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## Safeguarding Childhood: An Analysis of PocsO's Efficacy in India's Social and Legal Context

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*Crimes involving the sexual abuse of children are extremely concerning. It is a concern not just for parents, but also for the school authorities where children study. The police, government, and media constantly scrutinize such a concern for children. For a variety of reasons, including societal, economic, and personal ones, the majority of children are becoming victims of sexual offences. But because of social stigma and family pressure, these offenses go unreported. The article discusses child sexual abuse in India, a brief overview of the POCSO Act, the need for the legislation, implementation mechanisms, challenges in implementation, case studies, impact, and effectiveness. To achieve justice, this article focuses on investigating many facets of child sexual abuse and the role of the Protection of Children from Sexual Offences Act (POCSO) in reducing this heinous crime. To protect minors from sexual assaults, sexual harassment, and pornography, India passed the POCSO Act in 2012<sup>1</sup>, which included special provisions such as establishing unique Courts for fast trials of these crimes. To remove social stigma, the term 'rape' has been replaced by the phrase 'penetrative sexual assault'. This law is entirely intended to protect children, and it defines various categories of sexual offences against children and provides harsh punishment; however, sexual crimes against children are on the rise in our country due to non-enforcement of existing laws, delays in investigations, a lack of awareness, and so on.*

**Keywords:** *child abuse, child sexual abuse, protection of children, violence against children, poison.*

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<sup>1</sup> Protection of Children from Sexual Offences Act 2012

## INTRODUCTION

'Children are the world's most valuable resource and its best hope for the future.' They require particular attention and protection. Child sexual abuse is a global issue, and India is not an exception. However, they were not secure or protected. 77% of children who experience abuse or assault are at the hands of family members or relatives.<sup>2</sup> Recent evidence such as the National Crime Records Bureau (NCRB), there has been a notable rise in reported cases of child sexual abuse. In 2020, approximately 28.9% of children in India experienced some form of sexual crime, with only 65.6% of these crimes being reported<sup>3</sup> demonstrating the seriousness of child sexual abuse. It demonstrates unequivocally that most Indian youngsters are not even protected at home. It is in the home that we need to begin examining the issue of child sexual abuse. The Indian Penal Code<sup>4</sup> fell short in protecting children and making unconventional sexual abuse crimes, which are not the same as standard crimes like child trafficking, pornography, etc. Therefore, legislation Protection of Children from Sexual Offences<sup>5</sup> was passed in 2012. This Act is the most balanced and effective weapon available till now to battle these crimes against children who have been sexually abused in various forms. Additionally, our Indian Constitution contains some provisions for safeguarding children including Article 15(3)<sup>6</sup>, 21-A<sup>7</sup>, 24<sup>8</sup>, 45,<sup>9</sup> and 51A (K).<sup>10</sup> Given the fact that India has the world's largest child population, the development of children must be prioritized on the national development agenda. This is not because children are the weakest section in society, but because they are our nation's assets and will remain a valuable resource in the future.

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<sup>2</sup> 'National Child Abuse Statistics from NCA' (*National Children's Alliance*, 04 March 2024)

<[www.nationalchildrensalliance.org/media-room/national-statistics-on-child-abuse/](http://www.nationalchildrensalliance.org/media-room/national-statistics-on-child-abuse/)> accessed 18 May 2024

<sup>3</sup> Megha Chaturvedi, 'Child Sexual Abuse in India: Alarming statistics, lifelong impact, how to heal' *India Today* (04 August 2023) <<https://www.indiatoday.in/education-today/featureophilia/story/child-sexual-abuse-in-india-alarming-statistics-lifelong-impact-how-to-heal-2416285-2023-08-04>> accessed 18 May 2024

<sup>4</sup> Indian Penal Code 1860

<sup>5</sup> Protection of Children from Sexual Offences Act 2012

<sup>6</sup> Constitution of India 1950, art 15(3)

<sup>7</sup> Constitution of India 1950, art 21A

<sup>8</sup> Constitution of India 1950, art 24

<sup>9</sup> Constitution of India 1950, art 45

<sup>10</sup> Constitution of India 1950, art 51 A(K)

## CHILD SEXUAL ABUSE IN INDIA

The frequency of offenses against children in India is a major concern, and determining the precise extent is difficult due to underreporting, stigma, and cultural factors. The Ministry of Women and Child Development conducted a comprehensive study in 2007. According to the findings of this study, about 53% of Indian children have been subjected to a variety of kinds of sexual abuse.<sup>11</sup> The study includes touching, fondling, exhibitionism, and penetration as types of sexual abuse. There has been a rise in reported incidences of child sexual abuse after the enactment of the POCSO Act in 2012. Annual data on crimes against children, including sexual offences, are provided by the National Crime Records Bureau (NCRB). These figures, however, reflect reported cases rather than true prevalence.

Crime Against Children (2002)<sup>12</sup>, written by Arunima Baruah, addressed some major issues of Child Sexual Abuse. Her primary goal was to uncover factors that lead to the susceptibility of youngsters. She defined vulnerability as a child's physical and psychological features that endanger their safety or protection. Risk factors, which are situations and circumstances that increase the possibility of victimization, are not included in this definition. The most important point she made in her piece was how children become aware of sexual assault. It is a concern because children may be unaware of which kind of physical contact is associated with negative or positive touch. It can be challenging to comprehend sexual assault in children because, although too much information may rob them of the sense of safety and security they deserve during childhood, a lack of knowledge on the subject can also leave kids unprepared for an attacker.

Child Abuse 1992 authored by G. S. Kewalramani<sup>13</sup> Note that there is a dearth of awareness in our society about the actual frequency of child sexual abuse and the traits of those who engage in it. This remains an open question, in his opinion. Boys and girls are equally victims of child sexual assault, although girls are more susceptible. He conducted a study in which he generated

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<sup>11</sup> Vyjayanthi Kanugodu Srinivasa Subramanian et. al., 'Silence of male child sexual abuse in India: Qualitative analysis of barriers for seeking psychiatric help in a multidisciplinary unit in a general hospital' (2017) 59(2) Indian Journal of Psychiatry <[https://doi.org/10.4103/psychiatry.IndianJPsychiatry\\_195\\_17](https://doi.org/10.4103/psychiatry.IndianJPsychiatry_195_17)> accessed 18 May 2024

<sup>12</sup> Arunima Baruah, *Crime against children* (Kalpaz Publications 2002)

<sup>13</sup> G. S. Kewalramani, *Child Abuse* (Rawat Publications 1992)

23 cases of victims, 16 of whom were girls and 7 of whom were boys, yielding a sexually assaulted boy-to-girl ratio of 1:2. One of the study's findings was that the majority of abusers come from lower-class and lower-status occupations. This is a risk that can only be isolated in certain groups, such as low-income, illiterate, or less-educated people, and adolescents.

Child exploitation and abuse have traumatized children, which harms their well-being and retards their development. With 440 million children, India accounts for 19% of the world's children population. According to a survey conducted by the United Nations International Children's Education Fund between 2005 and 2013, CSA in Indian girls was 42%. The frequency of CSA was estimated to be 53% in this large state-sponsored survey in India. Boys were equally harmed, with more than 20% experiencing severe types of sexual abuse.<sup>14</sup> According to the Honourable Delhi High Court, 215 of the 1704 rape cases reported in the city in 2014 were instances of child incestuous rape.<sup>15</sup>

An unfortunate case of child sexual abuse includes the Mathura Rape Case (Tuka Ram and Anr v State of Maharashtra).<sup>16</sup> The Mathura rape case involved a custodial rape in which a tribal girl who was a minor at the time was allegedly raped by two police officers. Following the acquittal of the accused by the Supreme Court, there was public outcry and rallies, which eventually led to the Criminal Law (Second Amendment) Act 1983,<sup>17</sup> Which amended Indian rape law. There is an utmost need to protect children, and this has become a global concern for every society. Sexual abuse of children is a blot on society as a whole because it shakes society's human sensibility and obstructs children's normal healthy growth.

## **CHILDREN'S PROTECTION BEFORE THE POCSO ACT, 2012**

Many provisions in the Indian Constitution are based on the basic structure to protect, develop, and care for children.

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<sup>14</sup> S Tyagi and S Karande, 'Child sexual abuse in India: A wake-up call' (2021) 67(3) Journal of Postgraduate Medicine <<https://doi.org/10.4103%2Fjpgm.IPGM.264.21>> accessed 18 May 2024

<sup>15</sup> Soibam Rocky Singh, 'Incest rapes in Delhi up, fathers among offenders' *Hindustan Times* (19 November 2014) <<https://www.hindustantimes.com/delhi/incest-rapes-in-delhi-up-fathers-among-offenders/story-CiCONdMcRtirpLuhDJLpdL.html>> accessed 18 May 2024

<sup>16</sup> *Tuka Ram And Anr v State Of Maharashtra* (1979) 2 SCC 143

<sup>17</sup> Criminal Law (Second Amendment) Act 1983

- Article 21<sup>18</sup> provides the right to life that has to be free, and dignified, as per the procedure established by the laws.
- Article 21-A<sup>19</sup> of the Indian Constitution provides for free and compulsory education for all children aged six to fourteen years as a Fundamental Right.
- Article 23<sup>20</sup> forbids the trafficking of human or forced labour, and
- Article 24<sup>21</sup> Prohibits the employment of children under the age of fourteen in hazardous occupations.
- Article 45<sup>22</sup> Makes provision for children's free and compulsory education. The State shall make every effort, within ten years of the adoption of this Constitution, to offer free and compulsory education for all children until they reach the age of fourteen.

Until the enactment of separate legislation dealing with specialized subjects such as sexual abuse against children, it was only punishable under the country's penal laws in three particular parts that did not only apply to minors. However, under these specific circumstances, the only alternative for reporting violations is as follows:

- Rape (sexual intercourse without consent – Section 376<sup>23</sup>).
- Outraging modesty of a woman (unspecified acts – Section 354)<sup>24</sup> and
- Unnatural acts are defined as carnal intercourse against the order of nature with any man, woman, or animal (anal sex, homosexuality, or bestiality – Section 377)<sup>25</sup> (Decriminalized).

**ADDITIONAL PROVISIONS:** The Information and Technology (IT) Act of 2000<sup>26</sup> Also forbids the publication and transmission of pornography using online material, yet it can be shown that children can easily access pornography on the internet.

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<sup>18</sup> Constitution of India 1950, art 21

<sup>19</sup> Constitution of India 1950, art 21A

<sup>20</sup> Constitution of India 1950, art 23

<sup>21</sup> Constitution of India 1950, art 24

<sup>22</sup> Constitution of India 1950, art 45

<sup>23</sup> Indian Penal Code 1860, s 376

<sup>24</sup> Indian Penal Code 1860, s 354

<sup>25</sup> Indian Penal Code 1860, s 377

<sup>26</sup> Information and Technology (IT) Act 2000

In this regard, certain sorts of sexual abuse, such as 'non-penetrative sexual assault, harassment, and exploitation,' are not defined or considered crimes, and hence are not recorded.

### **NEED OF THE POCSO ACT 2012**

Worldwide, there is an increasing prevalence of child sexual abuse, particularly in our own country, India, which is one of the top five countries in the world in terms of the number of sexual offenses involving children. The POCSO Act is primarily needed to protect kids from being sexually abused and exploited. All children are entitled to the same rights, regardless of their community, state, religion, or place of birth. The act acknowledges that children who have experienced sexual abuse should get extra care and protection. In addition to focusing on their mental and physical well, it guarantees an amicable legal process. There was no comprehensive law specifically addressing child sexual abuse laws in India before the POCSO Act. The act requires that cases of sexual abuse be reported and looked into as soon as possible. The POCSO Act prioritizes victim help and rehabilitation in addition to punishing criminals. It creates assistance services and special courts for children who have experienced sexual abuse.

The legislation is consistent with India's commitment to several international treaties and accords, notably the United Nations Convention on the Rights of the Child, which requires children to be protected from all forms of violence. The POCSO Act's implementation has raised awareness of child sexual abuse. The act imposes heavy punishments for offenders. Penalties for penetration of a child can be as high as life in prison or a minimum of ten years. The minimum sentence for non-penetrative sexual assault on a minor is three years, while the maximum sentence is five years in prison plus a fine.

### **PROTECTION OF CHILDREN AFTER IMPLEMENTATION OF THE POCSO ACT, 2012**

The Protection of Children from Sexual Offenses Act of 2012, which especially addresses the issue of child sexual abuse, was enacted to curb the loopholes in earlier laws. In the Vishal Jeet case<sup>27</sup>, the Supreme Court gave several instructions to the state as well as the Union territory to take the required steps to eradicate child prostitution and to create rehabilitation centers. Residences; and form an Advisory Committee comprised of persons from various professions.

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<sup>27</sup> *Vishal Jeet v Union of India* (1990) 3 SCC 318

The POCSO Act is not a completely criminal code in and of itself; the procedure and offenses are covered by the Code of Criminal Procedure, 1973<sup>28</sup>, Indian Penal Code, 1860<sup>29</sup>, Juvenile Justice Act, 2015<sup>30</sup>, and Information Technology Act, 2000.

In contrast to the IPC, the POCSO Act does not make a gender distinction between offenders and victims. This resolves one of the biggest problems with the Indian Penal Code. Most sexual assaults take place in private, and the victims go to great lengths to hide the crime. The POCSO Act's Section 19<sup>31</sup> Mandates that third parties report certain circumstances for the Act to be put into effect. The matter will be heard in a fast-track court which are specialized court established in India with the primary aim of expediting the trial process for cases related to sexual offenses. The modified legislation POCSO 2019 states that if there are any disagreements with the trial court's sentence, they must be resolved within six months. Repeat offenders will face life imprisonment or execution. The statute requires a time-bound investigation in cases of rape of girl children; in rape cases, the investigative procedure must be finished within two months. The possibility of anticipatory bail for the accused is denied under the newly modified statute if he is charged with rape of a kid under the age of 16 years.

*Jarnail Singh v State of Haryana* (2013)<sup>32</sup>- In the case of *Jarnail Singh v State of Haryana* (2013), the Supreme Court of India noticed that the approach used to ascertain the age of a child who is in dispute with the law, as specified by the Juvenile Justice (Care and Protection of Children) Rules, 2007, can be followed in situations falling under the POCSO Act, 2012. According to the Juvenile Justice (Care and Protection of Children) Rules, 2016, in India, the approach used to determine the age of a kid is as follows:

1. Age determination through physical examination: A medical officer or a paediatrician performs a physical examination on the child to determine their age.

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<sup>28</sup> Code of Criminal Procedure 1973

<sup>29</sup> Indian Penal Code 1860

<sup>30</sup> Juvenile Justice (Care and Protection of Children) Act 2015

<sup>31</sup> Protection of Children from Sexual Offences Act 2012, s 19

<sup>32</sup> *Jarnail Singh v State of Haryana* (2013) 7 SCC 263

2. Age determination by documents: If accessible, documents such as birth certificates, school records, or other government-issued documents are used to determine the child's age.
3. Age assessment by radiological examination: If the preceding procedures are inconclusive, radiological examinations such as bone ossification tests (e.g., wrist X-ray) may be used to estimate the child's age.
4. Age determination using dental examination: A dental examination can also be used to estimate a child's age based on dental development.
5. Final decision by the Juvenile Justice Board (JJB): The JJB evaluates the reports obtained through the preceding techniques and makes a final determination of the child's age.

In this instance, Savitri Devi's daughter was allegedly abducted and raped by the appellant as she slept. The Juvenile Justice (Care and Protection of Children) Rules, 2007, which described the age determination procedure for minors in legal trouble, were superseded, according to the Supreme Court, and Rule 12 which outlines the process for determining the age of a child in conflict with the law should be applied when determining the age of a child victim. By applying this criterion, the Court found Jarnail Singh guilty.

### **Efforts to Enhance Efficacy**

The definition of 'child pornography' under the POCSO Act is restrictive, and it does not include as an offense any behaviour that promotes or advocates sexual activity. Cyberbullying defames children by impersonating them on social media or distributing manipulated images of them. Children are particularly susceptible and easy prey. In terms of school authorities, it is the school's job to ensure that the children are safe in the school, and the authorities exercise due diligence in this regard. As a result, the school must adhere to child safety standards on school grounds. Aside from that, whether the school provides transportation or has a contract with a transportation agency, the school authorities must adhere to safety standards.

A parent's involvement can be crucial in preventing child abuse. To keep an eye on what their kids are doing, they need to be very vigilant. It will be necessary for parents to restrict their kids' access to specific websites. The first thing a parent should do if their child is being cyberbullied is report the event to the closest police station. Children should be encouraged to take part in



offline and online cyber awareness activities with their parents and teachers. This will support children's knowledge development.

The government ought to attempt to impose restrictions or outright prohibit any middlemen or websites that host any kind of content about child sexual abuse. These responsibilities should be distributed by the government via several agencies or departments. Although it is rare, there is a pervasive problem with violence against children. While many children experience abuse and neglect, the Protection of Children from Sexual Offences (POCSO) Act of 2012 only addresses a very small percentage of these cases because there is a lack of comprehensive support services for victims, including psychological counselling, legal aid, and rehabilitation programs. In cases involving adolescents, proving the absence of consent can be challenging. The Act presumes the absence of consent in cases involving children under 18, but proving this in court can be complex. According to a current estimate, the public conviction rate for child assault is 28.2%, with 89.6% of these cases still pending. According to data, conviction rates in states such as Jammu Kashmir and Odisha are as low as 10.2% and 6%, respectively.<sup>33</sup>

Implementing a close-to-home health training educational strategy is crucial, and it should start with Class I or even Anganwadi at the proper time. Conversations should be done within resident associations and panchayats, and simple steps can protect children. The POCSO Act has been able to protect children from sexual abuse to some extent with the support of legal perspectives; however, much more has to be done to care for children who have been victims of various sorts of abuse. As this vulnerable population in our society continues to suffer significant danger, it is vital to have a comparable type of focus in the areas of abuse meted out by children.

## CONCLUSION

According to the debate above, the Protection of Children from Sexual Offences Act, of 2012, was a great move by the government to address this type of problem. This Act is gender-neutral and covers all forms of sexual abuse. A safe, healthy, and supportive environment is the most basic need of all children worldwide. Youngster sexual abuse is a significant problem, and it is

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<sup>33</sup> Ministry of Women and Child Development, 'Conviction Rate in POCSO Cases' (*Press Information Bureau*, 05 August 2021) <<https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1742825>> accessed 18 May 2024

a heinous crime that can haunt a youngster for the rest of his or her life. According to reports, the rate of reporting cases has increased due to greater awareness produced by authorized authorities, which has resulted in increasing worry among children. This increased awareness has resulted in the reporting of crimes against minors. The significance of parents cannot be questioned, as they have played a phenomenal role in raising awareness among their children, explaining to them about 'good touch' as well as 'bad touch'. POCSO 2012 has unquestionably made a crucial commitment to dealing with the issue of CSA in India. It has acknowledged and condemned a wide range of unacceptable sexual activities that endanger children. Furthermore, the Indian government's commitment to prevent child marriages and safeguard vulnerable children, as represented in the Prohibition of Child Marriage Act 2006<sup>34</sup> and the Prohibition of Child Marriages Order 2012, should impede underage unions. However, since the passage of the Protection of Children from Sexual Offenses Act, the number of cases of child sexual abuse has risen steadily.

The Act forbids sexual activity with minors under the age of eighteen, but it makes no distinction between consenting sexual activity between teenagers of similar ages. Teenage relationships that are consenting may end up becoming illegal as a result of this. The POCSO Act has occasionally been abused to settle personal scores, which has resulted in unfounded allegations. This abuse may lead to false accusations, traumatizing the accused in the process. It can be difficult to estimate the victim's age accurately, particularly if birth certificates are erroneous or unavailable. This may make the legal process more difficult. The number of special courts assigned to POCSO cases is frequently insufficient to effectively manage the burden.

Without a doubt, there are flaws in the stated POCSO Act regarding child protection, and modification to the said Act is urgently needed. The National Commission, which is responsible for protecting the rights of children, felt the same way. The POCSO Act is expected to provide insurance to children who have no voice and continue to live quietly. However, various loopholes and discrepancies in the Act have been discovered during its operation and implementation at the ground level, which must be filled and rectified for the Act to be more

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<sup>34</sup> Prohibition of Child Marriage Act 2006

effective and fairer in dealing with criminal perpetrators while also preventing its misuse by unscrupulous members of society.