

A CRITICAL ANALYSIS OF POCSO ACT, 2012 IN PREVENTING OFFENCES AGAINST CHILDREN

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ABSTRACT:

A Child is God's most pure and innocent creation, unaffected by social evils, sins, or materialistic and worldly manipulations of any kind. Sexual offenses against modern women are rising alarmingly on a global scale. One of the top five nations in the world with the highest rate of sexual offenses is India. In India, fifty three percent of children faced some kind of sexual assault in their lives. The existing laws have not been able to stop the commission of such horrible offenses, and this rate is only going to rise with time. It is widely acknowledged that the Protection of Children from Sexual Offences (POCSO) Act, 2012, upholds the rights of children who are vulnerable to sexual abuse. The 2012 Act, which established judicial authorities to protect children's rights and established an effective right enforcement system, was created in response to the sharp rise in sexual offenses committed against children. This paper covers the Impact of POCSO in Preventing Offences Against Children. This makes it necessary to examine the POCSO Act and its challenges on Indian society.

Key words: Child, POCSO, Offences, Punishments.

INTRODUCTION :

Approximately 158 million children in India are between the ages of 0 and 6 (according to the 2011 Census). A number of programmes for the welfare, development, and protection of children are run by the Ministry of Women and Child Development²⁰⁷³. According to Justice Misra Rangnath, who delivered the order in *Sheela Barse & Others v. Union of India*²⁰⁷⁴ children are considered national assets, it is the responsibility of the state to ensure that their personalities are developed properly.

In addition to being required by the UN Convention on the Rights of the Child, which India has ratified, an expansive interpretation of Article 21 of the Indian Constitution guarantees the state's duty to safeguard children. The

development of a nation depends on children. Children need proper care and socialization in order to achieve human status.

Children's development should consider all aspects, including cognitive and emotional growth, and the development of love, affection, and security. A civilised society's treatment of its children is an indication of its level of civility. The government and society must accept that children need care and protection. The growth of the nation depends on the intellect of children. The welfare and protection of children is a primary responsibility of the state.

SOME FACTS ABOUT CHILD SEXUAL CASES IN INDIA:

- The government informed the Lok Sabha that the number of cases pending under the Protection of Children from Sexual Offences (POCSO) Act increased by 7.4% from about 1.2 lakh to over 1.3 lakh cases

²⁰⁷³ MINISTRY OF WOMEN AND CHILD DEVELOPMENT, GOVERNMENT OF INDIA, ANNUAL REPORT 2022-2023, <https://wcd.nic.in/annual-report> (last visited on Mar.15, 2024).
²⁰⁷⁴ AIR 1986 SC 1773.

in a single year until March 2023, despite the fact that the total number of POCSO cases disposed of was slightly over 1 lakh. More than 2 lakh cases have been resolved by 758 fast track special courts, including 412 exclusive POCSO (e-POCSO) courts operating nationwide, according to statistics provided to the government by a number of high courts.

- On December 8, Smriti Irani, the minister for women and child development, provided the information in a written response to a question in the Lok Sabha. Congressman K Jayakumar, a member of the Lok Sabha, also asked for state-by-state information on the complaints that were received, cases that were outstanding, and cases that were resolved regarding child sexual assault in 2022–2023.
- The state-by-state disposition of exclusive POCSO cases in 2022–2023 reveals that Madhya Pradesh led with 7,274 cases out of 46,179 cases disposed of, followed by Uttar Pradesh (5,771) and Andhra Pradesh (4,045).
- According to state-by-state cumulative data, of the 1.31 lakh cases that remained open as of March of this year, 48,630 were in UP, 15,733 in Bihar, and 8,922 in MP. UP topped the list of states with 20,329 cases in terms of data on disposal. 14,940 cases total were resolved in MP, and 6,710 in Bihar. In the nation's capital, 619 items were disposed of while 3,116 were pending.
- The minister went on to explain the background, stating that according to information from the law ministry, the Government of India finalised a plan in August 2019 to establish fast track special courts (FTSC's) across the nation for the swift trial and resolution of pending cases in accordance with the Criminal Law (Amendment) Act, 2018.²⁰⁷⁵

AREA OF RESEARCH :

This study analyses the impacts of POCSO in preventing sexual offences of children in society. This study doesn't deal any other laws which is relating to children.

SIGNIFICANCE OF STUDY :

In India, fifty three percent of children faced some kind of sexual assault in their lives. The existing laws have not been able to stop the commission of such horrible offenses, and this rate is only going to rise with time. It is widely acknowledged that the Protection of Children from Sexual Offences (POCSO) Act, 2012, upholds the rights of children who are vulnerable to sexual abuse. There was a necessity for the separate act. The present study in this regard will deal with the POCSO in full, as well as the issues and controversies associated to it.

RESEARCH QUESTIONS:

1. What are the factors are main reason to rise the sexual offences against children?
2. What are the impacts of POCSO Act, 2012?
3. What are the flaws and challenges associated with putting laws against sexual abuse of children into effect?

OBJECTIVES OF RESEARCH:

1. To study the history of POCSO legislation in India
2. To evaluate how well the POCSO Act safeguards children from sexual abuse
3. To analyse the impacts in the society after the enactment of this act

REVIEW OF LITERATURE :

The researcher analyzed national and international criminal legislation, focusing on clauses and cases involving child sexual abuse. The researcher studied the Indian Penal Code, POCSO Act, UNICEF studies on

²⁰⁷⁵<https://timesofindia.indiatimes.com/india/backlog-of-pocso-cases-rose-to-1-3-lakh-in-2023-government-tells-lok-sabha/articleshow/106001848.cms#:~:text=December%2015%2C%202023->

[Backlog%20of%20POCSO%20cases%20rose%20to%201.3,2023%2C%20government%20tells%20Lok%20Sabha&text=The%20pendency%20of%20POCSO%20Act,at%20just%20over%201%20lakh](https://timesofindia.indiatimes.com/india/backlog-of-pocso-cases-rose-to-1-3-lakh-in-2023-government-tells-lok-sabha/articleshow/106001848.cms#:~:text=December%2015%2C%202023-) last visited on 07.04.2024

child sexual abuse, and other relevant national and international laws.

A CRITICAL ANALYSIS OF POCSO ACT, 2012:

A unique law has been passed for the first time to deal with the problem of sexual offences against minors. India has the highest proportion of children worldwide, with over 42% being younger than 18 years old. One of the most serious crimes the nation is fighting is child sex abuse. The POCSO Act was created in June 2012 with the intention of addressing the issue of CSA through stricter and less unclear legislative requirements. Prior to the enactment of this Act, certain provisions of the IPC addressed sexual offences, but not all forms of offences against minors were included. Nor was there a difference made between victims who were children and adults. For the first time, many offences, such as sexual assault, sexual harassment, and pornography, have been specifically defined by law.

SALIENT FEATURES OF THE POCSO ACT:

- **Gender-neutral:** This Act has jurisdiction over cases in which a crime is committed against a minor, male or female.
- **Burden of Proof:** This act's basic rule is "innocent until proven guilty," but under it, one is "guilty until proven innocent." Penalties for making maliciously false accusations or providing false information have also been instituted in order to prevent the law from being abused.
- **It requires the documentation of abuse:** This law also requires the authorities to file a First Information Report (FIR) for each case of maltreatment of a child. The statement of a minor may be recorded at the minor's home or at any other location of his choosing, provided that the female police officer recording

the statement has a minimum rank of sub inspector²⁰⁷⁶.

- **It enumerates every kind of sexual offence known to exist against minors:** Sexual harassment, using a minor for pornographic purposes, attempting or aiding an offence, penetrative sexual assault, aggravated penetrative sexual assault, non-penetrative sexual assault, aggravated non penetrative sexual assault, and failure to report an offence that is, if there is a fear that such an offence will be committed are all punishable under this law. Ignorance of the reporting requirement carries a penalty of either a fine or six months in jail.
- **It guarantees children safety during the court process:** The child's evidence must be documented within thirty days in order to facilitate a speedy trial.²⁰⁷⁷
- Trials will be held before special tribunals and should be completed in less than a year.
- These courts have to make sure that the adolescents is kept completely hidden from the accused throughout the evidence-gathering process and that neither the investigation nor the trial will reveal his identify. The kid may provide a video link instead of having to repeat their testimony in court. All questions from the defence must go through the judge, and they cannot be asked in a hostile manner. To help the juvenile in court, a translator, interpreter, special educator, or other expert is present.
- As per the Indian Penal Code of 1860, it has increased the age of consenting to sexual conduct from 16 to 18 years old²⁰⁷⁸. Thus, it follows that: Regardless of the child's consent, anyone (even children) who performs a sexual act on them faces

²⁰⁷⁶ Section 24(1) of the POCSO Act 2012

²⁰⁷⁷ Section 35 of the POCSO Act 2012

²⁰⁷⁸ The age has been increased with the Criminal (Amendment) Act 2013

legal consequences. If a spouse has sex with a spouse who is under eighteen, they may face legal consequences.

- The Act's facilitation provisions also apply to those who trade juveniles for the purpose of sexual exploitation.
- The Act mandates that anyone with knowledge of a child's sexual abuse disclose the incident in compliance with the strictest international child protection standards. Failing to comply with this could result in fines and/or up to six months in jail. A case of child sexual abuse must be settled within a year of the offence being reported, according to the law.
- No child will be kept overnight in the police station and the statement provided by the youngster will be verbatim recorded. Penalties for making fake complaints or knowingly giving incorrect information have been put in place to stop legal abuse. It is forbidden for the media to reveal the minor's identity without the special court's approval. Media organisations that contravene this clause may face a six-to-a year-long penalty.
- **Identity confidentiality:** Section 23 of the POCSO Act mandates that the media follow certain procedures and that the identity of the child victim be kept private unless the Special Court has given permission for it to be revealed. "No information about a child's identification, including his name, residence, photo, family information, school, neighbourhood, or any other facts that might lead to the child's identify being revealed, may be revealed in any media article," according to Section 23(2). In the historic case of *Bijoy @ Guddu Das v. The State of West Bengal* (2017), the Calcutta High Court reaffirmed the legislation created under Section 23 and ruled that anyone who

violates it, even a police official, will face legal action.

- **Mandatory reporting of child abuse cases:** Because sexual abuse charges are stigmatised, elders often try to conceal instances that occur behind closed doors. Thus, in order to ensure that the POCSO Act is implemented correctly, Sections 19 to 22 of the POCSO Act require third parties who are aware of or apprehend such violations to report these instances. These rules were created with the presumption that society has a responsibility to defend children's interests because children are weak and defenceless.
- In *State of Gujarat v. Anirudhsing and Others* (1997), the Supreme Court stated that it is the duty of every citizen to support and cooperate with the investigating agency and offer information regarding the commission of cognizable offences. Teachers and schools have occasionally assisted child victims by reporting cases of sexual abuse to the appropriate authorities. In the 2016 case of *Nar Bahadur v. State of Sikkim*²⁰⁷⁹, for instance, teachers were informed that their pupil was pregnant as a result of the elderly accused harassing her sexually on multiple occasions. The panchayat was notified by the instructors, and they filed a police station FIR.
- In the significant 2013 decision of *Shankar Kisanrao Khade v. State of Maharashtra*²⁰⁸⁰, the Supreme Court established rules for reporting the offence. In this instance, an 11-year-old child with a moderate intellectual handicap was raped, but neither the police nor the juvenile justice board were notified of the incident. The Court noted that because children with intellectual

²⁰⁷⁹<https://indiankanoon.org/doc/195104935/> last visited on 01.04.2024
²⁰⁸⁰<https://indiankanoon.org/doc/79577238/> last visited on 01.04.2024

disabilities are particularly susceptible, it is the duty of the institutions that house them to report any instances of sexual abuse. In addition, it was established that failing to report a crime in compliance with the POCSO Act's provisions is a serious criminal.

- **The last seen theory:** The trials involving child sexual abuse make use of this notion. This idea states that when the time between the victim's last seen point and the crime is so small that no other person could have possibly committed the crime, the person who was last seen with the victim is presumed to be the one who committed it. It was noted in the 2012 case of *Shyamal Ghosh v. State of West Bengal*²⁰⁸¹ that it is illogical for courts to use the last seen assumption when there is a significant time lapse.

CHALLENGES IN IMPLEMENTATION:

The adoption of the death penalty for rape of youngsters is the Act's highlight. The Act provides citations from Supreme Court rulings in *Machhi Singh* (1983) and *Devender Pal Singh* (2002) to support its goal section. In these cases, the court determined that the death sentence should only be used in extreme situations. Thus, the Act's objective is to serve as a deterrent; nevertheless, some say that introducing the death penalty in cases of child sexual abuse could backfire and have disastrous repercussions. Family members are commonly the perpetrators of abuse, and including such a penalty in the statutes may discourage the crime from being reported. The question now is whether adopting the death sentence in India will curb crimes against children. To comprehend this, we must first address the primary issues and deterrents in the implementation processes. The following are some of the significant issues faced in the correct implementation of legislation for the prevention of child sexual abuse in India.

DELAYED FILING OF INQUIRIES AND CHARGE SHEETS:

Delays in the police investigation and sample submission to Forensic Science Laboratories contribute to the high pending cases²⁰⁸². According to evidence provided in a Supreme Court decision, the length of time it took the police to finish their investigation and deposit samples with forensic science laboratories (FSLs)²⁰⁸³ It is obvious that just 35% of POCSO cases are resolved within 60 days. In 36% of cases, investigations take more than six months to complete.

If the inquiry takes so long, it's improbable that the trial will be completed within a year of taking cognizance⁶⁶. The fact that the police waited 31 days to more than a year to deposit samples with FSLs in 49% of cases is also concerning. The time it takes FSLs to prepare reports may potentially be a source of delay. Courts have often chastised FSLs for their excessive tardiness in submitting reports, which has a negative impact on the proceedings. According to a Times of India examination of 100 district court decisions, some cases were delayed for over five years due to the lack of available FSL reports.

Officials sometimes blame a lack of manpower for prioritising new investigations over older ones. According to a report on the situation of policing and law and order in Delhi, 14378 cases of crime against children were to be investigated as of December 2020, with 56% still pending at the end of the year. According to NCRB data from 2020, only 79297 of the 137552 cases of crimes against minors were investigated, with 58186 (42%) still pending. Only 2284 of the investigations resulted in charges.

The 14378 instances cover all crimes against children, not just those violating the POCSO Act. Delays in investigations are prevalent for all

²⁰⁸¹2012 (7) SCC 646

²⁰⁸² Ramya Kannan, 'Activists press for speedy resolution of POCSO cases' The Hindu (20 August 2021) Last Accessed 20 May, 2023

²⁰⁸³ In Re, Alarming Rise in the Number of Reported Child Rape Incidents (2020) 7 SCC 108. Report submitted by Surinder S. Rathi, Registrar, Supreme Court of India. The report was filed in compliance to the order of the Supreme Court dated 01-10-2019 last visited on 08.04.2024.

crimes against children, including POCSO instances. The Delhi Commission for Protection of Child Rights (DCPCR) requests quarterly reports from the FSL, Government of India, and closely monitors any delays in investigations.

Delhi would examine to see if the forensic investigations were completed on schedule. The DCPCR found that while investigations were completed within three months in over 50% of POCSO instances, police took longer to collect findings and file charge sheets²⁰⁸⁴. This highlights the police's low prioritisation for POCSO cases. A research in Maharashtra observed that because DNA and forensic labs are only found in a few big cities, such as Mumbai, samples under the POCSO Act are transported there from all over the state, resulting in considerable delays in receiving findings and filing the charge sheet. In addition to these challenges, there is a lack of appropriate professionals, skills, and infrastructure in FSLs, and in certain circumstances, no FSLs exist. In order to ensure successful inquiry, it is more important to enhance the number and capacity of FSLs, as well as address the issue of delays when FSLs are present.

The Kerala High Court emphasised the need to improve the execution of the POCSO Act to protect children from secondary victimisation and provide effective punishment²⁰⁸⁵. Despite the intervention of the higher judiciary, some accused individuals are nevertheless released on bail due to police failure to deliver charge sheets on time.

CONCLUSION:

We greatly appreciate that the POCSO Act broadens the list of offences that fall under the category of child sexual abuse in order to more fully address the problem. Additionally, it promotes a kid-friendly atmosphere for the duration of the investigation and trial of such

acts, which is very beneficial to the victim. What is lacking, though, is the deliberate operationalization and application of the law to achieve its goals. We hope that these deficiencies will be addressed and closed as the Act enters its seventh year. More concerning are certain sections of the POCSO Act that need to be reevaluated since they don't follow the legislation's intended purpose. Facilitating stakeholder debates is crucial for highlighting additional issues and for fortifying the law.

²⁰⁸⁴ 9 Delhi Commission for Protection of Child Rights, 'Intervention Undertaken by the POCSO Division recently' DCPCR (29 May 2021)

²⁰⁸⁵ 0 Abhishek K.A @ Bhanu v State of Kerala, Criminal Appeal No. 1087 of 2019 (Ker H.C.) (Unreported)