

● A CONTEMPORARY IMPACT ASSESSMENT OF POCSO ACT AND ITS IMPLEMENTATION



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Abstract

Be shame... they are at the age of game... Children are an important marginalized group, and instead of playing hard in the sun and attending school, they often suffer various forms of abuse, especially sexual exploitation. This excludes them not only from access to basic human needs, but also from freedom of expression and proper acceptance of views on issues of vital importance to them. Among all these afflictions, sexual exploitation and sexual abuse are considered by the perpetrators to be the most heinous crimes because of their enormous impact on the mental and physical state of the victim. Given the seriousness of this crime and the vulnerability of children, several criminal laws have been enacted to protect children.

Keywords: Child, Sexual abuse, Law, Protection

INTRODUCTION

Sexual offences themselves are serious, but when such crimes are committed against children are considered even more heinous. Children are the most vulnerable and innocent victims of such crimes. According to a 2007 Ministry of Women and Child Development report¹, "53.2% of children suffered multiple sexual abuses, of which 52.94% were boys." Additionally, in 2018, the National Crime Reports Bureau released a report stating that the number of reported rape cases was 21,605.

The Protection of Children from Sexual Offences Act, 2012 ["POCSO Act, 2012"] is a piece of legislation that attempts to protect children from all forms of sexual abuse. Although the United Nations ratified the Convention on the Rights of the Child in 1989, crimes against children were not addressed by legislation in India until 2012. It imposes severe penalties for committing crimes against minors, ranging from a minimum of 20 years in jail to the death sentence in cases of serious penetrative sexual assault. The Ministry of Women and Child Development was the driving force behind the passage of the POCSO law. The law aims to combat egregious crimes of such heinous nature and sexual exploitation of minors through relatively less vague and stricter judicial protections than the Indian Penal Code, complying with the WHO international guidelines.

This was done with the aim of constructively countering such activity. In parallel, the Juvenile Court Act, which protects minors from offenses such as "sexual assault, sexual harassment and pornography" and provides for the establishment of special courts to hold special trials on such offenses and related matters and cases was enacted.

¹<https://wcd.nic.in/sites/default/files/Annual%20Report%202007-08.pdf>
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NEED AND RELEVANCE OF POCSOACT

Before the introduction of this Act of 2012, the Goa Children Act 2003 and the Rules 2004 were the only laws in India aimed at protecting children's rights. In the Code of 1860, child sexual abuse was an offense u/S 375, 354 and 377, however, these provisions did not protect boys from sexual abuse, nor do they protect male modesty, at the same time the Code does not include definitions of the terms "modesty" and "unnatural offence".

In the absence of specific legislation, it was important to enact legislation specifically to address the growing problem of child sexual abuse in the nation. Through the efforts of various NGOs, activists and the Ministry of Women and Child Development, the POCSO Act 2012 was enacted on 14 November 2012. However, the POCSO Act 2012 is not the single law dealing with child sexual abuse cases. The POCSO Act is not an exhaustive code and has overlapping provisions in the Criminal Code of 1973, the Penal Code of India 1860, the Juvenile Justice Act and the Information Technology Act 2000, which summarizes procedures and identifies offenses.

The act has significant importance since child sexual abuse incidents occur in schools, places of worship, parks, and dormitories, and child safety is not guaranteed anywhere. Given these new threats, it was important to introduce another law that could curb the number of such crimes and provide a credible system for punishing perpetrators.

This law has helped provide a vigorous legal mechanism for victims of sexual assault and has emphasized the importance of children's rights and safety. Awareness-raising has also led to an increase in reports of child sexual exploitation cases. The law covers punishment for both non-sexual assault and serious sexual assault.

Characteristics of the POCSO Act

- **Non Disclosure of Victim's Distinctiveness:** Section 23 of the POCSO Act regulates media procedures and imposes an obligation to retain the identity of the child victim unless a special court authorizes disclosure. Section 23(2) states that "No media report shall reveal the identity of the child, including name, address, photograph, family information, school, neighborhood and other details necessary to establish the identity." In the milestone case *Bijoy/Guddu Das v. West Bengal*², the Kolkata High Court upheld the law under Article 23, making any person, including police officers, guilty of such crimes.
- **Gender-unbiased provisions:** Another notable feature of the law is that, it does not distinguish between victims and perpetrators based on gender. This solves one of the major deficiencies in the provision of Penal Code of 1860. The definition of "child" includes any one under the age of 18.
- **Obligation to report cases of child abuse:** The elders try to cover up these cases because sexual exploitation cases occur in the closed room and the stigma attached to these crimes. Consequently, for proper enforcement of the POCSO Act, Sections 19 to 22 of the POCSO Act mandate the reporting of these incidents by third parties with knowledge of such criminal activity. These laws were enacted on the premise that children are vulnerable and powerless and that society has a duty to protect their interests.



- Child-accessible research and negotiation: Sections 24, 26 and 33 of the POCSO Act provide for investigative and judicial proceedings designed with the needs of children in mind.

Magnitude of Child Sexual Abuse in India

- The Protection of Children from Sexual Offences (POCSO) Act of 2012 is an Indian law that specifically addresses child sexual abuse. The Act defines various offenses related to child sexual abuse and prescribes stringent punishments for those convicted. When It comes to determining the magnitude or degree of child sexual abuse under the POCSO Act, several factors are taken into consideration. These factors include the nature and severity of the offense, the age of the victim, the relationship between the offender and the victim, and the overall impact of the abuse on the child.
- The POCSO Act categorizes different offenses based on their gravity. It identifies specific acts such as sexual assault, penetrative sexual assault, sexual harassment, and using a child for pornographic purposes. The Act also recognizes that any non-consensual sexual contact Or sexual act with a child constitutes an offense, regardless of the absence of physical harm or penetration.
- The severity of the offense is determined by factors such as the age of the victim. The Act distinguishes between "aggravated penetrative sexual assault" and "penetrative sexual assault." Aggravated penetrative sexual assault refers to instances where the offense is committed on a child below the age of 12, while penetrative sexual assault pertains to offenses committed on children between the ages of 12 and 18.
- The relationship between the offender and the victim is another crucial factor in determining the magnitude of child sexual abuse. The Act recognizes that offenses committed by a person in a position of trust or authority, such as a family member, teacher, or guardian, carry greater gravity due to the betrayal of trust and the increased vulnerability of the child.
- Furthermore, the POCSO Act acknowledges the psychological and emotional impact of child sexual abuse. It recognizes that such abuse can cause severe trauma and long-lasting psychological damage to the child. The Act ensures that child-friendly procedures are followed during the investigation, trial, and rehabilitation processes to minimize any further harm to the child.
- In short, the magnitude or degree of child sexual abuse under the POCSO Act 2012 is determined by considering the nature of the offense, the age of the victim, the relationship between the offender and the victim, and the overall impact of the abuse on the child. The Act aims to provide comprehensive protection to children and holds offenders accountable for their actions, ensuring justice for the victims.

ADMINISTRATIVE LAXATION

There were many administrative pitfalls in implementing the POCSO Act. Due to the delay in filing the First Information Report (FIR) and following up on the medical legal case, authorities were unable to meet the statute of limitations despite repeated attempts. Testing is often omitted because people misunderstand what it means and how it affects patient well-being.

Because the environment surrounding minors in institutions is usually very uncomfortable and hostile, medical professionals must take greater responsibility when conducting tests on minors in distress. You must respond with the utmost kindness and patience. The police should follow similar manners during investigations.

CRITIQUE ON POCSO-CHALLENGES AND CONTROVERSIES

There are various gaps in the approach and implementation of the legislation set out in the POCSO Act. Below are some of them-

- **Problems in applying the last seen theory:** The last seen theory could lead to wrongful convictions in some cases and thus cannot be applied without circumstantial evidence. The Supreme Court ruled in *Anjan Kumar Salma v. Assam* (2017) that the last seen theory had weak evidence and could not be trusted on its own.
- **Unprepared survey machinery:** Investigations are flawed because authorities in child sexual abuse cases are not sufficiently familiar with the process. For example, in the *Addl. Sessions Judge, Hoingoli and Ors. v. Bhawat and Ors.* (2017), the Bombay High Court acquitted the alleged defendant on the grounds that the semen stains on the victim's dress could not be used for sentencing because the victim's dress was unsealed during police custody.
- **Silence on consensual sex:** In the case of consensual intercourse, if one of them is a minor, the non-minor partner may be prosecuted under POCSO law. This is because the consent of minors is not considered relevant under the Act.
- **False allegations from children are not punishable:** Section 22 of the POCSO Act provides for the punishment of those who make false accusations intended to humiliate, threaten, intimidate or defame another person. However, although children are exempted from such punishment, this exemption provides a loophole for many to abuse the provision.
- **Pending cases:** The POCSO Act stipulates under section 35(2) that "the special court shall, so far as is possible, complete the proceedings within one year from the date of taking cognizance of the crime" but still the number of cases pending raises major questions about the effectiveness of the justice system.

Cases observed by Supreme Court and High Court

There have been several notable cases of the Apex Court, High Courts, and POCSO courts misinterpreting the legislation to the injury of the victim and society at large. Among the cases are:

1. "State v. Aas Mohammad"³

It was discovered that the victim, a 14-year-old female minor, had had a carnal relationship with her tenant. Following the revelation of the victim's pregnancy, her parents filed the grievance on her behalf. When questioned about the charge during the trial, she revealed she filed it because the individual refused to get into marriage. However, after the charge was filed, the claimed offender made an offer of marriage,



compensation in the sum of Rs 30,000, and lodging for her family. They married while the renter was on bond, and the court determined that the tenant kept his commitments, thus he was cleared of the allegations against him. As a result of this decision, we can see that the Court is legalizing weddings of children rather than penalizing the criminal for committing a crime, which is completely contrary to the spirit of POCSO.

2. State v. Ishkar Ahmed⁴

If the person is a minor aged under eighteen, engaging in a relationship with the plaintiff for engaging in a discussion with the complainant does not give the defendant permission to commit rape or engage in any other implicit sexual activity, regardless of whether he sought her permission. Nonetheless, in such cases, the legal notion of "mens rea" should be considered in order to aid better decision-making on the part of both the defendant and the plaintiff.

3. Satish Ragde v State of Maharashtra⁵

The POCSO Court in Bombay decided in this case that stroking a minor's bosom and disrobing her garment does not constitute "sexual assault" as defined by Section 7 of the POCSO Act, and thus is not punishable under Section 8 of the Act. Because there was no physical contact between the parties, the judge determined that the act constituted a non-major breach of Section 354 of the IPC.

4. Libnus v. State of Maharashtra⁶

Previously, the previous bench clearly stated in Libnus vs. the State of Maharashtra 2021 SCC OnLine Bom 66 that "trying to restrain the hand of a 5-year-old girl and unzipping her trousers while urging her to sleep with him did not constitute sexual assault under

Sections 7, 8 of the POCSO Act." They defended their attitude by citing the lack of genuine contact between the two sides. The bench of our country's highest court first issued a stay order on these decisions, but then overturned it, claiming that "sexual intent" is required for the conduct to be characterized as a sexual assault under Section 7 and that "skin-to-skin contact" is irrelevant.

5. Sonu Kushwaha v. State of Uttar Pradesh⁷

Non-consensual oral sex does not constitute "aggravated sexual assault" or "sexual assault" under Sections 5, 6, or 9 of POCSO." According to the Allahabad High Court's findings in this case, it will be constituted "penetrative sexual assault" under Section 4 of the statute. The current minimum term for physically harming a kid under the age of ten is seven years in jail. Section five now considers any sorts of explicit attacks on youngsters under the age of twelve that entail penetration to be "aggravated," making the previous punishment much worse. The bench incorrectly classified the offence, so shortening the sentence of the guilty individual, which was contrary to the spirit of the Statute. The NCCR ("National Commission for Child Rights") aggressively pushed the

⁴2011 SCC OnLine Del 2800.

⁵(Criminal Appeal no. 161 of 2020).

⁶2021 SCC OnLine Bom 66.

⁷2014 SCC OnLine All 2539.

Chief Secretary of Uttar Pradesh to submit a petition. This instance highlights the need for more education and sensitivity towards the consequences of such crimes against youth. The sentence reduction for a significant offence exceeds.

REFORMATIVE SUGGESTIONS ON POCSO ACT

From this Act of 2012, it can be concluded that this law can significantly reduce the number of crimes against minors. The same is true, however, if the bureaucratic and judicial frameworks are functioning properly and lawfully to implement safeguards. Proving the age of the attacker based on the documentation provided may require the introduction of certain new measures into current law. Laws are undoubtedly fundamental in their nature, as their primary purpose is to have a constructive impact on the education of minors. These changes will make minors more aware of this type of crime and of the need to report the same to the relevant authorities in order to prevent further occurrences and ensure the betterment of society as a whole.

The lack of adequate Special courts, lack of awareness training for detectives and lawyers on how to deal with perpetrators of such crimes, inadequate prison records, etc. must follow the steps below: The directive of the Supreme Court is that "within 60 days of the judgment, a special court should be established in every district where more than 100 cases are pending under the law, "must be complied with immediately. The situation must be investigated and discussed openly.

Initially, POCSO Act did not offer a compensation scheme for minors who were victims of apparent crimes, however the Supreme Court drew attention to this failure and ordered victims to be compensated under the 'National Legal Service Authority's Compensation Scheme' for female Victims, survivors of sexual assault and other crimes. The problem, however, is that although POCSO is gender neutral, its compensation policy targets women and this is a legislative issue that needs remedial action.

To prevent violence, the knowledge and sensitivity of all involved are critical. Wide spread awareness campaigns should be conducted to educate the public about this law and the integrity of children. Law must also be incorporated into education. In addition to social stigma and psychological anxiety, victims of close family exploitation may become combative for fear of further humiliation and stigma. This issue needs to be considered, providing advice and enacting additional requirements to ensure that they are mentally prepared to confront perpetrators and defend their fundamental rights in the process. The involvement of various non-governmental organizations will also be helpful. Section 39 of the Protection of Children from Sexual Harassment Act requires community workers and doctors who work closely with abusers and victims to follow these principles.

In addition to raising public awareness, it is important to monitor the application of regulations. In addition to speedy courts, facilities and judicial capacity must also be considered. Regulatory safeguards must be put in place to facilitate grassroots implementation and enable rapid judicial remedies. Appropriate public training and special divisions for minors, equivalent to divisions for women, should be established.

Here come basic principles of responsibility at all levels. Many people in our country challenge the perception that sexual crimes are a serious problem that threatens national stability. It is important to accept that this dilemma stems from the



implementation of the current judicial program. In the event of health problems, those involved should be given immediate assistance

and compensation. Compensation for minors after being in a dire situation should be covered by the compensation system. Appropriate forums and frameworks must be provided for expressing opinions about crimes committed against them.

Guidelines under POCSO Act 2012:

Guidelines of the POCSO Act 2012 in schools:

1. **Sensitization:** Schools must conduct regular sensitization programs for teachers, students, and parents about the provisions and implications of the POCSO Act.
2. **Reporting Mechanism:** Schools should establish a robust mechanism to report any instances of child sexual abuse, ensuring confidentiality and safety for the victims.
3. **Awareness Campaigns:** Regular awareness campaigns should be organized within the school premises to educate students about good touch, bad touch, and safe and unsafe situations.
4. **Safe Environment:** Schools must create a safe and secure environment by implementing measures such as installing CCTV cameras, ensuring proper lighting, and regulating access to the premises.
5. **Training for Staff:** Teachers and school staff should receive specialized training on recognizing signs of abuse, responding to disclosures, and understanding their legal responsibilities.
6. **Support Systems:** Schools should establish support systems, such as counseling services or helplines, to assist victims and provide them with the necessary emotional and psychological support.
7. **Code of Conduct:** Schools should develop and implement a code of conduct that explicitly prohibits any form of sexual harassment or abuse within the school premises.
8. **Collaboration with Authorities:** Schools must cooperate with law enforcement agencies during investigations, ensuring prompt reporting of incidents and assisting in the legal proceedings.

Guidelines of the POCSO Act 2012 in workplaces:

1. **Prevention Policy:** Work places should develop a comprehensive policy that clearly defines and prohibits sexual harassment and abuse of children within the organization.
2. **Internal Complaints Committee (ICC):** Employers should establish an ICC to address complaints related to child sexual abuse promptly and impartially.
3. **Awareness and Training:** Regular awareness programs and training sessions should be conducted to sensitize employees about the provisions of the POCSO Act, recognizing signs of abuse, and reporting procedures.
4. **Safe Environment:** Workplaces must ensure a safe and secure environment for children, which may include measures like restricted access to certain areas, surveillance systems, and appropriate staffing.