

Life Turning of Miners Effect from POSCO ACT-A Study

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Abstract

Child sexual abuse is a worldwide phenomenon, and India is not an exception. The magnitude of this grave crime is underrated because of under-reporting. The reality is that the incidence of child sexual abuse has reached epidemic proportions in India. In 2021 only there were 53,874 cases registered under Protection of Children from Sexual Offences Act of 2012. To enable the all-around protection of children, the Indian government administrated the “Protection of Children from Sexual Offences (POCSO)” Act of 2012. The act is a comprehensive piece of legislation designed to protect children from crimes including sexual assault, sexual harassment, and pornography. The degree to which this act has improved child protection is therefore an important issue for interrogation. Here, we consider the implications of the POCSO Act (2012) in enhancing children’s protection from sexual abuse and pin-point the role of quality of life together with other social, economic, and demographic determinants in foreshortening POCSO incidences. The empirical analysis of the paper is conducted based on secondary data compiled from National Crime Records Bureau. Our empirical results reveal that the POCSO Act has reduced the Growth rate of incidents of sexual offences against children in India from 4.681% to -4.611. Moreover, our empirical results also reveal that by enhancing the quality of life it is possible to restrict the POCSO incidences across Indian states. In addition, favourable sex-ratio, the increased gross enrolment ratio at the elementary level, the improvement in the judiciary and Public Safety Score of the state also enables the state to restrict the POCSO incidences. Based on our empirical result we recommend that future policies could include, for instance, aiming to improve the quality of life as well as the law and order conditions of the state, and increasing the enrolment of the girl children in higher education.

Keywords: Miners, Life Turning and POSCO Act., etc.,

Introduction

According to the Constitution, Article 15 of, inter-alia, confers upon the State powers to make special provision for children. Further, Article 39, inter-alia, provides that the State shall in particular direct its policy towards securing that the tender age of children is not abused and their childhood and youth are protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity. The United Nations Convention on Rights of Children, ratified by India on 11th December, 1992, requires the State Parties to undertake all appropriate National, By-lateral and Multi-lateral measures to prevent (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; and (c) the exploitative use of children in pornographic performances and materials. The data collected by the National Crime Records Bureau shows that there has been increase in cases of sexual offences against children. This is corroborated by the study on child abuse: India 2007*conducted by the Ministry of Women and Child Department. Moreover, sexual offences against children are not adequately addressed by the extant laws.

A large number of such offences are neither specifically provided for nor are they adequately penalized. The interests of the child, both as a victim as well as a witness, need to be protected. It is felt that offences against children need to be defined explicitly and countered through commensurate penalties as an effective deterrence. It is, therefore, proposed to enact a self-contained comprehensive legislation inter-alia to provide for protection of children from the sexual offences and pornography with due regard for safeguarding the interest and wellbeing of the child at every stage of the Judicial process, incorporating child friendly procedures for reporting, recording of evidence, investigation and trial of offences and provision for establishment of Special Courts for speedy trial of such offences.

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Objectives

The object of the Act is to protect the child from many an aspect so that he/she does not feel a sense of discomfort or fear or is reminded of the horrified experience and further there has to be a child friendly atmosphere. In *Alakh Alok Srivastava v. Union of India*, 2018 Cri.L.J 2929 (SC) Hon'ble Supreme Court reiterates Object of the Act and very purpose of bringing the legislation and its provisions. It was observed that in U.P there were 30884 and in M.P- 10117 POCSO cases pending. Evidence stage – beyond 1 year Instructions issued to Spl courts - speedy disposal – no unnecessary adjts. Adequate steps – child friendly atmosphere.

For the first time, a special law has been passed to address the issue of sexual offences against children. India is home to the largest percentage of children in the world, out of which, about 42% are children below 18. One of the biggest evils the country is battling is Child sexual abuse. In order to address the problem of CSA through less ambiguous and more stringent legal provisions, the POCSO Act was formulated in June, 2012. Before passing of this Act, sexual offences were covered under different sections of IPC, but did not provide for all types of sexual offences against children. There was also no distinction between an adult and a child victim. The offences have been clearly defined for the first time in law such as the offences of sexual assault, sexual harassment and pornography.

The Act has come into force with effect from 14th November, 2012 along with the Rules framed thereunder. It is a comprehensive law to provide for the protection of children from the offences of sexual assault, sexual harassment and pornography; to safeguard the interests of the child at every stage of the judicial process; for the proper development of the child in view of his/her protection of the right to privacy and confidentiality. The Act under its ambit defines child as a Male or Female person below 18 years (Sec. 2(d)).

Salient Features

- ❖ Child friendly.
- ❖ Definitions of the Child, of different forms of sexual abuse, including penetrative and non-penetrative sexual assault and what constitutes to be —aggravated sexual assault etc.
- ❖ Child is given police protection during the Investigative Process.
- ❖ Can avail Emergency Medical Treatment.
- ❖ Provisions for avoiding re-victimization of the child.
- ❖ Child to be given frequent breaks while deposing.
- ❖ Can testify through Video conference or by single visibility mirrors or curtains or any other device.
- ❖ The child is not to be called repeatedly to testify in court.
- ❖ In-camera trial of cases but parents of victim can be allowed.
- ❖ A case of child sexual abuse must be disposed of within one year from the date of the offence reported.
- ❖ It provides for the Special Court to determine the amount of compensation to be paid to the child.
- ❖ No person in any media should disclose the details regarding the identity of the child.
- ❖ The medical examination of the child should be conducted in the presence of the parent of the child and in case of a girl child by a woman doctor.
- ❖ When there is any inconsistency between the provisions of POCSO Act and any other Law, POCSO Act will prevail. (42.A)

Types of Sexual Offences against children

- ❖ Penetrative sexual assault (Sec.3)
- ❖ Aggravated penetrative sexual assault (Sec.5)
- ❖ Sexual assault (Sec.7)
- ❖ Aggravated sexual assault (Sec.9)
- ❖ Sexual harassment (Sec.11)
- ❖ Using child for pornographic purposes (Sec.13) 9. Stringent Punishments:

Brief History of POCSO Act

Below is a table with the important facts about the Protection of Children from Sexual Offences Act:

Enactment Date:	June 19, 2012
Act Year:	2012

Short Title:	The Protection of Children from Sexual Offences Act, 2012
Long Title:	An Act to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto.
Ministry:	Ministry of Women and Child Development
Enforcement Date:	November 14, 2012

Importance and Necessity of the POCSO Act

India has one of the largest populations of children in the world – Census data from 2011 shows that India has a population of 472 million children below the age of eighteen. Protection of children by the state is guaranteed to Indian citizens by an expansive reading of Article 21 of the Constitution of India and also mandated given India's status as a signatory to the UN Convention on the Rights of the Child. Before the implementation of the POCSO Act, the Goa Children's Act, 2003, was the only specific piece of child abuse legislation.

Child sexual abuse was prosecuted under the following sections of the Indian Penal Code:

- I.P.C. (1860) 375- Rape
- I.P.C. (1860) 354- Outraging the modesty of a woman
- I.P.C. (1860) 377- Unnatural offences

However, such a measure had drawbacks since the IPC could not effectively protect the child due to various loopholes like:

- IPC 375 doesn't protect male victims or anyone from sexual acts of penetration other than "traditional" peno-vaginal intercourse.
- IPC 354 lacks a statutory definition of "modesty". It carries a weak penalty and is a compoundable offence. Further, it does not protect the "modesty" of a male child.
- In IPC 377, the term "unnatural offences" is not defined. It only applies to victims penetrated by their attacker's sex act and is not designed to criminalise sexual abuse of children.

As such a legislative reform with a specific child protection act in mind was needed.

All government exam aspirants must also go through the other initiatives, schemes and organisations working for the welfare of children across the globe in the links given below:

Integrated Child Protection Scheme	National Child Labour Project Scheme
	United Nations Children's Fund (UNICEF)
Child Labour Prohibition Act	Right to Education Act, 2009

- "Children" according to the Act are individuals aged below 18 years. The Act is gender-neutral.
- Different forms of sexual abuse including but not limited to sexual harassment, pornography, penetrative & non-penetrative assault are defined in the Act.
- Sexual assault is deemed to be "aggravated" under certain circumstances such as when the child is mentally ill. Also when the abuse is committed by the person in a position of trust such as a doctor, teacher, policeman, family member.
- Adequate provisions are made to avoid re-victimization of the Child at the hands of the judicial system. The Act assigns a policeman in the role of child protector during the investigation process.
- The Act stipulates that such steps must be taken which makes the investigation process as child-friendly as possible and the case is disposed of within one year from the date of reporting of the offence.
- The Act provides for the establishment of Special Courts for the trial of such offences and matters related to it.
- Under section 45 of the Act, the power to make rules lies with the central government.

- To monitor the implementation of the Act, the National Commission for the Protection of Child Rights (NCPCR) and State Commissions for the Protection of Child Rights (SCPCRs) have been made the designated authority. Both are statutory bodies.
- Section 42 A of the Act provides that in case of inconsistency with provisions of any other law, the POCSO Act shall override such provisions.
- The Act calls for mandatory reporting of sexual offences. A false complaint with intent to defame a person is punishable under the Act.

POCSO Act – General Principles

The Protection of Children from Sexual Offences Act, 2012, mentions 12 key principles which are to be followed by anyone, including the State Governments, the Child Welfare Committee, the Police, the Special Courts, NGOs or any other professional present during the trial and assisting the child during the trial. These include:

Right to life and survival – A child must be shielded from any kind of physical, psychological, mental and emotional abuse and neglect

Best interests of the child – The primary consideration must be the harmonious development of the child

Right to be treated with dignity and compassion – Child victims should be treated in a caring and sensitive manner throughout the justice process

Right to be protected from discrimination – The justice process must be transparent and just; irrespective of the child's cultural, religious, linguistic or social orientation

Right to special preventive measures – It suggests, that victimised children are more likely to get abused again, thus, preventive measures and training must be given to them for self-protection

Right to be informed – The child victim or witness must be well informed of the legal proceedings

Right to be heard and to express views and concerns – Every child has the right to be heard in respect of matters affecting him/her

Right to effective assistance – financial, legal, counselling, health, social and educational services, physical and psychological recovery services and other services necessary for the child's healing must be provided

Right to Privacy – The child's privacy and identity must be protected at all stages of the pre-trial and trial process

Right to be protected from hardship during the justice process – Secondary victimisation or hardships for a child during the justice procedure must be minimised

Right to safety – A child victim must be protected before, during and after the justice process

Right to compensation – The child victim may be awarded compensation for his/her relief and rehabilitation

An online complaint management system, POCSO e-box was launched in New Delhi by the Union Ministry of Women and Child development in order to facilitate easy and direct reporting of sexual offences against children and timely disposal of the cases under POCSO Act 2012.

Integrated Child Protection schemes

Integrated Child Protection Scheme (ICPS) is a centrally sponsored scheme, implemented by the Union Ministry of Women and Child Development 2009-10. The objective of ICPS is creating a safe and secure environment for children in conflict with law as well as children in need of care and protection. The scheme is based on the cardinal principles of "protection of child rights" and the "best interest of the child". It is an umbrella scheme bringing several existing child protection programmes under one roof, with improved norms. This Scheme incorporates other essential interventions aimed at addressing issues which have so far not been covered by earlier Schemes. ICPS would ensure appropriate inter-sectoral response at all levels, enhance capacities at all levels, strengthen child protection at family and community level, create database and knowledge base for child protection services and also strengthen structures and institutionalize essential services.

ICPS Objectives

- To institutionalize essential services and strengthen structures for emergency outreach, institutional care, family and community based care, counselling and support services at the national, regional, state and district levels
- Educate public and raise public awareness regarding child protection schemes, services.
- Proper Coordination of inter-sectoral response at all levels.
- Documentation and research will be undertaken.
- To enhance capacities at all levels of functionaries including administrators and service providers; members of allied systems including local bodies, police, judiciary and other concerned departments of State Governments to undertake responsibilities under the ICPS
- To create database and knowledge base for child protection services, including Management Information System and child tracking system in the country for effective implementation and monitoring of child protection services
- To strengthen child protection at family and community level.

- To create and promote preventive measures to protect children from situations of vulnerability, risk and abuse
- To raise public awareness, educate public on child rights and protection.

References

1. Ali S (2019) Death penalty in POCSO Act imperils child victims of sexual offences. Retrieve from: <https://www.indiaspend.com/death-penalty-in-pocso-act-may-imperil-child-victims-of-sexual-offences/>. Accessed 14 May 2020
2. Bajpai A (2018) Child rights in India: Law, policy, and practice. Oxford University Press
3. Banerjee A, Dolado J, Galbraith JH, Hendry DF (1993). Co-integration, error-correction, and the econometric analysis of non-stationary data: advanced texts in econometrics. Oxford University Press, Oxford
4. Barth J, Bermetz L, Heim E, Trelle S, Tonia T (2013) The current prevalence of child sexual abuse worldwide: a systematic review and meta-analysis. *Int J Pub Health* 58(3):469–483
5. Becker GS (1968) Crime and punishment: an economic approach. *J Polit Econ* 76(2):169–217
6. Behere PB, Mulmule AN (2013) Sexual abuse in 8-year-old child: Where do we stand legally? *Indian J Psychol Med* 35(2):203–205
7. Bhaumik SK (2015) Principles of econometrics: a modern approach using reviews. OUP Catalogue
8. Books SW (2016) Regression with Stata. Chapter 2-Regression Diagnostics. UCLA: Academic Technology Services, Statistical Consulting Group. Retrieve from: <https://www.coursehero.com> Accessed 11 Aug 2016
9. Bower C (2003) The relationship between child abuse and poverty. *Agenda* 17(56):84–87
10. Brown RL, Durbin J, Evans JM (1975) Techniques for testing the constancy of regression relationships over time. *J Royal Stat Soc: Series B (Methodological)* 37(2):149–163
11. Bywaters P, Bunting L, Davidson G, Hanratty J, Mason W, McCartan C, Steils N (2016) The relationship between poverty, child abuse and neglect: an evidence review. Joseph Rowntree Foundation, York
12. Chahine EF (2014) Child abuse and its relation to quality of life of male and female children. *Procedia Soc Behav Sci* 159:161–168.
13. Chandramouli C, General R (2011) Census of India. Rural urban distribution of population, provisional population total. Office of the Registrar General and Census Commissioner, New Delhi, India
14. Children in India-Statistical Information (2022) Retrieve from: <https://toybank.in/children-in-india-statistical-information>. Accessed 05 Jul 2022
15. Chiu GR, Lutfey KE, Litman HJ, Link CL, Hall SA, McKinlay JB (2013) Prevalence and overlap of childhood and adult physical, sexual, and emotional abuse: a descriptive analysis of results from the Boston Area Community Health (BACH) survey. *Violence Vict* 28(3):381–402
16. Chow GC (1960) Tests of equality between sets of coefficients in two linear regressions. *Econ: J Econ Soc* 28(3):591–605
17. Chowdhuri S, Mukhopadhyay P (2016) A study of the socio-demographic profile of the persons accused under POCSO act 2012. *Int J Health Res Med Leg Pract* 2:50–55
18. Chowdhuri S, Mukhopadhyay P (2016) A study of the socio-demographic profile of the persons accused under POCSO act 2012. *Int J Health Res Med Leg Pract* 2:50–55
19. Collin-Vézina D, Daigneault I, Hébert M (2013) Lessons learned from child sexual abuse research: Prevalence, outcomes, and preventive strategies. *Child Adolesc Psychiatry Ment Health* 7(1):1–9

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