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## THE INTERPRETATION AND IMPLEMENTATION OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT, 2012

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### ABSTRACT

Children are the nation's greatest human resource, and their well-being health, education, safety, happiness, and access to opportunities is a barometer of the socio-economic progress of the nation. The article begins with outlining the POCSO Act and its goals, which was introduced in 2012 in response to an increase in crimes against children. The protection of children from sexual offences (POCSO) legislation was passed by the Union Cabinet on April 21, 2018, in response to a spate of horrible child rapes. This law stipulates that anyone found guilty of raping a minor who is 12 years old or younger will be executed. Without a doubt, POCSO 2012 has significantly helped to address the child sexual abuse issue in India. It has recognized and made illegal several inappropriate sexual activities that endanger children. The law has significantly contributed to educating the public, sensitizing the criminal judicial system, and making the reporting of CSA (child sexual abuse) acceptable and mandatory, as seen by the fast-rising number of reported cases. The law is highly detailed and contains some unusual aspects. However, three key concerns that were noted in the letter and spirit of the law could make its implementation in the Indian setting problematic. The problems are rigidity in the age of consent for sex with those under the age of eighteen, mandatory reporting requirements, and the impreciseness of age determination. Additionally, POCSO 2012 and the Prohibition of Child Weddings Act 2006, which expresses the government of India's desire to outlaw child weddings and protect vulnerable children, should deter underage marriages. However, given the issues mentioned above and, in a setting, where social and cultural norms continue to tolerate, if not actively promote, child marriages the possibility of resource waste and loss cannot be discounted.

### INTRODUCTION

Around the globe, millions of children irrespective of gender face exploitation and sexual abuse every year. According to UNICEF about 1 in 10 girls under the age of twenty have been forced to engage in sex or perform other sexual acts. The lowest prevalence of CSA should not be ignored as its scar on the victim should never be ignored. The reported sexual abuse cases recognised that in 60% of cases victims are within the age of 12 years reported every year globally 4% of girls and 2% of boys are victims of CSA and the consequences become extremely severe for about 15% of girls and 6% of boys. The identification of actual global figures concerning CSA is a challenging

task because of under-reporting of such crimes. India is the home of 472 million children. Children constitute more than one-third of the Indian population. In India we celebrate 'children's day' on 14<sup>th</sup> November, the birthday of the first Prime Minister of India, Jawaharlal Nehru, who is popularly known as 'Chacha Nehru'. He dreamt of making India a 'children paradise'. However, the reality is something else.

On 17<sup>th</sup> November 2020, a 6-year-old girl was raped and then murdered brutally to perform black magic and then accused were arrested under the Protection of Children from Sexual Offences (POCSO) Act. On 26<sup>th</sup> August 2020, a 20-year-old girl was found dead near her house in Uttar Pradesh. Before that, another

horrendous incident was reported in the same state for a forlorn 13-year-old Dalit girl. Because of the societal status, this case was less talked about. In India, child sexual abuse is an understand transgression. Only a handful of cases get media attention, and the people of India sought Justice. Most of the cases remain unexplored. The most talked about POCSO incident in India was the “Kathua rape case”. The case was about Asifa Bano, an 8-year-old girl from Rasana Village near Kathua in Jammu and Kashmir who was gang raped and then killed in January 2018. By closing our eyes, we cannot deny the reality and the reality is that ‘child sexual abuse’ in India has reached an epidemic proportion. The Indian Government has administered the Protection of Children from sexual offences POCSO Act 2012, a specified law, to ensure children’s protection from maltreatment. The Act has come into force with effect from 14<sup>th</sup> November 2012 along with the rules framed there under. The POCSO Act, 2012 is a comprehensive law to provide for the protection of children from the offences of sexual assault, sexual harassment and pornography while safeguarding the interests of the child at every stage of the judicial process by incorporating child-friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts. This act includes ‘special courts’, where the victim child is allowed to record his/her statement on camera in a child friendly circumstance and simultaneously the child’s identity also remains unrevealed. However, this special act is fallible to protect children from sexual abuse. In 2019, 1510 rape cases reported of POCSO. In fact, in Kerala, children-both boys and girls have had such horrid experiences at least once in life. However, it is not the exceptional one. Between January to June 2019. The total number of registered POCSO cases all over India was 24,212.

Child Sexual abuse is a global phenomenon and a matter of concern for comprehensive existing literature. Researchers observe that CSA health professionals play a crucial role in the

identification and protection of children. Sometimes even a genuine allegation made by a child against a powerful person is reported casually based on the accuser’s disownment. Such reporting reduces the credibility of the incidence. In India people aged 15-25 and above, alcoholic, addicted to pornography are the common characteristics of the accused of the POCSO Act 2012. Childhood experiences of sexual exploitation adversely affect adulthood psychological, physical, and socio-economic well-being and thus deteriorate the adult’s physical quality of life. Childhood experiences of sexual abuse may result in permanent scars on a child’s well-being and quality of life.

### BACKGROUND

Before the introduction of the POCSO Act. 2012 the sole legislation in India that aimed at protecting the rights of a child was the Goa’s Children’s Act, 2002 and rules 2004. Under the Indian Penal Code, 1860, child sexual abuse accounted for an offence under section 375, 354 and 377. These provisions neither protect male children from sexual abuse nor protect their modesty. Also, definitions of the terms like ‘modesty’ and ‘unnatural offence’ are not provided in the code. Owing to the lack of any specific legislation, it was pivotal to establish a statute that pointedly tackles the issue of growing child sexual abuse cases in the country. With the efforts of multifarious NGO’s, activist and the Ministry of Women and Child Development, POCSO Act, 2012 was enforced on 14<sup>th</sup> November 2012.

In India, POCSO Act, 2012 is not the only legislation which deals with the child sexual abuse cases. The POCSO Act cannot be called a complete code and provisions of the code of criminal procedure, 1973, Indian penal code, 1860, Juvenile Justice Act, and information Technology Act, 2000 overlap and encapsulate the procedure and specify the offences.

### APPLICABILITY OF THE POCSO ACT, 2012

POCSO Act, 2012 is divided into 46 sections. It was published in the official gazette on 20<sup>th</sup> June 2012 but came into force on 14<sup>th</sup> November 2012 which raises the question of its applicability to the cases prior to its enforcement date.

In the case of *M. Loganathan v. state* (2016), the offence of rape was committed on 28.09.2012 i.e., before the Act was enforced, but the trial court convinced the accused under section 4 of the POCSO Act. Consequently, the High Court of Madras declared that conviction being violative of Article 20(1) of the constitution of India, 1950 was unconstitutional and it was modified to punishment under section 376(1) of the Indian Penal Code, 1860. In another case of *Kahana vs. State of Maharashtra* (2017), The accused was convicted under Section. 376 Of the Indian Penal Code and section 6 Of the POCSO Act for having. Committed Aggravated Penetrative Sexual assault upon the victim. Which resulted in her pregnancy. The accused Contended that Unless there is Proof of age of foetus, the date of the commission of offence was not in proximity with 14.11.2012. And He cannot be prosecuted Under Section 6 Of the POCSO Act. The High Court of Mumbai (Bombay) accepted the argument. An acquitted the accused of all the chargers. Therefore, it is apparent that when the applicability of the POCSO Act is questioned. The quotes after the conviction of the accused or acquit them.

The act includes the punishment where the offences have been committed against a child. Section 2(1)(d) of the POCSO Act contains the definition of child, it states that a child means any person below the age of 18 years implies that offences perpetrated against anyone of the age less than 18 years are punishable under the POCSO Act.

### IMPLEMENTATION OF POCSO ACT

Protection of children from sexual offenses POCSO Act, 2012 was enacted by Government of India to safeguard children from sexual abuse and sexual offenses. The Act clearly defines a

child as any person below the age of 18 years. The POCSO Act provides punishment as per the gravity of offence.

The Act was further reviewed and amended in 2019 to introduce most stringent punishment, including the death penalty for committing sexual crimes on children, with a view to deter the perpetrators and prevent such crimes against children.

The Government of India has also notified the POCSO rules 2020. Rule 9 of the POCSO Rules provided that the special court may in appropriately cases on its own or an application filed by on behalf of the child, pass an order for interim compensation to meet the needs of the child for relief or rehabilitation at any stage after the registration of the First Information report FIR. Interim compensation paid to the Child Shall be adjusted against the final compensation, if any.

Further, the POCSO rules also provided that for special relief if any to be provided for the contingencies such as food, clothes, transport and other essential needs, Child Welfare Committee may recommend intermediate payment of such amount. As it may assess to be required at the start stage of the following.

The District legal Services Authority DLSA under section 357A or,

The District child protection unit DCPU out of such funds placed at their disposal by state or,

Funds Maintained under section 105 of the Juvenile Justice (Care and Protection of Children Act, 2015. (2 of 2016).

### IMPORTANCE OF THE POCSO ACT, 2012

POCSO Act, 2012 was enacted when the cases of sexual abuse against children were rising. It contains provisions regarding the protection of children from sexual assault and pornography and lays down the procedure for the implementation of these laws.

Incidents of sexual abuse against children occur at schools, religious places, parks, hostels, etc., and the security of children is not

guaranteed anywhere. With such emerging dangers, it was significant to introduce separate legislation which could provide a reliable system for mitigating the number of such offences and punishing the perpetrators.

The Act has been instrumental in providing a robust justice mechanism for the victims of sexual abuse and has highlighted the significance of child rights and safety. The reporting of cases of child sexual abuse has also surged because of awareness. The Act covers punishment for both non-penetrative sexual assault and aggravated penetrative sexual assault.

**SALIENT FEATURES OF THE ACT**

The POCSO Act 2012 has some distinct features which make it important and relevant. They are discussed below:

The Act defines children as any individual aged below 18 years of age. The problem of gender exclusion in the previous act was ignored here all together as this act is general-neutral in its stance.

There are multiple forms, and the acts of sexual abuse defined under this act that is not just limited to pornography harassment or penetrative/non penetrative offences.

These Acts would be considered aggravated if the child is mentally ill and/or the perpetrator comes from a position of authority and/or trust like a family member, doctor, teacher, etc.

The are free with them. Myson of the child with the judicial system is one of the utmost importance as the PCSO Act allows a police officer to act under the role of a child protector throughout the investigation.

The process of investigation is to be made as a child friendly as possible and justice to be served from quietly with year from front the reporting of the incident.

The setting up of special courts has made that under this act with civil exclusively deal with such offences with the sensibility and sensitivity they need.

The central government is given the authority to make rules under the 45<sup>th</sup> Section of the Act.

The State Commission for the Protection of Child Rights as (SCPCR) and the National Commission for the Protection of Child Rights, (NCPCR) have been given the authority to monitor the implementation of the ADS provisions. Both authorities are statutory in nature.

The POCSO Act will override instances of inconsistencies with other provisions according to Section 42A.

The Act makes the reporting of a sexual offence mandatory. Misuse of these laws with the purpose of defamation of the person is punishable.

**PUNISHMENT**

PROVISION	NAME OF THE OFFENCE	POCSO ACT PUNISHMNET
SECTION 4	Sexual assault that is penetrative in nature on a child below 16 years of age.	A minimum of 20 years of imprisonment that may be extended up to imprisonment for the remainder of natural life + fine.
SECTION 6	Penetrative sexual assault that is aggravated in nature.	A minimum of 20 years of rigorous imprisonment that may be extended to a life sentence + fine.
SECTION 8	Sexual assault	3-5 years of imprisonment + fine.
SECTION 12	Sexual harassment	Up to 3 years of imprisonment + fine.

SECTION 14(1)	Use of a child for pornography	Upon the first conviction, 5 years of imprisonment will be given. However, upon further convictions, the failure time can go up to 7 years + fine.
SECTION 14(2)	Use of a child for pornography while committing an offence under section 3.	A minimum of 10 years of imprisonment that may extend up to imprisonment for life + fine.
SECTION 14(4)	Use of a child for pornographic purposes while committing an offence under section 7.	A 6 to 8 years of imprisonment term + fine.
SECTION 14(5)	Use of a child for pornographic purposes while committing an offence under section 9.	An 8 to 10 years of imprisonment term + fine.
SECTION 15	The offence of storing pornographic material involving a child for commercial purposes.	A term of imprisonment that may extend up to 3 years + fine or both.

### CONCLUSION

No doubt that this Act has done its best in protecting interest of child and prescribed punishment which is deterrent but mostly under this Act it provides how a child shall be protected and exploitation through there is a provision whereas a preventive action. This act has obliged each citizen to report such offense which comes to their knowledge which is about to be committed, but what it is in the law must be brought in action therefore police officers must be very active to prevent such exploitation about to be committed, which alone serves the purpose of connecting this Act. It is a harsh reality that children are exploited by the family member's, nowadays as everyone is running to make money and giving 90% of their time to their work are neglecting their children ignoring the fact that child is not only safe in the hands of parents but again there are instances where one of the parent itself abests or instigates other person to exploit child. Think where the root cause is, it is mind of a human being is being polluted. Law does everything to safeguard the child, but it is we who should be having a soul to understand another innocent soul, are we in general thinking before hurting someone physically or mentally, question yourself today. The root cause is fault in upbringing of a child who in future commits such heinous offences. A child of tender age shall be taught moral values and do everything to make him/her a good citizen. It is not only the responsibility of each citizen to be a good contribution in child's life but not a destructor. I am of no words to describe how a child who goes through such offence would feel so insecure in this world for rest of his/her life.

It was thoughtful of legislator for not only looking at the perspective of society at large but empathetically considering how child should be protected in all angles and at all stages of proceedings.