

# The Protection of Children from Sexual Offences Act, 2012

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## Abstract

When dealing with a case of child abuse at a crowded outpatient clinic, many of us feel completely drained. Despite the fact that the "Protection of children from sexual offences act, 2012" is currently in force, it has numerous flaws that make it difficult to put into practice. Despite the act's virtues, this piece comments on the ethical and legal issues we meet on a daily basis.

**Keywords:** *child sexual abuse, POCSO, challenges.*

## 1. INTRODUCTION

The Protection of Children from Sexual Offences (POCSO) Act, 2012 was passed by the government to address incidences of child sexual abuse. Since November 14, 2012, the Act and its accompanying Rules have been in effect.

The purpose of the Protection of Children from Sexual Offences Act, 2012 is to make it easier for parents to protect their children from being sexually exploited or abused. For the first time, a specific law addressing crimes against minors has been passed.

To be covered under the POCSO Act of 2012, a person has to be under the age of 18 years old in order to be considered a child. For the first time, the legal definitions of these offences are very clear. According to the seriousness of the offence, sanctions are graded accordingly. There is a wide range of punishments available, from minor fines to lengthy prison sentences. As a last resort, the Court has the power to issue a fine.

## 2. LITERATURE REVIEW

**HITABHILASH MOHANTY (2021)** Known as the POCSO Act, this comprehensive law protects children from sexual assault, sexual harassment and pornography while ensuring that the child's interests are protected at every stage of the judicial process through child-friendly mechanisms for reporting, recording evidence, investigation, and speedy trial through designated Special Courts, which have been set up to handle cases involving minors in the Philippines.

**MICHAEL REUBEN, FAUZIA MOHAMED, FELICIAN MUTASA (2021)** the study found that Community-based Child Protection Mechanisms can make a difference in the fight against child sex abuse. " Improved access to services on sexual violence against children; increased reporting to the police; better handling; better reporting of sexual violence cases to the police and social welfare officers; and better reporting to community-based child protection mechanisms; all of these outcomes have resulted from the interventions. It has also enhanced case management and strengthened cooperation between players in Rambo District as a result of the initiatives. Rombo District's community-based child protection mechanisms interventions are being hindered by a lack of finances and insufficient knowledge and skills. That's why researchers say it's important to engage in community child protection systems, such as providing financial resources and training for community members, to prevent sexual abuse of children.

**CHILWALO, M. (2020)** Through the Girl Power Program in Zambia, administered by Plan International, this essay tries to demonstrate the importance of community-based child safety measures

in addressing school-related gender-based violence. Despite the lack of recognition and acclaim, community-based child protection mechanisms are one of the most important ways of tackling a wide range of community issues in many African countries, including Zambia. Local level structures are accessible in communities, community members have faith in these structures because they are based on local norms and practices, and unquestionably these structures are resilient when those who either helped to enhance or establish them are long gone. This article provides a wealth of information to support and defend the importance of these structures from a variety of perspectives.

**MAYANK TIWARI (2020)** Children's sexual abuse and child pornography are among the offences covered by the Protection of Children from Sexual Offences Act (POCSO), which came into effect on November 14, 2012. Children's offences that were previously unreported under the Indian Penal Code are now covered by the Act's 46 new provisions (IPC). Criminal penalties for serious penetrative sexual assault were broadened to include punishment for abuse perpetrated by a person in a position of trust or authority, such as a public worker or police officer.

**RENU RENU, GEETA CHOPRA (2019)** the most horrific crime against children, child sexual abuse (CSA) is often carried out in the shadows. It's the crime that goes unreported the most often. CSA has a lasting impact on an individual's life. Toxic stress, as it is now known, can permanently impair a child's emotional well-being. CSA research in India is the focus of this study. There was enactment of the POCSO Act (Protecting Children from Sexual Offences) in 2012. The application of POCSO is fraught with challenges. Research on POCSO is also discussed, with topics such as required reporting, consenting sex, doctors' readiness to deal with CSA victims, and the position of special courts under POCSO all being discussed in the article in some detail.

### 3. EVOLUTION OF THE POCSO ACT, 2012

53 percent of the overall population of children was abused in a survey conducted by the MWCD in 2007. At the conclusion of the poll, 99.6 percent of respondents believed that legislation to protect children from abuse was necessary. It took effect on May 22nd, 2012; the day after the POCSO bill was introduced and passed by both houses of parliament. For this reason, the POCSO Act, 2012 was enacted to protect children from sexual offences while also ensuring their rights at every level of court proceedings."

#### Introduction of the POCSO Act, 2012

The Ministry of Women and Child Development pushed for the introduction of the Protection of Children from Sexual Offences Act, 2012, in order to deal with the unpleasant crimes of sexual nature against children through strong legal restrictions. Act defines a child as any individual under the age of 18 years, deeming their health, physical, emotional, intellectual, and social development of essential importance at every stage of their life.

Under some circumstances, such as when the victim is mentally ill or the abuser is a person in a position of trust or authority toward the victim, such as a family member or a police officer, the sexual assault is deemed to be "aggravated" and punishable by up to ten years in prison. The abetment provision in the statute also punishes those involved in child trafficking for sexual purposes.

Laws can be made by the NCPCR and SCPCR under Section 44 of the POCSO Act, 2012. The NCPCR has taken up the topic in the following areas in order to accomplish its responsibilities:-

- Courts having exceptional jurisdiction are designated;
- Public prosecutors appointed as "special";
- Provision of guidance to various stakeholders within the authority granted by Section 39 of the POCSO Act;
- Design and implementation of courses for various stakeholders' training;
- measures to educate the public about the POCSO Act's provisions;
- The creation of Child Welfare Committees, District Child Protection Units, and Special Juvenile Police Units;

It is important to know how many FIRs have been filed under the act, how many charge-sheets have been submitted, how many victims have been compensated, how many defendants have been found guilty or not guilty, how many witnesses have become hostile, how many appeals have been filed, etc.

There has been more than a year's worth of sexual abuse cases sitting in a special or session's court.

If the district legal services authority receives a certain number of compensation requests, how many instances have been languishing for more than 30 days before receiving compensation?

#### **4. PROTECTION OF FEMALE CHILD FROM SEXUAL OFFENCES**

Several pieces of Indian legislation, including the POCSO Act, the IPC, the Cr.P.C. the Indian Evidence Act, and the Vishakha Guidelines, have provisions for the protection of female children in India. Even in our country's fundamental document, the Constitution of India, there are provisions for women's safety. Here is a discussion of the current legal framework:

##### **Constitution of India**

As stated in Article 45, the State is required to make every effort to provide early childhood care and education for all children until the age of fourteen. As a result of this Directive Principle, all forms of free education up until the age of 14 are included. To augment Article 24, Article 45 stipulates that children under the age of 14 must be enrolled in an educational institution to keep them busy if they are not allowed to work. To ensure educational equity for all children, it is proposed that Article 24 enhance Article 39's clauses (e) and (f). Essentially, Article 45 recognises the value of the child's dignity and individuality and instructs the state to provide free and obligatory education for children up to the age of 14 years.

However, in Vishal Jeet v. Union of India, this Court made various directives to the State and Central Governments to eliminate child prostitution and to provide appropriate rehabilitation homes, well-trained senior employees and psychiatrists and doctors.

##### **Indian Penal Code 1860:**

When it comes to child sexual abuse, nothing is worse than a justice system that treats the victim as an innocent bystander, or police behavior that only serves to heighten the victim's sense of helplessness. In order to help an abused child rehabilitate, she says, we need to change the law and the procedures for investigating and cross-examination, which are currently in place. The Indian Penal Code, 1860, contains numerous provisions aimed at combating sexual misconduct. These laws demonstrate that this issue persisted even in the 1860s.

Children under the age of 18 are protected under the Protection of Children from Sexual Offences (POCSO) Act, 2012, which governs sexual offences against minors. A new term, "penetrative sexual assault," is defined in the Act. When a police officer, public servant, member of a remand home, protection or observation home, jail, hospital or educational facility, or a member of the armed or security forces commits an offence, it is deemed more serious.

On November 14, 2012, the Act came into effect, as well as the provisions governing it. Incorporating child-friendly mechanisms for reporting, recording evidence, investigation, and speedy trial of offences through appointment of Special Public Prosecutors and designated Special Courts, the Act is a comprehensive law designed to protect children from crimes of sexual assault and harassment as well as pornography. Child-friendly reporting, recording, investigation, and trial procedures are included in the Act. The Act allows for harsh penalties that are graded according to the seriousness of the offence.

Guidelines for the use of NGOs, professionals, and experts in the pre-trial and trial stages of a child's case must be developed by state governments under Section 39 of the POCO Act. The Ministry of Women and Child Development, in response to requests from many State Governments, published Model Guidelines in September, 2013, which can be used or amended by the State Governments/UT Administrations to better implement the aforementioned Act. Seven States/Union Territories (excluding Uttarakhand), according to the National Commission for Protection of Child Rights (NCPCR), confirmed the formulation/acceptance of guidelines for various stakeholders.

When it comes to protecting children from sexual offences, the 2012 Protection of Children from Sexual Offences Act enables two state commissions to monitor the law's provisions in a way that may be mandated. The NCPCR has taken up the implementation of the POCSO Act in the following areas as part of its responsibility:-

- 1) Designation of Special Courts;
- 2) Appointment of Special Public Prosecutors;
- 3) Formulation of Guidelines u/s 39 of POCSO Act for various stakeholders;
- 4) Modules for educating diverse stakeholders are designed and implemented in this step;
- 5) Steps made to raise awareness of the POCSO Act's provisions;
- 6) Children's Committees, District Child Protective Units (DCPUs), and Special Juvenile Patrol Units (SJPSU) were established (SJPU);
- 7) Under the Act there have been a number of FIRs, instances in which charges have been brought against a person or persons and compensation has been paid to victims, as well as cases in which the accused has been convicted or acquitted and situations in which witnesses have been hostile.
- 8) There have been more than a year's worth of sexual abuse cases awaiting trial in Special/Session Court;
- 9) Instances in which District Legal Services Authority has received compensation claims, the Special Court has awarded compensation, and situations in which compensation has been awarded but not yet received has been outstanding for more than 30 days, for example.

## 5. IMPORTANT PROVISIONS OF THE ACT

- An 18-year-old is defined by the POCSO Act as a kid,
- Under the POCSO Act, there are five sorts of sexual offences against minors. sexual harassment and sexual assault are all forms of aggravated penetrative sex assault, as are the other four,
- Additionally, the Act punishes anyone who aids or assists in the commission of an offence or an attempt to commit one,
- Under the POCSO Act, using a kid for pornographic purposes, such as depicting a child's genital organs, using a child engaging in actual or simulated sexual actions, or depicting a child in an indecent or obscene manner, constitutes an offence,
- The POCSO Act provides for the establishment of a Special Court to expedite trials and conduct trials in an environment that is child-friendly.
- Trial must be completed within a year of the Special Court's taking notice of the offence.

## 6. CONCLUSION

Though the POCSO Act of 2012 was passed by Parliament, most people aren't aware of this groundbreaking measure to protect children from sexual assault. To deny that this enactment is inaccessible to those who must implement it would be a disservice to the author. According to the Delhi Police, they added POCSO provisions to the FIR only two days after it was filed on 15th April 2013 in a horrific rape case in Delhi.

Even though this law is currently in effect, the administrative level of this legislation is still lacking. Ethical, legal, and clinical concerns must be addressed in workshops organized by professional organizations. Educating experts, teachers, parents, children, and the general public on children's rights and protection is essential.

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