 2005* summarizes the good practices that can be adopted by States in accordance with domestic law and judicial procedures to, *inter alia*, “guide professionals in their day to day practice”, and to “assist and support those caring for children in dealing sensitively with child victims and witnesses of crime.” The term “professionals” has been defined to include judges, law enforcement officials, prosecutors, defence lawyers, support persons, and others in contact with child victims and witnesses of crime. “Child-sensitive” has been defined to mean “an approach that balances the child’s right to protection and that takes into account the child’s individual needs and views”. Section 33(4) of the POCSO Act, illustrates how the “child-friendly atmosphere” of the courtroom can be created. This can be done “by allowing a family member, a guardian, a friend or relative, in whom the child has trust or confidence, to be present in the court.” A bare reading of this provision shows that it has no reference to the physical aspect of the courtroom or the behaviour required to ensure that the child’s interaction with the criminal justice system is child-friendly. It is pertinent to see that the Special Courts are similar to other courts in building and structure. However, there are some advantages of having a court room with four doors to be designated as a special court, like, minimal exposure of the children to the accused.

Procedural Compliance

The POCSO Act lays down the procedures to be followed by Special Courts while trying cases under the Act. These are mentioned as below:

2.1 Direct Cognizance by the Special Court

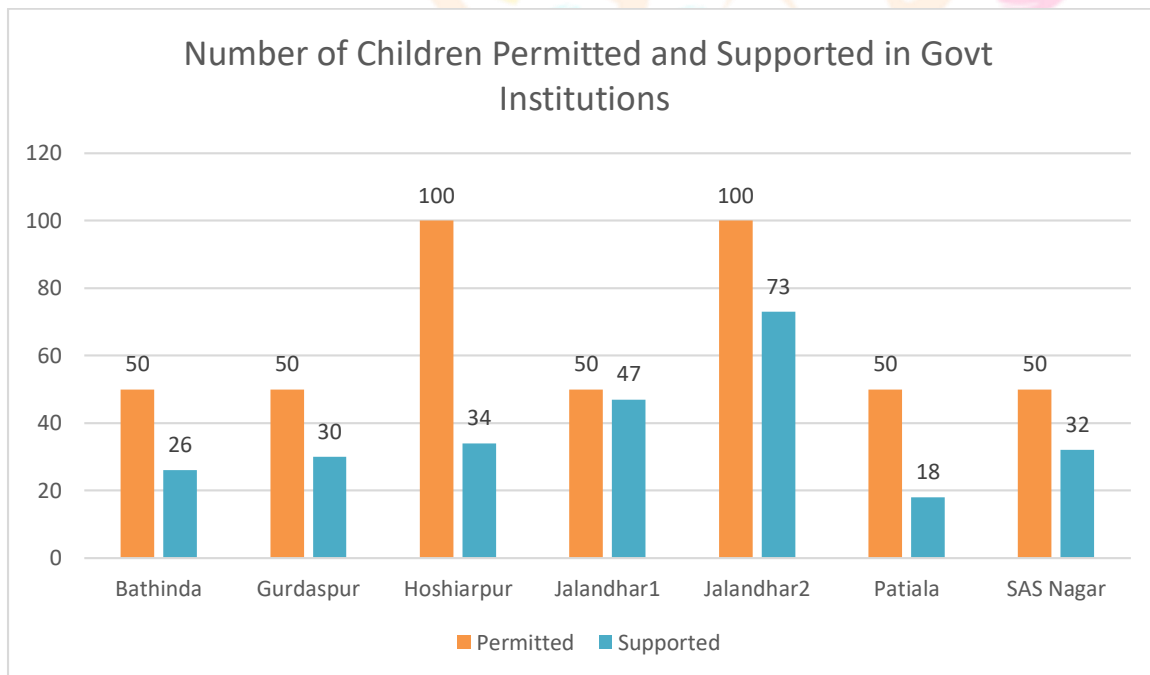
Section 33(1), POCSO Act, empowers the Special Court to directly take cognizance of an offence based on a complaint or upon a police report, without the accused being committed to it for trial. The police must, therefore, bring the matter directly before the Special Court instead of initiating committal proceedings before a Magistrate. This is to facilitate speedy trial of sexual offences against children. Judgements of various High Courts have clarified the powers of the Special Courts to take direct cognizance of cases under the POCSO Act. Despite this, accused persons have been produced before the Magistrate’s Courts in some districts of Andhra Pradesh. In 60 of 509 cases (11.7%), the cases were committed to the Special Court. According to the data

collected for the study, the occupancy levels of the homes have been found out. This has a direct relation with the quantity and the quality of services that are provided to the inmates of the homes.

Number of Children Permitted and Supported in Govt Institution

Name of District	Institutions	Number permitted	Number supported
Bathinda	Children Home, (For Boys)	50	26
Gurdaspur	Children Home, (For Boys)	50	30
Hoshiarpur	Children Home for Boys	100	34
Jalandhar	Children Home for Girls	50	47
Jalandhar	Children Home (For Girls)	100	73
Patiala	Children Home Rajpura, (For Boys)	50	18
SAS Nagar	Children Home Dusrana , (For Boys)	50	32
	Total	450	260

Source: Interview Schedule



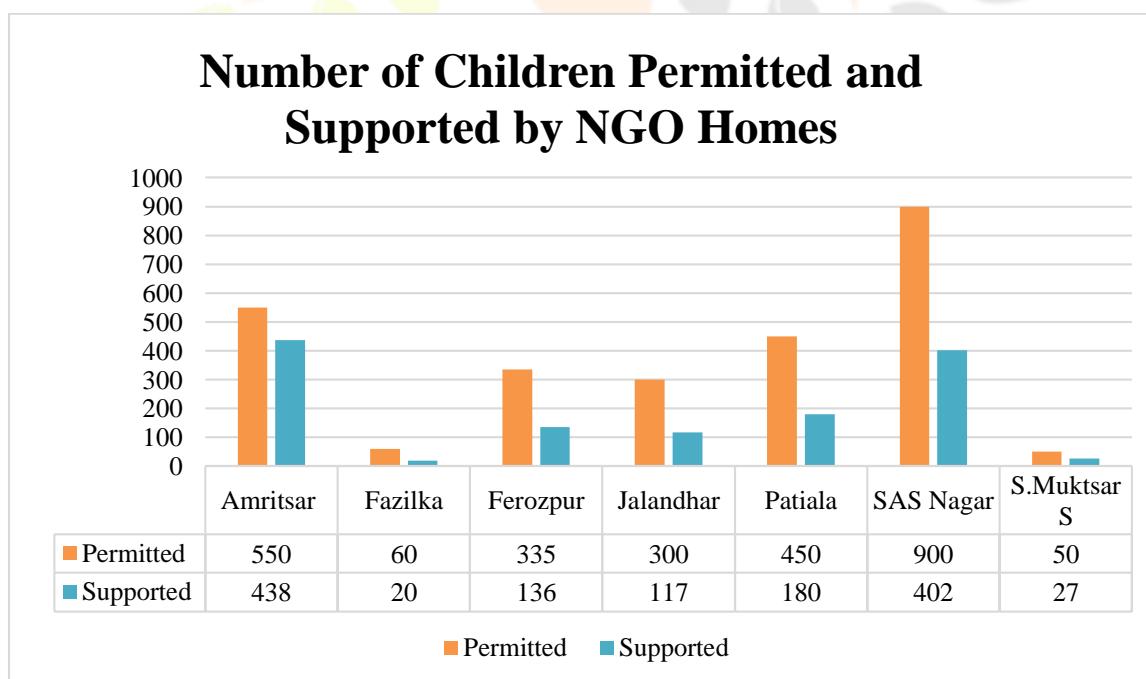
Number of Children Permitted and Supported in Institutions run by NGOs

The table below illustrates the total number of children permitted in 16 institutions under study which run by NGOs in different districts of Punjab as well as the occupancy of these Homes.

Number of Children Permitted and Supported in Institutions run by NGOs

Name of District	Institutions	Number permitted	Number supported		
			Girls	Boys	Total
Amritsar	All India Pingalwara Charitable Society Amritsar	150	42	46	88
	Central Khalsa Orphanage	400		350	350
Fazilka	Matra Chaya Anath Ashram Bal Sanskar Greh	60		20	20

Ferozpur	Arya Anathalya Ashram	300	25	79	104
	Missionary of Charity	35	17	15	32
Jalandhar	Missionary of Charity, Shanti Bhawan	50	21	5	26
	Guru Nanak Anaath Ashram	50	13	18	31
	Unique Home for Girls	200	60		60
Patiala	Mata Gujari Sahara Trust-kalarbheni	300	56	84	140
	S.D.K.S. Yadvindra Puran Bal Niketan	150	40		40
SAS Nagar	Jyoti Syrup Kenya Asra Trust, Kharar	150	90		90
	GurAsra Trust	300	102		102
	Apne Foundation	50	4	40	44
	Mata Gujri Sukh Niwas	150		80	80
	Prabh AasraVillage	250	50	36	86
Sri Muktsar Sahib	Jyoti Foster Care Home for girls	50	27		27



It is

understood from the table above that there is no uniformity regarding the number of beneficiaries supported in each institution. There is uniformity in number of sanctioned beneficiaries, depending upon the availability of the infrastructure. No home is full beyond capacity, only the Homes run for Girls by the Government at Jalandhar is almost full to its capacity, rest all Government run homes, have scope of housing way more

children. This is also because the Government provides just these two Homes for female beneficiaries, whereas five homes are available for housing male beneficiaries. As far as the Homes run by NGOs is concerned, there too, no home is full beyond its capacity. Others have ample scope for housing more beneficiaries as per their capacity.

Indian Law on Child Protection

The Juvenile Justice Act, 2000 was passed to replace the Juvenile Justice Act of 1986 and to give effect to the ratification of the CRC. This Act incorporates the Beijing Rules² and the UN Rules for the Protection of Juveniles, following the spirit of the Indian Constitution. This Act was enacted with the main objective of care, protection, development, treatment and rehabilitation of neglected, delinquent children and those who are in need of care and protection. Through the enactment of this Act, a more child friendly juvenile justice system is aimed at. In addition, it provides for provisions for the children in need of care and protection, hence, acting as a consolidated law on and for children. The “touchstone of the Act is ‘best interest of the child’ and their rehabilitation through various non-institutional and institutional mechanisms provided under the Act”. The Law for Children in India makes a preference for non institutional rehabilitation mechanisms and strengthening of the family unit. This is in recognition of the importance of the institution of family in the holistic development of the child.

International Commitments towards Child Rights

The United Nations Convention on the Rights of the Child, 1990 (CRC), is a ‘benchmark’ in the International arena. It is against this Convention that all the nation states relate their actions in the sphere of child welfare and development. The CRC was not the first international instrument in the arena of rights of the child, it was the non-binding Geneva Declaration of the Rights of the Child, of 1924, adopted by the League of Nations, which framed the children’s rights. This was treated as mere ‘moral obligation upon the State rather than legal entitlements’ and was succeeded by the UN General Assembly’s Universal Declaration of Human Rights, 1948. India has contributed significantly by suggesting that 20th November, 1979 be celebrated as ‘The Universal Children’s Day’ and this set the ball rolling for the process of formulating a ‘binding’ Convention on the Rights of the Child. Such a Convention was unanimously accepted by the General Assembly and it came into force in 1990 and in 1992 India became one of the initial few countries of the world to sign the CRC. This demonstrated India’s intention, as a nation in giving specific direction to the internal movement of rights and justice for children.

The CRC guarantees the following basic rights to the children:

The right to survival: According to the Convention, the right to survival includes the ‘right to life, attainable standards of health, nutrition and adequate standards of living’. It also includes the right to a name and nationality’.

²UN Standard Minimum Rules for Administration of Juvenile Justice, 1985 are known as the Beijing Rules.

The right to protection: The Convention provides the right to protection as a right to every child. This includes freedom from all forms of exploitation, abuse and inhuman and degrading treatment. It also includes the right to special protection in situations of emergency and armed conflict. The basic aim is to protect vulnerable children from all those who can/would take advantage of them and to safeguard their minds and bodies’.

The right to development: This right includes the ‘right to be educated, to receive support for development and care during early childhood, and to social security’. It also includes the right to leisure, to recreation, and to cultural activities’.

The right to participation: According to the Convention, the right to participation accords the child ‘access to appropriate information and the freedom of thought and expression, conscience and religion’. In addition to this, the views of the child shall be respected’.

The International community as well as the Indian State are sensitive towards the rights of children. Along with the signing of the CRC, India also signed two additional protocols. The UNCRC has come to establish the child as a citizen of today, rather than an adult of tomorrow. It bestows upon each child certain rights, which can be divided into three categories:

Right to provisions	Right to protection	Right to participation
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This brings to the fore the shift in the approach towards child rights from welfare approach to development approach, which is rights based as against needs based and focuses upon holistic development of the child, appreciating inclusion and mainstreaming the participation of the child. In compliance of the provisions of the UNCRC, the State of India has brought out various policies, schemes and legislations to give effect to the provisions of the CRC. The main out of these being:

- The National Policy for Children, 2012
- The Juvenile Justice Act, 2015 and Rules thereof
- The Integrated Child Protection Scheme.

It is mainly through these instruments that the protection of child rights has become a reality in India.

National Policy for Children 2012

On April 18, 2013, the National Policy for Children, 2012 came into being. Through this Policy, the Government has reaffirmed its commitment to the realization of the rights of all children in the nation. It identifies every individual under eighteen years of age as a child. It also states that ‘childhood is an integral part of life with a value of its own, and a long term, sustainable, multi-sectoral, integrated and inclusive approach is necessary for the harmonious development and protection of children’. The policy sets down important ‘guiding principles’ to be respected in letter and spirit, by the governments at the national, state and local levels, in their initiatives with respect to children. The policy has recognized ‘survival, nutrition, health, education, protection, development and participation’ as the undisputable and irrefutable rights of each child. These areas have also

been declared as its key priority areas. The policy recognizes ‘best interest of the child’ as the first, primary and chief concern in all actions and decisions touching children. Family setup and family environment is considered to be the most beneficial and conducive environment for the overall development of children.

Integrated Child Protection Scheme

In 2006, The Ministry of Women and Child Development had suggested the adoption of the Integrated Child Protection Scheme (ICPS). It was in 2009, that the Central government gave approval to the scheme and is, since then, carrying out the extensive task of helping provide the children with a protected and safe environment to develop and flourish. It is an umbrella scheme ensuring various aspects of protection to the children in need of care and protection and children in conflict with law. It aids and extends the motive of the Juvenile Justice Act, 2000. This scheme has been adopted by almost all the states in India. The state of Punjab, signed a MOA with the Central Government in 2010 to implement this scheme in the state. The objective of the scheme is to provide for children in difficult circumstances, and also to decrease the risks and vulnerabilities children experience in various situations and actions that lead to abuse, neglect, exploitation, abandonment and separation of children. In order to meet its objectives, the scheme calls for the establishment of new bodies within a service delivery structure. These bodies are established at following four levels:

National
Regional
State
District

At the national level there are the CHILDLINE India Foundation- Headquarters, Child Protection Division in the National Institute of Public Cooperation and Child Development (NIPCCD) and Central Adoption Resource Agency (CARA). At the regional level there are the Child Protection Division in the four Regional Centers of National Institute of Public Cooperation and Child Development (NIPCCD) and four Regional Centers of CHILDLINE India Foundation (CIF). At the state level there are, the State Child Protection Society (SCPS), State Adoption Resource Agency (SARA), State Child Protection Committee (SCPC) and the State Adoption Advisory Committee. At the district level there is, the District Child Protection Society (DCPS), District Child Protection Committee (DCPC), Sponsorship and Foster Care Approval Committee (SFCAC), Block Level Child Protection Committee and the Village Level Child Protection Committee.

The official perception on the working of the ICPS was undertaken during the study, and the responses have been tabulated as below:

Perception of officials with regard to the working of the ICPS

Are you satisfied with the working of the ICPS and services/facilities provided by the Home?	No. of respondents		Percentage	
	Govt homes	NGO homes	Govt homes	NGO homes
Yes	12	34	23%	67%
No	28	11	57%	22%
No reply/Can't say	10	5	20%	11%
Total	50	50	100%	100%

Source: Primary Data

Deeper insights of the officials were sought upon the limitations of the ICPS. The following points have come to the fore during the same:

- Recruitment of staff on contractual basis
- Low remuneration of the staff
- Lack of adequate infrastructure to the CWC
- Ineffective monitoring mechanisms
- Lack of transparency

Suggestions

- There is a greater need to reach out the children in need of care and protection. The need is felt more in case of counselling services for these children to enable the maintenance of good mental health.
- Greater involvement of the staff with the beneficiaries and provision of better facilities in Government run Homes, may help in providing better sense of belonging and comfort to these children.
- The Government and NGO run CCIs should also focus on child work and involvement of children in daily house work and decision making. There can be constitution of children committees to decide menus etc. which will go a long way in bringing about a feeling of belongingness in the inmates.
- The Government can help the homes with linkages with other Government departments and functionaries to help in such times of crisis.
- There should be online training classes for staff of the Homes that should be held to sensitize and train and equip them to deal with the children in such times.

Conclusion

The study concludes that there is greater need for the Government to focus on the children in need of care and protection. There is requirement of actively engaging children to keep them away from negative mental impact of the pandemic and help them in their growth and development. Also, children who have parents, should be made to engage and communicate with them more often than usual. Sensitization of the staff on these issues will go a long way in not only helping the staff, but it will also percolate down to the beneficiaries and their sense of satisfaction with the institutions and facilities provided will increase. It is also mandatory that timely review of the situation be taken by the higher authorities. The children should be

involved more in the daily routine work of the CCIs. This will help them feel more a part of the homes and improve constructive peer group interaction amongst them, as well as equipping them with life skills.

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