
POCSO Act- A DETAILED CRITICAL ANALYSIS

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ABSTRACT

Background and Purpose

POCSO Act was enacted in India in 2012 long after it was realized that child sexual abuse being a heinous offence requires a separate legislation to punish offenders who abuse child sexually than adult women. The act came with stringent punishment for said offenders. The present study is an initiative to study and analyze in detail POCSO Act and its impact in India.

Material and Method

Research scholar has used doctrinal method with both primary and secondary data analyzed and a qualitative approach has been followed. POCSO act was a necessary implication which has strengthened the laws with respect to protection of children and it has also reduced the crime rate against children.

Silent features of POCSO Act

The Act does not discriminate on the basis of gender and places a premium on the child's best interests and welfare at all times. This is done to promote the child's complete physical, emotional, intellectual, and social development. Under the Act, a "child" is anybody under the age of eighteen, and the child's best interests and well-being are always given first priority. This is done to promote the kid's overall healthy physical, emotional, intellectual, and social development. It specifies various forms of sexual abuse, such as penetrative and non-penetrative assault, as well as sexual harassment and pornography, and defines "aggravated" sexual assault as occurring when the victim is mentally ill or when the perpetrator is a trusted adult such as a family member, police officer, teacher, or doctor.¹

¹PROTECTION OF CHILDREN FROM SEXUAL OFFENCES, Available at- <https://vikaspedia.in/education/policies-and-schemes/protection-of-children-from-sexual-offences-act> (Last accessed on 18.08.2022 at 9:48 pm).

Those who aid in the sexual exploitation of minors are likewise subject to prosecution under the Act's abetment provisions. The Act sets forth severe punishments that increase in severity depending on the severity of the crime, up to and including a sentence of rigorous imprisonment for life and a fine. Child pornography is defined as "any visual depiction of sexually explicit conduct involving a child, including but not limited to photographs, videos, digital or computer generated images that are indistinguishable from actual children, and images that have been created, adapted, or modified to appear to depict a child;"²

Statistical Data of cases under POCSO Act and Crime Records for the implications

On a daily basis, news outlets publish new cases of sexual assault and other sexual crimes committed against children or juveniles. Child sexual abuse is a major problem in India, a nation with more than 44 crore kids. Studies have shown that children who are sexually abused often suffer from a variety of mental health issues that may never fully go away. Fear of indignity, social shame, communication gap between kid and parents, community denial, long legal processes, and other factors may cause children and parents to keep silent about such situations.³ In 2012, the government of India approved a gender-neutral legislation, the Protection of Children from Sexual Offences (POCSO) Act, 2012, which came into effect on November 14 of that year along with the regulations created under the act.⁴ Every kid under the age of eighteen is protected against sexual assault, sexual harassment, and pornography according to this all-encompassing regulation. Incorporating child-friendly methods for reporting, recording of evidence, investigation, and fast trial of offences via designated Special Courts, it seeks to protect the interests of the child at every level of the legal process. The severity of the crime will determine the severity of the penalty, which may range from a fine to life in jail. Annually, the NCRB releases a report titled Crime in India, which includes data on the number of cases registered under each provision of the POCSO Act, 2012.⁵

Data from the NCRB are current as of the year 2020. Since 2017, the NCRB report has included distinct sections for offences under Sections 17 through 22 of the POCSO Act, as

²Ibid.

³**Data: POCSO cases increased by 30% in 5 years while pendency rate in Courts crossed 94%**
Available at- <https://factly.in/data-pocso-cases-increased-by-30-in-5-years-while-pendency-rate-in-courts-crossed-94/> (Last accessed on 18.08.2022 at 10:22 pm).

⁴Ibid.

⁵Ibid.

well as offences under the POCSO Act read with Section 377 IPC.⁶ Preceding this, unnatural offences against minors were recorded as IPC crimes rather than covered under POCSO Act. Since 2017, the report includes included information depending on the sex of the child victim. Only in 2014 did NCRB begin keeping records of cases filed under POCSO Act, 2012. NCRB statistics show a 30% rise in POCSO incidences between 2016 and 2020.⁷ More than 47,000 instances are expected to be recorded in 2019 and 2020 alone. This equates to an average of 129 POCSO instances every day. Girls made up between 97.1% and 97.6% of victims annually between 2017 and 2020 (the latest years for which data is available),⁸ while males made up between 2.3% and 2.8%. Between 2016 and 2019, about 54% of all POCSO Act reports included violations of Sections 4 and 6 (rape).⁹ In 2020, 59.4% of all rapes were recorded. In each of these years, 99 percent of rape victims were female. For the first time, in 2020, more than 28,000 incidents were recorded under POCSO's Sections 4 and 6. Since 2017, there has been an almost 60% rise in the total. Sections 8 and 10 (sexual assault), Section 12 (sexual harassment), and Sections 14 and 15 (usage of a minor for pornographic material) all had a rise in reported incidents until 2019¹⁰, and then saw a decline in 2020. In each year, almost a third of POCSO Act cases included sexual assault, and coupled with rape cases, accounted for around 90% of all POCSO Act cases. Over 2,592 incidents were recorded between 2017 and 2020 under the POCSO Act to read with Section 377 IPC (unnatural crimes), and 90% of victims (2,341) were boys.¹¹

Conclusion

Anyone responsible for unduly delaying the police's response to a crime might be fined an amount deemed fair. A person might take advantage of this loophole by initiating a malicious prosecution.

Keywords: Child sexual abuse, POCSO Act, Child, Majority age, Sexual Harassment.

⁶Ibid.

⁷Ibid.

⁸Ibid.

⁹Ibid.

¹⁰Ibid.

¹¹Ibid.



INTRODUCTION

Background

Women and children have been subjected to a plethora of sexual exploitations ever since the start of civilization, and this is true on a worldwide scale. While all forms of sexual misconduct against children, such as genital penetration, improper touching, groping, and fondling, and defilement, fall under the umbrella of child sexual abuse (CSA), the majority of recorded instances involve genital penetration and defilement. There is widespread agreement that CSA is a major issue across the world, affecting kids of all ages, genders, races, and socioeconomic backgrounds. It raises serious problems for human rights and public health, and it presents a constant obstacle for the judicial system to deal with. Abuse of children is a hidden emergency in terms of health and justice, but it is often underreported, leaving children vulnerable to further exploitation and suffering. CSA is a social ill that branches out from poverty, which is the mother of many others. Sexual abuse, the flesh trade, and forced marriage are just some of the other forms of exploitation that come to mind when we think of child trafficking. Additionally complicated is the fact that CSA is mired in myths and misconceptions all over the world. According to research (Cromer & Goldsmith, 2010),¹² So far, no society or government has been able to devise a foolproof plan to prevent sexual assaults on children. To combat CSA, India passed the Prevention of Child Sexual Offences (POCSO) Act, 2012 on November 14, 2012, which is not in line with the United Nations Convention on the Rights of the Child, 1989. (Children Day).¹³ This Special Act does away with the word "rape" in favour of the more gender-neutral phrase "penetrative sexual assault," making it more child-friendly. A number of provisions ensure justice and protection for the child from various forms of sexual exploitation, including those related to reporting incidents, investigation procedures, protecting the identity of victim children, special courts, special prosecutors, and resolution of trials within a year.

¹²Goswamy, Gajendra Kumar-*Role of forensics in strengthening child rights under POCSO Act, 2012, 2020* Available at-<https://shodhganga.inflibnet.ac.in/handle/10603/308994> (Last accessed on 18.08.2022 at 9:28 pm).

¹³POCSO ACT Available at-
https://www.indiacode.nic.in/handle/123456789/2079?sam_handle=123456789/1362 (Last accessed on 18.08.2022 at 9:29 pm).

Literature Review

The sexual exploitation of minors has a grim and deplorable history, as shown by historical research. In ancient Greece and Rome, minors were utilised for sexual entertainment (Brown, 1985; Downer, 1984).¹⁴ At least until a male juvenile developed secondary sexual characteristics, it was socially and legally acceptable in Greece for an older male family member to engage in sexual activity with a minor son. The Romans condoned homosexual acts between men of a certain age and those of a younger age, and minors were often used for sexual gain (Downer, 1984).¹⁵ Many young girls were imprisoned, tortured, and burned at the stake in the 1600s and 1700s "because their tormentors claimed that they had fornicated with the Devil and had sought to entice innocent and unsuspecting males" (Kahr, 1991).¹⁶ Until the early modern era (1700s), homosexuality was widely accepted across Asia, Africa, the Middle East, and Europe (Trumbach, 1977).¹⁷ There are a number of abnormal behaviours that can occur in a sexually abused child, including nightmares, depression, post-traumatic stress disorder (PTSD; Ullman, Najdowski, & Filipas, 2009)¹⁸, changes in hygiene (refusing to bathe or excessive bathing), inappropriate sexual conduct or knowledge (Vrolijk-Bosschaart et al., 2019), self-harm (Yeo & Yeo, 1993), academic difficulties or absences, and an over.¹⁹

Aim

The present article enlightens with respect to the recent legislative enactment i.e. POCSO Act and its impact on the crime against child victims of sexual abuse. The aim of present study is

1. To analyse the impact of enactment of POCSO Act on crime rate towards child sexual abuse.
2. To study in detail and critically analyse POCSO Act.
3. To highlight the sufficiency of act and its competency with other laws.

DETAILED ANALYSIS OF POCSO ACT

¹⁴Literature Review Available at- https://shodhganga.inflibnet.ac.in/bitstream/10603/308994/8/08_chapter%201.pdf (Last accessed on 18.08.2022 at 9:40 pm).

¹⁵Ibid.

¹⁶Ibid.

¹⁷Ibid.

¹⁸Ibid.

¹⁹Ibid.

Provisions under the act

Penetrative Sexual Assault (Section 3) on a minor - Not less than ten years which may lead to imprisonment for life, and fine (Section 4). (Section 4).²⁰ Whoever commits penetrative sexual assault on a child under the age of sixteen shall be subject to imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be subject to fine. If you're convicted of aggravated penetrating sexual assault under Section 5, you'll get a minimum sentence of twenty years in jail, which may go up to life in prison, and a hefty fine (Section 6)²¹ Sexual Assault (Section 7) i.e. sexual contact without penetration — Not less than three years which may extend to five years, and fine (Section 8) (Section 8) A person in a position of power may face up to seven years in prison and a fine of up to \$250,000 for the crime of aggravated sexual assault (Section 9). (Section 10)²²

Section 11: Sexual Harassment of a Child; Maximum Sentence 3 Years in Prison and a \$10,000 Fine . Article 12 Use of a Child for Pornographic Purposes (Section 14) — No less than 5 years in prison and a fine, with an increase to 7 years in prison and a fine for a second conviction. Under Section 14 (1), the minimum sentence for the pornographic exploitation of a minor that results in a penetrative sexual assault is ten years (in case of child below 16 years, not less than 20 years)²³

Aggravated penetrative sexual assault arising from the use of a minor in a pornographic context: not less than 20 years in prison and a fine of not less than \$250,000 A minimum of three and a maximum of five years in prison for using a minor in a pornographic context that leads to sexual abuse.²⁴ Penalties start at 5 years in prison and may go as high as 7 for exploitation of a kid for sexual reasons that leads to serious sexual assault. Anyone with the purpose to distribute or transmit child pornographic material keeps or has such material and fails to remove or destroy it or report it to the authorised authorities as may be specified. - A punishment of at least Rs 5,000, and no less than Rs 10,000 for any future offences. Except for the purposes of reporting, as may be prescribed, or for use as evidence in court, any person who stores or possesses pornographic material involving a child for transmission or

²⁰Ibid.

²¹Ibid.

²²Ibid.

²³Ibid.

²⁴Ibid.

propagation or display or distribution in any way, at any time, shall be punished with imprisonment of either description: The maximum penalty is three years in jail, or a fine of up to \$3,000, or both.²⁵

. Punishment has been established for filing a false complaint or proving false information with malicious intent to discourage the abuse of the legislation. In an effort to promote reporting, the maximum sentence for such an offence is just six months. Penalties are increased (by one year) if a fraudulent allegation is filed against a youngster (Section 22).

²⁶To protect the child's privacy, the Special Court has ordered that the media cannot report on the child's identify without its consent. Six months to a year in prison may be the penalty for media outlets that violate this rule (Section 23).²⁷The Act mandates that the child's testimony be documented within 30 days to ensure a prompt trial. As far as practicable, the Special Court should wrap up the trial within a year (Section 35). Within twenty-four hours of receiving a report, the Special Juvenile Police Unit (SJPU) or local police will have taken the necessary steps to ensure the child's safety, including admitting him or her to a shelter home or the closest hospital for treatment and rehabilitation. As part of the child's long-term rehabilitation, the SJPU or local police must report the incident to the Child Welfare Committee within 24 hours of receiving the complaint. Central and State Governments are required under the Act to make the general public, children, and their parents/guardians aware of the requirements of this Act by spreading awareness via media, including television, radio, and print media, at regular intervals. Notwithstanding anything contained in any law for the time being in force, an offender found guilty of an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376C, 376D, 376E, or section 509 of the Indian Penal Code (45 of 1860) shall be liable to punishment under this Act or under the Indian Penal Code as²⁸

Methodology

The present study has followed doctrinal research methodology with qualitative approach.

Study Design

²⁵Ibid.

²⁶Ibid.

²⁷Ibid.

²⁸Ibid.



The study has been conducted by descriptive analyses of data collected and reaching necessary conclusions. Objectives have been studied in detail and accordingly theories have been propounded.

Data Collection

Primary data such as case laws, statutes have been taken from bare acts, official website of courts while secondary data has been collected from websites, blogs , journals etc.

Data Analysis

Qualitative analysis of data has been done using various sources and opinion of jurists.

CONCLUSION

Reconsidering Section 29 of the Act, which requires the Special Courts to presume the guilt of the accused, because it is incompatible with the principles of natural justice and criminal jurisprudence, and providing some relaxations for application of the aforementioned provision in certain cases, such as I where there is insufficient evidence to constitute a prima facie offence, or (ii) where it is proven that the victim or his/her relative(s) has/have filed the complaint. Court hearings are held at irregular intervals, despite the fact that the Act specifies a time limit for finalising cases. In this way, the accused will have a fair chance to provide evidence of their innocence at at least one hearing with the court within a certain time frame. In order to keep the process moving quickly, it is imperative that the accused be physically present at every hearing.

Additionally, the Act's definition of "kid" has to be revised. An individual "under the age of eighteen years" is considered a "child" for the purposes of Section 2 (d).²⁹ Although this description is accurate from a biological standpoint, it does not account for those who may be experiencing mental or physical impairments. In a recent instance, the Hon'ble Supreme Court ruled that the legislature correctly interpreted the phrase "age" to mean chronological age, rather than mental age, since a lady who was 38 years old but only 6 years old at the time

²⁹IBID.



of her rape was considered to be mentally retarded.³⁰ Furthermore, a fair restriction period should be set on filing a complaint of an act of abuse lest any conduct since the execution of the Act might be reported at any time, which not only makes inquiry difficult but also renders the cause of action obsolete with the passage of time.

³⁰THE TIMES OF INDIA, *Is a 40 year old woman with mental age six entitled to compensation under POCSO Act*, THE TIMES OF INDIA (Mar. 3, 2017, 08:26 IST) <https://m.timesofindia.com/india/is-a-40-year-old-woman-with-mental-age-of-six-entitled-to-compensation-under-pocso/articleshow/57441310.cms..>



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- 7) ¹IBID.