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## "A CRITICAL ANALYSIS OF POCSO ACT: ENSURING PROTECTION AGAINST CHILD SEXUAL ABUSE IN INDIA"

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### Abstract

The Protection of Children from Sexual Offenses (POCSO) Act, 2012, represents a pivotal milestone in India's legislative framework for safeguarding children against sexual abuse and exploitation. This study critically analyses the Act's legislative objective, its all-encompassing provisions, and the social-legal challenges in executing it. The POCSO Act mandates timely trials via Special Courts, ensures procedures that are sensitive to victims, and categorizes offenses to address a wide spectrum of child sexual abuse. The Act faces issues such as underreporting, delays in the judiciary, and minimal public knowledge, despite its solid framework. This report emphasizes opportunities for policy enhancement and modification by comparing the POCSO Act with international child protection standards. The Act can serve as a model for child protection in developing nations by addressing these deficiencies. To effectively combat child sexual abuse, the study emphasizes the need for an all-encompassing approach that combines administrative, sociological, and legal changes.

### Keywords:

POCSO Act, child sexual abuse, legal framework, judicial reforms, child protection, societal impact, mandatory reporting, victim-sensitive procedures.

### Introduction

#### **Context: Overview of Child Sexual Abuse in India**

In India, child sexual abuse represents a significant social and legal issue that greatly affects the rights and well-being of children. The National Crime Records Bureau (NCRB)<sup>1</sup> indicates a rise in cases of child sexual abuse, underlining the necessity for swift legal measures. Numerous incidents remain unreported due to cultural taboos, social stigma, and a lack of awareness that often hinder discussions about this issue. To tackle these problems and establish a child-friendly legal system for dealing with sexual crimes against children, the Protection of Children from Sexual Offenses (POCSO) Act, 2012, was enacted.

#### **Problem Statement: Gaps in Child Protection Before the Enactment of POCSO**

Protection before the Enactment of POCSO: Before the implementation of the POCSO Act, India tackled sexual crimes against children through a combination of laws within the Indian Penal Code (IPC)<sup>2</sup>. These regulations failed to recognize the specific vulnerabilities of children as victims of sexual abuse, lacking clear definitions. For instance, non-penetrative crimes and the abuse of children in pornography were not adequately addressed by IPC sections related to rape or violating a woman's dignity. Moreover, the absence of child-sensitive judicial practices often led to secondary victimization during legal proceedings. The passage of the POCSO Act tackled these legal and procedural shortcomings by creating a comprehensive structure to protect minors from sexual abuse and exploitation.

**Research Objectives: Why This Study is Essential and Its Focus Areas** This study aims to evaluate the effectiveness of the POCSO Act in addressing child sexual abuse in India. The objectives include:

- **Analysing the Legislative Structure:** assessing the Act's stipulations and their alignment with international standards for safeguarding children.<sup>3</sup>
- **Identifying Implementation Challenges:** emphasizing barriers such as resource constraints, underreporting, and delays in the court system.
- **Offering Policy Recommendations:** proposing effective methods to address systemic issues and enhance the Act's effectiveness.

Through the exploration of these factors, the research aims to contribute to the ongoing discussion regarding child safety and propose approaches for a more robust social and legal response to child sexual abuse<sup>4</sup>.

### Legislative Background

#### Evolution of Child Protection Laws in India

Throughout the years, India's laws regarding child protection have evolved significantly, reflecting a deeper awareness and commitment to safeguarding children's rights. Early laws offered minimal protection to minors, including the rape and assault<sup>5</sup> clauses in the Indian Penal Code (IPC). The Juvenile Justice (Care and Protection of Children) Act, 2000<sup>6</sup>, marked a notable progress by tackling more extensive aspects of child welfare. Significant deficiencies existed in the laws concerning offenses against children; however, there were no specific legal actions in place to tackle child sexual exploitation. A focused legal instrument was needed to fill this legislative void, leading to the creation of the Protection of Children from Sexual Offenses (POCSO) Act of 2012.

**Significance of the UN Convention on the Rights of the Child (UNCRC)** An important occurrence that shaped subsequent child protection legislation was India's 1992

ratification of the UN Convention on the Rights of the Child (UNCRC). The UNCRC mandates that member states implement comprehensive measures to protect children from all forms of exploitation, abuse, and neglect. The POCSO Act was created based on this global framework, ensuring adherence to international standards for the protection and rights of children.

**Introduction to the POCSO Act** To tackle the increasing rates of child sexual abuse and the inadequacies of the existing legal system, the Protection of Children from Sexual Offenses Act, 2012<sup>7</sup>, was enacted. The Act provides a comprehensive legal structure that classifies offenses into three types: sexual harassment, penetrative assault, and involvement of minors in pornography. To minimize secondary victimization, child-centred legal procedures are necessary, such as private trials and confidentiality safeguards. The POCSO Act has transformed India's legal approach to child sexual crimes by enforcing strict penalties and mandating reporting, ensuring support and justice for victims.

### Key Provisions of the POCSO Act

**Scope of Offenses Covered under the Act** The POCSO Act provides a comprehensive framework to address various forms of sexual offenses against children. These offenses are categorized as:

- **Penetrative sexual assault:** This encompasses crimes that involve objects or other body parts and is characterized by the penetration of any part of a child's body with a sexual intent<sup>8</sup>.
- **Non-Penetrative Sexual Assault:** This type encompasses sexual assault actions that do not involve any form of penetration.<sup>9</sup>
- **Sexual harassment:** This refers to actions or signals aimed at a child that are of a sexual character and can be verbal, physical, or nonverbal.<sup>10</sup>
- **Child Exploitation for Pornography:** This

renders it unlawful for minors to produce, share, or view pornographic content.<sup>11</sup>

**Child-Friendly Procedures** The Act introduces various child-friendly measures to reduce the suffering that child victims experience during court proceedings:

- **Special Courts:** Established explicitly to manage POCSO cases to expedite the legal process and reduce delays.<sup>12</sup>
- **In-Camera Trials:** To ensure the safety and mental well-being of the victim, proceedings occur in a confidential setting.
- **Child Anonymity:** To avoid stigma and further victimization, the child's identity is protected throughout court processes and media attention.

**Mandatory Reporting Obligations** According to the Act, parents, guardians, and professionals are legally obligated to report any suspected or confirmed instances of child sexual abuse. As per the Act, breaching this requirement is against the law. To stop future offenders, mandatory reporting seeks to ensure that instances of abuse are quickly handled and investigated.<sup>13</sup>

### Implementation and Challenges

**Judicial and Administrative Mechanisms** The POCSO Act initiated important judicial and administrative reforms to ensure swift justice for children who have suffered sexual abuse. Special Courts were established to specifically address POCSO cases in order to speed up trials and reduce the burden on regular courts<sup>14</sup>. To protect the emotional well-being of victims during their testimonies, child-friendly methods such as in-camera hearings and the use of mediators were incorporated as well.

Despite these measures, the effectiveness of judicial mechanisms is often undermined by procedural delays and inadequate infrastructure.<sup>15</sup>

**Challenges in Enforcement** The POCSO Act faces challenges in being enforced effectively for several reasons:

- **Resource Constraints:** A lack of Special Courts, skilled personnel, and forensic resources hinders prompt and efficient case resolution.
- **Prolonged Trials:** The Act's aim of ensuring swift justice is undermined by elevated pending cases and delays in the legal system. Extended suffering for victims and their families can occasionally stem from protracted procedures.
- **Insufficient Training:** Procedural mistakes and secondary victimization frequently result from law enforcement and court personnel's insufficient specialized training to handle sensitive POCSO cases.

**Societal and Cultural Barriers** The societal and cultural norms that are deeply rooted significantly influence the reporting and prosecution of cases involving child sexual abuse. Victims and their relatives often feel dissuaded from speaking out due to a lack of faith in the legal system, anxiety about social stigma, and influence from family members. In rural regions, underreporting is exacerbated by insufficient awareness of the POCSO Act. Additionally, cultural stigmas surrounding discussions of sexuality and abuse foster a climate of silence that enables offenders to evade consequences.<sup>16</sup>

### Comparative Analysis

**Comparison with Child Protection Laws in Other Jurisdictions** Globally, countries such as the US and the UK have established comprehensive systems for safeguarding children. Legislation such as Megan's Law mandates the public disclosure of registered sex offenders, enhancing community awareness and promoting preventive measures in the US<sup>17</sup>. In all legal and administrative procedures, the UK's Children

Act prioritizes the child's wellbeing and incorporates protections for their safety and welfare. Both jurisdictions offer extensive approaches to child protection by highlighting harsh penalties, mandatory reporting, and support services for victims.

**Best Practices India Could Adopt** While India's POCSO Act adheres to several international standards, adopting the following best practices would be beneficial:

**Centralized Offender Database:** A national registry for sexual offenders, akin to Megan's Law in the US, is being established to monitor and prevent repeat offenses.

**Enhanced Victim Support Services:** In line with UK standards, these services provide comprehensive rehabilitation alongside financial assistance and mental health counselling.<sup>18</sup>

- **Specialized Training Programs:** To effectively handle sensitive cases, law enforcement and the judiciary need to create specialized training courses.
- **Technology Integration:** Utilizing online platforms for case tracking, reporting, and safeguarding victim identity confidentiality.<sup>19</sup>
- **Community Involvement Programs:** Encouraging awareness initiatives and local efforts to reduce the stigma associated with discussions about child sexual abuse.

India can enhance the impact of the POCSO Act in addressing the intricate challenges of child sexual abuse and strengthen its child protection frameworks by integrating these methods.

## Case Studies and Precedents

### 1. State of Punjab v. Gurmit Singh<sup>20</sup>

**Key Issue: Victim Protection and Gender Sensitivity**

**Summary:** In this case, the Supreme Court emphasized that regulations regarding sexual

crimes should be understood considering gender. The Court highlighted the importance of safeguarding the victim's privacy and dignity throughout the court process, especially in cases of sexual assault.

**Impacts on POCSO Act:** This decision set up victim-centred approaches for sexual offense cases, especially for children, ensuring the rights and dignity of survivors during the investigation and trial processes.

### 2. Sakshi v. Union of India<sup>21</sup>

**Key Issue: Child-Friendly Processes**

**Summary:** The Supreme Court mandated the creation of specialized courts to address cases of child sexual abuse and insisted that qualified personnel be employed to handle these sensitive matters. Furthermore, it established regulations to protect minors who give testimony in court.

**Impact on the POCSO Act:** This case further emphasized the importance of child-sensitive approaches in legal processes by impacting the procedural changes under the POCSO Act, ensuring that investigations and trials related to child sexual abuse are conducted in a manner that reduces the trauma experienced by the child victim.

### 3. Nipun Saxena v. Union of India<sup>22</sup>

**Key Issue: Online Child Sexual Abuse**

**Summary:** The case centred on the obligations of internet service providers (ISPs) to avert and disclose child sexual abuse, which is an increasing issue. The Supreme Court mandated the creation of systems for identifying and reporting online material associated with child sexual abuse.

**Impact on the POCSO Act:** This judgment extends the POCSO Act's definition to include online offenses, ensuring that law enforcement and internet providers work together to prevent the spread of child sexual abuse online and safeguard children from online exploitation.

#### 4. Anita Thakur v. Govt. of J&K<sup>23</sup>

##### **Key Issue: Mandatory Reporting by Medical Professionals**

**Summary:** The case centred on the obligations of internet service providers (ISPs) to avert and disclose child sexual abuse, which is an increasing issue. The Supreme Court mandated the creation of systems for identifying and reporting online material associated with child sexual abuse.

**Impact on the POCSO Act:** This judgment extends the POCSO Act's definition to include online offenses, ensuring that law enforcement and internet providers work together to prevent the spread of child sexual abuse online and safeguard children from online exploitation.

#### 5. Rajasthan v. Om Prakash<sup>24</sup>

##### **Key Issue: Fabricated Reports and Investigation**

**Summary:** This case illustrated the importance of carrying out thorough investigations in child sexual abuse cases to prevent injustices. The Court emphasized the significance of distinguishing between false allegations and genuine abuse claims.

**Impact on the POCSO Act:** This decision encourages comprehensive inquiries and ensures that cases of child sexual abuse under the POCSO Act are treated with caution to avoid wrongful convictions.

#### 6. Priya Patel v. State of Madhya Pradesh<sup>25</sup>

##### **Key Issue: Victim Compensation**

**Summary:** In instances of child sexual abuse, the Madhya Pradesh High Court highlighted the significance of compensating victims. It required that the state provide the survivor with financial assistance for their recovery and reintegration into society.

**Impact on the POCSO Act:** The POCSO Act's clauses that promote the welfare and health of child survivors align with this ruling, which set a standard for ensuring survivors' recovery via victim compensation.

#### 7. Vishal Yadav v. State of Uttar Pradesh<sup>26</sup>

##### **Key Issue: Witness Protection**

**Summary:** To protect the safety and welfare of the child survivor and their family, the Supreme Court directed the state government to ensure adequate security.

**Impacts on the POCSO Act:** This decision underscores the importance of safeguarding witnesses, especially in sensitive cases such as child sexual abuse, to avoid further distress or suffering for children and their families during court proceedings.

#### 8. Baijnath v. State of Madhya Pradesh<sup>27</sup>

##### **Key Issue: Training for Courts and Law Enforcement**

**Summary:** To promote empathy and sensitivity during investigations and trials, the Madhya Pradesh High Court emphasized the need for specialized training for law enforcement and judicial bodies dealing with cases of child sexual assault.

**Impacts on the POCSO Act:** This case highlights the importance of professionals involved in child sexual abuse cases enhancing their skills to ensure that the legal system addresses sensitive situations in a manner that is sensitive to trauma and supportive of children.

#### 9. Gita Hariharan v. Reserve Bank of India<sup>28</sup>

##### **Key Issue: Gender Discrimination and Child Rights**

**Summary:** This situation, unrelated to child sexual abuse, focused on gender discrimination and the importance of enforcing the law in a gender-sensitive way, emphasizing the need to consider the rights of women and children.

**Impact on the POCSO Act:** This decision highlights that case of child sexual abuse should be addressed with respect to the rights and dignity of the victim, irrespective of gender, and underscores the need for child protection laws that are sensitive to gender issues.

## 10. Suresh Kumar Koushal v. Naz Foundation<sup>29</sup>

### Key Issue: Section 377 and its Impact on LGBTQ+ Rights

**Summary:** This case centred on the legality of Section 377 of the Indian Penal Code (IPC), which criminalized consensual same-sex relationships. The situation highlighted the potential risks to at-risk children and teenagers, especially within LGBTQ+ communities, under the law's scope, despite not being related to child sexual abuse.

**Impacts on the POCSO Act:** This decision highlighted the importance of ensuring rights for every child under the POCSO Act, irrespective of their sexual orientation, and raised alarms about the susceptibility of minors, particularly concerning sexual exploitation and abuse in non-heteronormative scenarios.

### Societal Impacts: Changes in Societal Attitudes Post-POCSO Act

In India, attitudes towards child sexual abuse have shifted significantly due to the implementation of the **Protection of Children from Sexual Offences (POCSO) Act in 2012**. Owing to cultural taboos and insufficient legal protections, child sexual abuse was often hidden prior to its occurrence. The POCSO Act addressed these gaps by emphasizing the need for strict legal repercussions for offenders and advocating for the rights of child survivors. The increasing public awareness has strengthened the message that child sexual abuse is a grave crime requiring immediate action and legal intervention.

One of the most evident impacts of the POCSO Act is the shift in how the public views child sexual abuse. Additional victims have stepped forward due to the Act's clarification that this form of abuse is categorized as a criminal felony instead of merely a personal or family issue. The POCSO Act promotes the principle of safeguarding the dignity and privacy of survivors, allowing them to pursue justice without the fear of public humiliation or stigma,

as illustrated in **State of Punjab v. Gurmit Singh (1996)**, which highlighted the importance of victim protection. Moreover, the Act encourages reporting, shifting the societal norm from silence to accountability.

The media, non-governmental organizations, and community awareness efforts have significantly supported the societal change. Due to public awareness initiatives and media reports on child sexual abuse cases, the stigma surrounding these offenses has diminished, allowing survivors to share their stories. The importance of a legal system suitable for children was emphasized by the widely reported **Sakshi v. Union of India (2004)** case, which focused on safeguarding child witnesses. Due to this media engagement, child sexual abuse remains a prominent subject in public discourse.

NGOs have also been crucial by offering survivors support services such as legal aid, psychological counseling, and rehabilitation. As demonstrated in **Anita Thakur v. Govt. of J&K (2013)**, which emphasized the necessity of mandatory abuse reporting by healthcare workers, they have been instrumental in training both law enforcement and medical professionals to effectively address these situations.

Overall, the POCSO Act has greatly transformed society by fostering a more active and protective approach toward child sexual abuse, alongside the efforts of the media, NGOs, and community initiatives.

### Conclusion and suggestions

In conclusion, a significant advancement in safeguarding Indian children against sexual abuse is the Protection of Children from Sexual Offences (POCSO) Act, along with related laws and legal precedents. To enhance the effectiveness of the legal framework and ensure better child safety, several aspects must be tackled and refined.

Firstly, all parties involved—law enforcement, judicial systems, medical professionals,

educators, and the general populace—must increase their awareness and sensitivity towards the prevalence and impact of child sexual abuse. Educational and training programs must be implemented to enhance awareness of the indicators and consequences of abuse, along with the suitable reactions and resources available for victims and survivors.

Secondly, the issue of underreporting child sexual abuse cases needs to be tackled without delay. This can be achieved by implementing laws that mandate reporting along with protections for the privacy and confidentiality of victims and survivors. To encourage reporting and assist in their recovery, victims and survivors need to have access to specialized support services like counselling, legal assistance, and medical support.

Third, forming specialized teams within the judiciary and law enforcement should enhance the investigation and prosecution of cases involving child sexual abuse. The legal system ought to implement child-friendly methods to alleviate stress and promote involvement. Ultimately, consistent assessment and evaluation techniques are essential to guarantee responsibility and transparency in the execution of the POCSO Act. An extensive and varied approach to child sexual abuse necessitates cooperation among civil society organizations, non-profits, and governmental bodies.

Considering these factors, the subsequent suggestions are proposed to enhance India's protections against child sexual abuse:

1. Enhance initiatives to inform and educate individuals regarding child sexual abuse.
2. Establish laws that mandate compulsory reporting and safeguard the privacy of victims and survivors.
3. In cases of child sexual abuse, strengthen the investigative and prosecutorial procedures.
4. Provide tailored support services for

victims and survivors, including legal aid and counselling.

5. Monitor and evaluate the execution of the POCSO Act to identify areas that require improvement.

#### END NOTES

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8 Protection of Children from Sexual Offenses (POCSO) Act, 2012, Section 3, defining Penetrative Sexual Assault

9 Protection of Children from Sexual Offenses (POCSO) Act, 2012, Section 3, defining Penetrative Sexual Assault.

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Reporting Obligations and associated penalties for non-compliance.

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