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# **LEGAL MEASURES AGAINST CHILD EXPLOITATION AND TRAFFICKING VIS- À-VIS CAPITAL PUNISHMENT: A SOCIO-LEGAL STUDY**

AUTHORED BY - DR. ANJU & SHRUTI

## **Abstract**

Child exploitation and trafficking are very important issues at present day scenario and legal measures are very much needed to curb it on world at large. This paper deals with the issues of child exploitation and trafficking and legal measures taken at both national and international level to curb it. The need of capital punishment as highest form of punishment to curb this issue has also been discussed as children being the vulnerable group and are important part of population on which growth of the nation depends.

It also incorporates the international instruments like “United Nations Convention on the Rights of the Child (CRC)”, “International Labour Organization (ILO) Convention No. 182 (1999)”, “Optional Protocol to the CRC on the Sale of Children”, “Child Prostitution, and Child Pornography (2000)” which deals with issues of children.

The legal framework such as “The Constitution of India”; “The Bhartiya Nyaya Snhita, 2023”; “The Protection of Children from Sexual Offences (POCSO) Act, 2012”; “The Juvenile Justice (Care and Protection of Children) Act, 2015”; “The Immoral Traffic (Prevention) Act, 1956 (ITPA)”; “The Child Labour (Prohibition and Regulation) Amendment Act, 2016”; “The Bonded Labour System (Abolition) Act, 1976”; “The Criminal Law (Amendment) Act, 2013”; “The Transplantation of Human Organs and Tissues Act, 1994”; “The National Investigation Agency (NIA) Act, 2008” are taken into account.

The role of judiciary and NGOs and the need of capital punishment for aggravated sexual offence against child has been discussed,

**Keywords:** Child exploitation, trafficking, capital punishment and legal measures.

## Introduction

In recent years, human trafficking, especially of children, has become a global concern, including in India. It is recognized as one of the most severe forms of organized crime, transcending cultural, geographic, and temporal boundaries.<sup>1</sup> According to the United Nations,<sup>2</sup> “Human trafficking is the recruitment, transportation, transfer, harbouring, or receipt of people through force, fraud, or deception, with the intent to exploit them for profit.” This illegal trade in human beings is driven by various forms of the exploitations, including reproductive enslavement, commercial sex exploitation, child forced labour, and other abuses<sup>3</sup> “Child trafficking” is one of the most urgent global issues today. In India, many young girls are drawn into commercial sexual exploitation due to factors such as religious prostitution, sex tourism, and involvement in the production of pornographic material.<sup>4</sup>

The covert and cross-border nature of child trafficking, along with the very reluctance of those people involved to speak openly about it, makes it challenging to accurately assess the scale of commercial sexual exploitation (CSE) A government study commissioned by “Department of Women and Child Development” of India estimated that approximately 2.8 million individuals have been trafficked for CSE in the country, reflecting a 22% rise from previous estimates. Most of the trafficked individuals are usually young girls or children, often forced into sex work due to poverty, with many being under 18. Research also highlights a growing demand for younger children and for virgins, driven partly because of fears of HIV/AIDS. Additionally, there has been an emergence of new trafficking routes and destinations, as well as a rise in the sophistication of trafficking operations, many of which are controlled by organized crime syndicates or insurgent groups.<sup>5</sup>

Human trafficking is an illicit trade in human beings, driven by the intent to exploit individuals for reproductive enslavement, commercial sexual exploitation, forced labour, and various other forms of abuse.<sup>6</sup> Often described as a modern-day form of slavery, this crime persists in today’s world, trapping countless individuals in a web of exploitation. Human trafficking isn’t just

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<sup>1</sup> INTERPOL, 2005

<sup>2</sup> 2002

<sup>3</sup> United Nations, 2008

<sup>4</sup> Avnish Patel, “Child Trafficking in India: An Overview” *International Journal of Law and Social Sciences* (2023).

<sup>5</sup> Christine Joffres, “Sexual slavery without borders: trafficking for commercial sexual exploitation in India,” 7 *International Journal for Equity in Health* 22 (2008).

<sup>6</sup> Supra 3

history repeating itself it's slavery in our time.<sup>7</sup>

### **Issues of child exploitation and trafficking**

The prevalence of sex-related exploitation in India is one factor contributing to the problem's severity. Young women and girls from marginalised and economically disadvantaged groups, like the Dalits, are involved in one of the most common types of sex labour. These people are frequently "recruited" by brokers, forced into prostitution, and sold to pimps or brothel owners, many of whom are ex-prostitutes. Brokers can be outside agents collaborating with local accomplices or members of the victims' own communities who pretend to be family members. In some cases, family members, such as parents or husbands, are involved in the recruitment process. The strategies employed include making false promises of employment, approaching families burdened by debt and persuading them to give up their children, abduction, and arranged marriages, where young women and underage girls are "married" off to men willing to pay a dowry to impoverished families.<sup>8</sup>

After marriage, which makes it more difficult to take legal action, some of these women are either coerced into prostitution by their husbands or are later divorced or abandoned before being sold to a broker who subsequently sells them to a brothel. This practice has been reported in regions such as Bihar, West Bengal, Chhattisgarh, Odisha, Uttarakhand, and Hyderabad.<sup>9</sup>

Sex tourism (ST), which includes the mistreatment of young boys and girls by both foreign and Indian tourists, is another type of sexual exploitation. Children living on the streets are particularly vulnerable to this type of exploitation.<sup>10</sup>

The cultural component where the society allows prostitution of their young girls. In certain communities, when a girl reaches puberty, she is trained and pressured to accept and enter this profession, earning money for her maternal family, with male relatives often playing a role in bringing in clients. These girls become stigmatized and are pushed into social exclusion, unable to lead a normal life. They endure extreme vulnerability, facing a high risk of affecting with

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<sup>7</sup> Supra 1

<sup>8</sup> Supra 5

<sup>9</sup> Ibid

<sup>10</sup> Ibid

HIV/AIDS and other sexually transmitted diseases.<sup>11</sup>

Child labour, in which children are coerced into labour or lack the capacity to refuse it, is becoming more widely acknowledged as a type of contemporary slavery. They work in many different professions, many of which are hazardous. Significant health dangers arise from exposure to machinery, dust, pesticides, and chemicals in agricultural jobs, as well as fumes, chemicals, acids, and fibres like cotton and wool in other industries. A large number of children are forced into bonded labour. They frequently work as domestic helpers or in restaurants and vehicle repair shops in urban areas. Child trafficking, child labour, and sexual slavery are still major issues. Although illiteracy and poverty are the main reasons, negative social perceptions also encourage their exploitation and misuse. These working kids are deprived of quality healthcare and education, which results in losing both their childhood and dignity.<sup>12</sup>

### **Various Kinds of Child Trafficking**

#### *1. Forced Child Labour*

Despite the fact that minors in India are legally allowed to perform light employment, many are trafficked for domestic work and bonded servitude, frequently being forced to work much beyond the limits. It is common for children to be coerced into bonded labour in brick and stone quarries, where they are made to repay family debts owed to moneylenders and employers.

#### *2. Commercial Sexual Exploitation of Children*

Children are exploited for prostitution, child pornography, and commercial sex. It is similar to forced labour. This is also a form of contemporary slavery. This is a method of offering children's sex services in return for money or in-kind favours known as recompense.

#### *3. Domestic Servitude*

Children are often lured with promises of high pay for working as domestic helpers in middle-class households, but they frequently endure mistreatment, abuse, and sexual assault. This form of trafficking is challenging to detect because it occurs behind closed doors in private residences, without governmental oversight.

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<sup>11</sup> "CULTURAL DIMENSIONS OF HUMAN TRAFFICKING IN INDIA - ProQuest," available at: <https://www.proquest.com/openview/220ed8168bca3e01ee8812e5a678685a/1?pq-origsite=gscholar&cbl=626342> (last visited October 16, 2024).

<sup>12</sup> Rajendra N. Srivastava, "Children at Work, Child Labor and Modern Slavery in India: An Overview," 56 *Indian Pediatrics* 633–8 (2019).

#### 4. *Illegal Activities*

Children are frequently taken advantage of in illicit activities like begging and organ trafficking because they are seen as more vulnerable than adults. In order to enhance their profits, gang bosses have been known to mutilate or blind these kids with acid in addition to forcing them to beg on the streets. Injured children are frequently used in this way because they tend to generate more income. Additionally, organ trafficking is prevalent, with traffickers deceiving or coercing children into giving up their organs.<sup>13</sup>

### **Causes of Trafficking**

Human trafficking can be attributed to a number of things. Push and pull factors can be identified from these factors. The lack of education, skills, and earning prospects for women and their families in rural areas, the bad socioeconomic situations that many families experience, and the poverty that is made worse by frequent natural disasters like floods that leave some people in destitute are the push factors. Other contributing causes include dysfunctional home circumstances, domestic violence against women, the poor social standing of girls, pressure to raise money for dowries, which drives families to send their daughters to far-off regions for employment, and ignorance of traffickers' operations. The attraction of quick money, the promise of higher compensation, and alluring work prospects in large cities are some of the draw factors.<sup>14</sup>

### **Legal framework for child exploitation and trafficking**

#### **International Laws**

International laws and conventions establish universally agreed-upon standards to combat child trafficking. To ensure effective implementation and alignment, these standards must be incorporated into national legislation. The most significant international conventions addressing child trafficking include:

1. "The Convention on the Rights of the Child, 1989."
2. "The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000."

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<sup>13</sup> Navpreet Kaur and Shobha Gulati, "TRAFFICKING OF CHILDREN FOR CHILD LABOUR IN INDIA" 24–8 (2022).

<sup>14</sup> "Trafficking in women and children in India: nature, dimensions and strategies for prevention," *available*: <https://www.tandfonline.com/doi/epdf/10.1080/13642980802533109?needAccess=true> (last visited October 16, 2024).

3. “The Convention on the Elimination of All forms of Discrimination against Women, (CEDAW) 1979.”
4. “The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.”
5. “Declaration on Social and legal principles relating to the protection and welfare of children, with special reference to foster placement and adoption nationally and internationally, December, 1986.”
6. “SAARC Convention on Regional Arrangement for the Promotion of Child Welfare, 2002.”

### **National Laws**

#### *“Immoral Traffic (Prevention) Act, (ITPA) 1956”*

The focus is solely on human trafficking, with the primary goal of preventing and eradicating the exploitation of women and girls for prostitution as a structured livelihood. The specified offenses include:

- Procuring, enticing, or transporting individuals for prostitution;
- Detaining individuals in places where prostitution occurs;
- Engaging in prostitution in public spaces or making it visible;
- Seducing or soliciting for prostitution;
- Profiting from the earnings of prostitution;
- Seducing individuals in custody; and
- Operating or permitting premises for the use as brothel.

#### *“The Child Labour (Prohibition and Regulation) Act, 1986”*

In addition of outlawing the employment of minors in some professions, this Act establishes the terms under which children may labour.

#### *“Information Technology Act, 2000”*

The publication or transmission of any electronic content that is pornographic, appeals to obscene interests, or has the potential to corrupt or deprave those who read, watch, or listen to it is punishable under this Act. It is essential to combating the problem of pornography. In order to encourage and maintain high standards of moral and professional behaviour in the field of the internet and related services, India has also put in place a code of conduct for Internet

service providers (ISPs).

*“The Juvenile Justice (Care and Protection of Children) Act, 2000”*

- Adopted in accordance with the “Convention on the Rights of the Child (CRC).”
- Laws pertaining to minors in legal trouble and children in need of care and protection are consolidated and updated.
- This Act is particularly significant for vulnerable children who are at risk of being drawn into trafficking.
- *“The Protection of children from sexual offences Act 2012”*
- The Act aims to shield children from child pornography, sexual harassment, and sexual offences.
- It penalizes offenses like sexual offences.
- Under Section 6, the most severe punishment includes “rigorous imprisonment for a period of 20 years, that can extend to life imprisonment, meaning thereby imprisonment for the offender's natural life. It also allows for the death penalty. Any fines imposed must be fair and just, and directed towards covering the victim's medical expenses and rehabilitation.<sup>15</sup>

*“Bhartiya Nyaya Sanhita, 2023”*

- Abandonment and concealment of children- Section 93 of the BNS criminalizes the act of leaving a child under 12 years of age with the intention of abandoning them. The punishment for this offense is up to seven years in prison, a fine, or both.
- Hiring, employing, or engaging a children to commit offence- Section 95 of the BNS makes it an offense to use a child to commit an offense, including sexual exploitation or pornography. The punishment for this offense is three to fourteen years in prison.
- Kidnapping or maiming a child for begging- Section 139 of the BNS provides punishment for this offense
- Sexual exploitation of trafficked children- Section 144(1) of the BNS provides punishment of five years to life imprisonment for this offense.
- Importing a child from a foreign country for illicit sexual exploitation- Section 141 of the BNS provides punishment of ten years to life imprisonment for this offense.

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<sup>15</sup> Pocso Act, 2012

- Section 143 of the Bhartiya Nyaya Sanhita (BNS), 2023, criminalizes human trafficking and exploitation through coercive means. It imposes stringent penalties on those involved in such offenses, including:
  - **Rigorous imprisonment:** A sentence of seven years, which can extend to ten years. In cases involving multiple victims or minors (under 18), the sentence increases to imprisonment of ten years, which can extend to life imprisonment.
  - **Fines:** Convicted traffickers are also liable to pay fine.
  - **Harsher penalties for public servants and police officers:** Those in positions of authority, like public servants or police officers, face more severe punishments if found guilty of trafficking.
  - **Victim's consent is immaterial:** The law disregards whether the victim gave consent, focusing solely on whether the offense occurred.
- Section 144 of the “Bhartiya Nyaya Sanhita (BNS)”, 2023 deals with the exploitation of trafficked person.
- Punishment for Sexual exploitation of a trafficked child is rigorous imprisonment for a term of imprisonment of five years which can extend to ten years and fine.
- Punishment for Sexual exploitation of a trafficked person is Rigorous imprisonment for a term of imprisonment of three years which can extend to seven years and fine.
  - Section 96 criminalizes any act that causes a child to leave a place or engage in an activity with the intention or knowledge that the child to be coerced or lured into illicit sexual intercourse and punishment thereof will be imprisonment for ten years and a fine.
  - Section 97 of “the Bhartiya Nyaya Sanhita (BNS), 2023”, criminalizes the kidnapping or abduction of a child under tender age of ten years with the intention to commit theft and be punished with imprisonment for seven years and fine.
  - Section 98 of “the Bhartiya Nyaya Sanhita (BNS),2023” prohibits the sale, hire, or other disposal of a child for immoral or unlawful purposes and c be punished with imprisonment for ten years and fine.
  - Section 99 of the Bhartiya Nyaya Sanhita (BNS) criminalises the offence of purchasing or acquiring a child for unlawful purposes, such as prostitution or illicit intercourse and can be punished with imprisonment of seven years, which can extend to 14 years and fine.<sup>16</sup>

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<sup>16</sup> Bhartiya Nyaya Sanhita, 2023

- *Constitution of India*
- Article 24 prohibits the employment of children who are under the age of 14 years in factories, mines, or other hazardous occupations. This law is connected with Article 21A, which guarantees the right to education for children from the ages of 6 to 14.
- Article 45 mandates a provision of early childhood care as well as education for children up to six years.
- Article 46 encourages promotion of educational and economic interests of disadvantaged groups, including “Scheduled Castes” and “Scheduled Tribes.”
- Article 47 calls for improving the nutrition levels, living standards, and public health of the population.
- **Right to Equality (Article 14):** It ensures equality before the law as well as equal protection of laws for all citizens.
- **Right Against Discrimination (Article 15):** This prohibits discrimination on the basis of only of religion, caste, race, sex, or place of birth.
- **Right to life and personal liberty (Article 21):** This guarantees the right to life and personal liberty and subject to the procedure established by law.
- **Right to Protection from Trafficking and Forced Labor (Article 23):** This prohibits trafficking in human being and individual subjected to bonded labour.<sup>17</sup>

### Role of judiciary

In “Salal Hydro Project vs. Jammu and Kashmir”<sup>18</sup>, the Supreme Court interpreted Article 24 of the Indian Constitution, which forbids the employment of children under 14 in hazardous occupations. The Court determined that even though construction work was not covered by the Employment of Children Act, 1938, it still qualified as a hazardous occupation under Article 24, meaning that children under 14 could not be employed in such jobs.<sup>19</sup>

In “Vishal Jeet v. Union of India”<sup>20</sup>, the Supreme Court addressed the sexual exploitation of the children, expressing deep concern about the forced induction of young girls and impoverished children into prostitution. The Court condemned this practice as a grave violation of morality and human dignity.<sup>21</sup>

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<sup>17</sup> Constitution of India

<sup>18</sup> AIR 1987 SC 177

<sup>19</sup> Gulnaz Shirin, “Role of Judiciary in Protection of Rights of the Children.”

<sup>20</sup> AIR 1990 SC 1413

<sup>21</sup> Supra 8

In “*Gaurav Jain v. Union of India*”<sup>22</sup>, The Court acknowledged the rights of children born to prostitutes, upholding their entitlement to equality, dignity, care, protection, and rehabilitation. A committee was established by the court to create a rehabilitation plan for these kids and sex workers, with regular updates on how it was being carried out.<sup>23</sup>

In “*Sakshi v. Union of India*”<sup>24</sup>, Supreme Court requested the Law Commission for considering the sexual abuse of children and possible amendments to Sections 375 and 376 of the IPC. This is a Public Interest Litigation case which ultimately led to the enactment of the “Protection of Children from Sexual Offences (POCSO) Act, 2012”, which gives protection against sexual abuse for both boys and girls.<sup>25</sup>

In “*M. C. Mehta Vs State of Tamil Nadu*”<sup>26</sup> Supreme Court prohibited the employment of children in hazardous industries, such as matchbox and fireworks manufacturing, and directed that step be taken to improve their welfare and quality of life.<sup>27</sup>

In “*Goodricke Group Ltd Vs Centre of West Bengal*”<sup>28</sup> The Court acknowledged in that it is the duty of both the central and state governments to provide the funds required to give children free education. The Supreme Court affirmed in a historic judgment in *Unnikrishnan J. P. vs. State of Andhra Pradesh*<sup>29</sup> that the Indian Constitution's Parts III and IV, which address “fundamental rights” and the “directive principles of state policy”, are complimentary. The Court acknowledged that children between the ages of 6 and 14 have a basic right to free and compulsory education.

In “*Bandhua Mukti Morcha Vs Union of India*”<sup>30</sup>, the Court took note of child labour in the carpet industry in Mirzapur, Uttar Pradesh, and ordered the release of 144 children who were being held in forced custody by their employers.

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<sup>22</sup> AIR 1997 SC 3051

<sup>23</sup> Supra 8

<sup>24</sup> 1999 8 SCC 591

<sup>25</sup> Supra 8

<sup>26</sup> AIR 1991 SC 417

<sup>27</sup> Vishnupriya Dadhich, “Child Rights and Child Protection: Issues, Challenges and Strategies Role of Judiciary in Protecting Child Right,” 4 (2022).

<sup>28</sup> 123 CTR 516

<sup>29</sup> AIR 1993 SC 2178

<sup>30</sup> 1997(10) SCC 549

In “*Sheela Barse Vs Union of India*”<sup>31</sup> a case brought by social activist Sheela Barse; the Supreme Court addressed the illegal detention of children under 16 in jails. The Court called for their release and the establishment of juvenile courts and homes, stressing that children, as national assets, deserve special treatment. In a related case, “*Sheela Barse v. Secretary, Children Aid Society*”, the Court reinforced the need to protect children’s rights in observation homes.<sup>32</sup>

### **Role of NGO in protecting rights of children.**

The NGO works with vulnerable section of communities across India, and with state and central governments, for tackling issues such as child labour, abuse, corporal punishment, trafficking, and other child rights violations. Despite India having the world's largest education system, low enrolment and high dropout rates contribute to low literacy levels. The NGO focuses on:

- Promoting child education in "safe schools" that do not involve discrimination of any kind based on caste, gender or socioeconomic status.
- Creating "Inclusive Learner-Friendly Environments" for children aged 3 to 18 years in slums and villages.
- Advocating a financial set up to support “Right to Free and Compulsory Education Act, 2009”, as part to the Right to Education Forum.
- Consulting with families to encourage school enrolment and assisting with admissions.
- Employing child-friendly, interactive teaching methods to make learning enjoyable and meaningful.
- Providing funding for mobile learning centres, computers, sports equipment, and libraries.
- Reintegrating out of school children into classrooms.
- Enrolling street children and child labourers in formal education.<sup>33</sup>

**Rehabilitation and Relief Efforts:** To provide a supportive environment for maternal and infant health, the NGO works with the Department of Health and Family Welfare, Panchayat Raj Institutions, and the “Integrated Child Development Services (ICDS)” Scheme. In some of the most underprivileged areas of India, the NGO:

1. Prepares Community Healthcare Workers (CHWs) to treat expectant mothers, babies, and other healthcare patients.

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<sup>31</sup> 1986 3 SCC 596

<sup>32</sup> Supra 16

<sup>33</sup> Dr Shripad Kulkarni, “Role of NGO’s in Protecting Child Rights,” 8 (2023).

2. Promotes improved health policy implementation.
3. Encourages the general people to have access to nutrition and health services.
4. Informs people about access to food and medication, hospital deliveries, breastfeeding, and prenatal care.
5. Provides nutrition rehabilitation for undernourished children, hosts health camps, and hosts cookery demonstrations.
6. Offers medical support in areas devastated by disasters.

NGOs like Save the Children and others have played a key role in strengthening anti-child labour laws by providing compelling evidence that has led to legislative reforms. Their efforts have contributed to significant advancements, including the enhancement of the Child Labor Prohibition and Regulation Act through NGO intervention.<sup>34</sup>

### **Need of Capital Punishment for heinous crime against child.**

As there is no standard of aggravated sexual assault but by going through section 6 of POCSO Act, 2012 it can be inferred that if the person in authority such as police officer, public servant, security forces, member of armed forces or appointed to the management of jail, the remand home, hospital, educational institution and who commits gang penetrative sexual assault or uses dangerous weapons, fire, heated thing or corrosive substance or leads to grievous nature of hurt or the bodily harm or causes injury to sexual parts of the child are liable to be punished with rigorous imprisonment of a term of minimum twenty years which may extend to life imprisonment that is for remainder of one's natural life and can be liable to fine or death penalty can be imposed.<sup>35</sup>

The POCSO Act expands the scope of several offenses already covered under the IPC and introduces mandatory minimum sentencing. It outlines punishments for crimes such as penetrative sexual assault, pornography involving child and sexual harassment. Notably, the law is gender neutral, applying equally both to the child victim and the accused. In July 2019, the legislature amended the Act to introduce the death penalty as the highest punishment for aggravated form of penetrative sexual assault against minors.<sup>36</sup>

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<sup>34</sup> Ibid

<sup>35</sup> POCSO Act, 2012

<sup>36</sup> Kannan Jhunjhunwala, "A case against the death penalty for child sexual abuse," 6 *Indian Law Review* 1–16 (2022).

This shows the utmost need of capital punishment as reflected in POCSO Act.

### **Conclusion**

Child exploitation and trafficking are major issue at present time and it is happening in various forms like forced child labour, commercial sex exploitation of children, domestic servitude, illicit activities and many more. Children being the vulnerable section of society should be taken care of and their exploitation affects the development of nation as a whole as they constitute a good proportion of India's population. Several legal measures both at national and international level are taken to protect the children from such kind of exploitation. The judiciary has also played a vital role in securing justice to children through its judicial pronouncement along with the NGOs in providing protection and rehabilitation. With the rising rate of crime against children "The Protection of Children from Sexual Offences Act (POCSO), 2012" was enacted and it is really a remarkable step taken by legislation through this Act to protect the rights of children and a highest punishment of death penalty has been incorporated under section 6 of the abovementioned Act. It is highly appreciable that POCSO has come to effect and with the highest punishment of death penalty it may create deterrence in the society with aim to reduce the crime. The children being the future of a country should be protected to have full development of country as a whole and brighter future ahead.

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