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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **CRIME AGAINST CHILDREN- CRITICAL** **ANALYSIS OF THE POCSO ACT 2012.**

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## **Abstract:**

The Protection of Children from Sexual Offences Act, 2012, or POCSO Act, is a comprehensive law that protects children from sexual assault, harassment, and pornography while also ensuring that their interests are protected at every stage of the legal system. It does this by incorporating child-friendly mechanisms for reporting, documenting evidence, conducting investigations, and expediting the trial of offenders through specially designated Special Courts. The deficiencies in the Indian Penal Code and the lack of strict laws to address and combat horrible crimes like child sex abuse and exploitation, as well as the states' failure to comply with Article 15 of the Indian Constitution, which requires them to protect India's children, and the United Nations Convention on the Rights of the Child, which establishes the norms that state parties must adhere to in order to secure the child's best interests. The article lists the substantive provisions of the Act, which discuss the various sexual offenses against minor victims and their associated penalties, as well as the procedural provisions, which outline the steps that must be taken in order to report a case and make specific reference to the victim's medical examination procedure. This paper also addresses the Protection of Children from Sexual Offences (Amendment) Bill, 2019, which introduced the death sentence and increased the severity of punishment for a number of offenses in response to a sharp increase in cases filed under the Act.

## **Keywords:**

Child Protection, POCSO Act, Child Sexual Abuse, Child Rights, POCSO's Impact on India, Positive Effects of POCSO, Negative Effects of POCSO, Loopholes in POCSO Act.



## **Introduction:**

The Protection of Children from Sexual Offences Act, 2012 was introduced with the Ministry of Women and Child Development's encouragement in order to address the offensive offenses of a sexual nature against minors by stringent legal measures. The best interests and welfare of the child are considered to be of the utmost priority at all times to ensure the child's healthy, physical, emotional, intellectual, and social development.

The act defines a child as any individual under the age of eighteen. It describes various types of sexual abuse, including penetrative and non-penetrative assault, sexual harassment, and pornography. It also considers certain types of sexual assault to be "aggravated" in specific situations, such as when the abuse victim is a mentally ill child or when the abuse is perpetrated by an individual who holds a position of trust or responsibility over a kid, such as a member of the family, a police officer, etc. Under the act's section on abetment, those who traffic children for sex are likewise subject to punishment. In India, 109 children are sexually molested in some capacity every day, according to the National Crime Record Bureau. Additionally, the reports indicate that the numbers are rising year. Despite the fact that there are more crimes against children every day, nobody wants to talk about it. In Indian society, it is a social stigma. The issue of child sexual abuse is one that is mostly taboo and never discussed in public discourse. The only instance of rape against minors that was recognized as a crime was when there was no appropriate act. It was not legally permissible to penalize cases of child sexual assault, harassment, objectionable behaviour directed at children, or the use of pornography.

## **Background:**

Child sexual abuse (CSA) is a hidden issue in India that has long been disregarded by the criminal justice system and the general public. Until recently, rape was the only recognized specific sexual offense against minors in India; if not, then CSA was not considered a crime. A number of unacceptable activities, including as harassment, child sexual assault that did not qualify as rape, and exploitation for pornography, were made possible by a lack of clear legislation. were never subject to legal sanctions. Non-governmental organizations (NGOs), activists, and the Ministry of Women and Child Development of the central government have all actively contributed to shattering "the conspiracy of silence" in recent years, which has greatly boosted the political and public momentum to address the



issue.

The Ministry of Women and Child Development led the initiative that resulted in the 2012 Protection of Children from Sexual Offences (POCSO) legislation. This opinion focuses on three considerations that potentially have an impact on how the legislation is administered in reality while also highlighting the distinctive elements of POCSO. In this We begin our reflective essay by briefly summarizing the incidence of child sexual abuse (CSA) in India and the legal measures taken to address it. We review previously published studies, court records, media articles, and other sources to inform the study both our own professional practice and access to police sources.

### **Principal characteristics of the POCSO Act of 2012:**

The POCSO Act's principal components include the following: The victims' identities won't be disclosed. The POCSO Act's Section 23 describes the media technique and requires that the identity of the victim (kid) be kept confidential unless the Special Court has given its approval. In accordance with subsection (2) of this provision, "no reports in any media shall disclose the identity of a child, including his name, address, photograph, family details, school, neighbourhood, and any other particulars which may lead to the disclosure of the identity of the child." In *Bijoy v. Guddu Das v. The State of West Bengal* (2017), the Calcutta High Court upheld the legislation as it was stated in Section 23. It said that prosecution would follow for anyone breaking this regulation, including law enforcement personnel.

- **Gender-neutral provisions:** The POCSO Act does not distinguish between victims and offenders based on gender, in contrast to the IPC. Undoubtedly, this resolves one of the primary issues with the Indian Penal Code. Anyone under the age of eighteen is included in the definition of a child.
- **Mandatory reporting of child abuse:** Most occurrences of sexual assault happen in private, and the offenders frequently attempt to hide their actions. Third parties have been obliged to disclose these incidents in order to comply with POCSO Act Sections 19 through 22.<sup>1</sup>

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<sup>1</sup> <https://thelawbrigade.com/wp-content/uploads/2019/05/Surbhi-Garg.pdf>

## **POCSO ACT- 2012 Misuse:**

Individuals are often discovered to have been implicated in false cases under the POCSO Act due to land disputes, marital problems, political motivations, personal grudges, or for the purpose of dehumanizing the accused by keeping them in jail for an extended length of time. A girl who is less than eighteen maybe coerced by her family into making up a complaint against someone with whom they have a personal grudge.

1. The POCSO Act's severe limitations mean that courts seldom grant bail, and when they do, the accused's trauma and mental health deteriorate since the case is fabricated. Consequently, people who are being held on suspicion of a crime have to spend a substantial amount of imprisonment, frequently until the case is resolved. Before being granted bail or being declared not guilty, the accused has already gone through a considerable lot of hardship.
2. Many convicted people, some of whom were innocent when they were imprisoned under the POCSO Act, spend months inside bars without being granted access to bail, regular trials, or freedom. These prisoners usually turn to violence to settle disputes because of their appalling living conditions. A few of them have also developed mental illnesses.
3. As per the POCSO Act, 2012, Section 33(8), the special court has the authority to award compensation to the child for any harm done to their bodily or mental well-being and for their rehabilitation, apart from the sentence.

Certain family members of the minor child fabricate charges against well-off and worthy defendants in an attempt to get the settlement money.

4. Once, an advocate would allegedly work with the police and a girl under the age of eighteen to accuse affluent firms in POCSO instances of extortion. The police allegedly sent the victim girl in numerous cases after coaching her to speak what was stated to her when giving a statement under Section 164 CrPC before the judicial magistrate.
5. While in other cases police hold the accused until after the case is filed in order to help them secure bail from the court, in many others police detain the accused immediately. In a case involving gang rape, police are accused of manipulating statements made by 'witnesses' in compliance with Section 161 of the Criminal Procedure Code to exonerate the accused person of all accusations.
6. In order to implicate someone in the case or to remove the name of an accused person from the case, the police regularly manipulate the use of statements under Section 161 CrPC.

Consequently, the claims made by a few individuals who were not present at all during the cases were documented in a way that either benefited the accused or implicated innocent parties by omitting or adding their names to the statement of accused.

7. Due to the victim girl's family's poor relationship with the accused and/or his family, the mother of the victim girl has also allegedly been accused of intentionally hurting her child's genitalia or scraping her shin in order to obtain a medical report that will be used against the accused in a false case under the POCSO Act.

### **Gaps or Loopholes in the POCSO Act of 2012:**

Although it is a powerful act, the police and other parties involved in its execution have discovered a number of problems.

#### **Some of the shortcomings are listed below:**

1. The POCSO Act has no recommendations on what to do if the victim child refuses to have a medical examination but the investigating officer and family are willing to allow one.
2. A female physician is required to do the medical examination of a female victim in accordance with POCSO Act Section 27(2). If a female physician is not on duty at the government or private hospital to evaluate the girl child who is the victim, then no remedy is offered under the Act.
3. Women are not protected by Section 3 of the POCSO Act since it only designates men as accused parties in cases. A woman who commits a sexual offense is not prosecuted under the provisions of Section 3 of the Act.
3. Unless the opposite can be demonstrated, Section 29 of the POCSO Act of 2012 mandates that the Special Court assume that an individual accused of committing, aiding, or attempting to commit a crime has actually done or attempted to commit the crime. Poor men will not be able to avoid the POCSO Act's provisions if they are charged since they cannot afford to employ a good counsel to defend them in court, but wealthier accused parties can engage qualified attorneys to represent them.
4. Section 35 of the POCSO Act, 2012 stipulates that the Special Court needs to record the victim's evidence within 30 days of the Special Court's convening and finish the trial within a year of the offense being brought to its attention. Notwithstanding this clause, there are still a growing number of POCSO Act cases that are pending, and the Special Court has not yet finished any of the cases.



5. The amount of compensation that an accused person should get in the event that they are falsely accused is not specified in the Act.

### **Literature Review:**

According to Pal (2018), a doctor's duty begins shortly after a case is identified, as soon as sexual harassment is suspected or likely. The Act demands that Section 164A16 of the CrPC be observed during the victim's medical review. A female doctor should check a girl's child and any survivors in the presence of parents or other significant persons. It is necessary to do so. The laws shall also cover services for the relief and recovery of the victim from the special youth police unit (SJPU) and the Children's Welfare Committee (CWC) set up under the Act on Young Offenders. Child sexual harassment is a major abuse and a widespread social problem, and the POCSO Law was developed to deal effectively with the atrocious crimes of sexual violence and commercial sexual abuse.

### **Methodology:**

A doctrinal research methodology has been used by the investigator. The researcher has used a disproportionate amount of primary and secondary data that can be found online in the form of theses, articles, research projects, blogs, statistical data from the National Crime Records Bureau, and other sources that aren't specifically listed here, like books, commentaries, and legal research databases, all of which are properly cited.

### **Observation:**

In order to protect minors from sexual abuse, the POCSO Act was passed. It included many commendable provisions that guaranteed victim-friendly prosecution, child victim safety, simple and efficient reporting procedures, and the presumption of "guilt" of the accused, which transfers the burden of proof from the victim to the accused. The Act has encouraged children and their guardians to report abuses they experience, but a consistent, efficient implementation strategy is still needed to effectively carry out the Act's requirements. To ensure that children feel comfortable reporting such abuses, it is necessary to raise public knowledge of the POCSO Act and to reevaluate certain of its provisions, such as Sections 29 and 2(d).

## **Limitation of the pocso Act 2012.**

1. It is unjust to single out a certain gender for the accused's classification. The sole offense under Section 8 for which female offenders may be charged is "sexual assault," for which the maximum sentence is five years in jail. It has recently come to light that ladies and young girls have been observed forcing male children into sexual activities.
2. If a female child or adolescent is the victim of sexual assault, Section 27(2) of POCSO requires that a female doctor perform the medical examination; however, Section 166A of IPC requires the government medical officer on duty to examine the victim of sexual assault without fail, regardless of the officer's gender.
3. The victim's family is probably unable to afford the treatment costs; therefore, the state must cover them.
4. As the victim's family cannot afford the treatment costs, the state must cover them. This is likely because the treatment is expensive.  
The law does not accept as noncriminal acts consenting sexual relations between two teenagers or between an adolescent and an adult who are younger than three years of age.
5. Certain personal laws permit marriages between individuals under the age of 18, despite the Protection of Children from Sexual Offenses Act, 2012 considering such unions unlawful. Therefore, having sex with such married people is legal under personal laws but illegal under the POCSO. To create a universal legal system that transcends religious boundaries, this contradiction needs to be resolved.
6. The Prohibition of Child Marriage Act of 2006 distinguishes between a male (over 21 years old) and a female (over 18 years old) based on their ages in order to validate their marriage. Even though Section 3 of the 2006 Act allows the parties to declare such marriages "voidable," it also opens the door for abuse on the side of either party. who, in addition to the fact that the Act makes no mention of "consent," can just walk out of a married relationship when they get tired and claim they were sexually attacked in accordance with the POCSO's provisions. To implement the three without creating a conflict, the Parliament<sup>2</sup> must appropriately and jointly revise the POCSO, the 2006 Act, and the personal laws.
7. It is imperative that the Act include provisions for the training of medical professionals,

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<sup>2</sup> <https://ijcrt.org/papers/IJCRT2106265.pdf>

educators, advocates, and law enforcement authorities.

8. Specialized abilities and methods in history-taking, forensic interviewing, and medical examination are needed when evaluating victims of child sexual abuse. Individual counselling, family therapy, and rehabilitation are therefore necessary components of the follow-up care that mental health practitioners should provide to victims in relation to the emergence of psychiatric diseases.

### **Recommendation:**

**Awareness:** Raising awareness about sexual abuse can play a major role in aiding in the prevention of child sexual abuse (CSA). Public education regarding POCSO is necessary, and increasing stakeholder awareness will help eradicate CSA. It is imperative that more and more information on POCSO be disseminated, according to a number of studies on public awareness of POCSO.

**Police Required Service File a POCSO Act FIR:** Generally speaking, the police authority examines all reports promptly upon receipt, files a POCSO Act FIR, and then forwards the report to the jurisdictional authority so that it can furnish the necessary evidence for prompt and appropriate legal action.

**Politicians have no business helping to defend the accused:** First, the little house has been upgraded to a greater Défense. The mother is a child's first instructor notion states that every positive habit starts at home. Positive things destroy negative habits. As a result, local government began addressing the idea that growth at home came before global expansion. Having their own children taught them this as well.

**Mandatory Reporting:** One of the POCSO Act's main features is mandatory reporting. Mandatory reporting was added to the statutes in an attempt to increase the reporting of CSA offenses. But that turned into an issue for a lot of people. More work is needed in this POCSO area to improve law enforcement.

**Mandatory Implementation in School Education:** Research indicates that the core element of POCSO, the age of consent, needs to be quickly reevaluated. Any sexual behaviour with a juvenile who is younger than 18 is prohibited by POCSO<sup>3</sup>. Numerous studies have shown that teens'



consenting to sexual activity shouldn't be considered criminal.

### **Conclusion:**

The rising number of crimes against children is a threat to this nation's future. Every institution has an obligation to adopt the appropriate safety and security measures to guarantee the wellbeing and security of children. Rape is a terrible crime in and of itself when it comes to child rape. It's among the most repulsive therapies a child might ever encounter. Children are taught to experience every aspect of betrayal, mistrust, and anger at a young age, when they should be learning to grow and see the world from whole new angles. As a result, system efficiency and transparency are desperately needed, and the police must exercise their power with impartiality. It is imperative to raise the general public's and parents' awareness of their rights and how to exercise them. It's also important to let them know that they don't have to be afraid to approach the police. For both teachers and students, an efficient training session is also necessary. The kid line should be prominently displayed in the hospital and facility to allow anyone to report any suspected or confirmed cases of child abuse.

### **Acknowledgement:**

These articles were prepared to raise awareness of the need for safety and security. For research objectives, sources are retrieved from the relevant databases to demonstrate development and security. Do not assert any claims through any jurisdiction, readers, or spectators.

### **References:**

<https://www.legalserviceindia.com/legal/article-12660-pocso-act-2012-misuse-and-loopholes.html>

<https://www.barandbench.com/news/litigation/pocso-act-bombay-high-court-says-criminalization-romantic-relations-burdened-court>

<https://rajasthanjudicialacademy.nic.in/docs/studyMaterial10022021.pdf>

<https://www.lawctopus.com/academike/?s=Criminal+Law+%28Amendment%2>

[9+Act%2C+2013%3A+Sexual+Offences](https://www.lawctopus.com/academike/?s=Criminal+Law+%28Amendment%29+Act%2C+2013%3A+Sexual+Offences)

[https://www.vatican.va/archive/ENG1104/\\_INDEX.HTM](https://www.vatican.va/archive/ENG1104/_INDEX.HTM)

[https://blog.finology.in/Legal-](https://blog.finology.in/Legal-news/pocso-act)

[news/pocso-act](https://blog.finology.in/Legal-news/pocso-act)

<http://infochangeindia.org/children/analysis/the-sounds-of-silence-child-sexual-abuse-in-india.html>

[https://www.researchgate.net/publication/335916674\\_The\\_Protection\\_of\\_Childr](https://www.researchgate.net/publication/335916674_The_Protection_of_Childr)

[en from Sexual Offences Act POCSO 2012' in Clinical Settings](#)

<https://thelawbrigade.com/wp-content/uploads/2022/03/Riddhika-Somani-JLSR.pdf>

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