

CHILD ABUSE IN INDIA WITH SPECIAL REFERENCE TO POCSO ACT, 2012

Mangal Singh

Research Scholar, Department of Law, Maharshi Dayanand University, Rohtak

ABSTRACT-

India passed the POCSO Act¹ in 2012 in order to protect children from sexual assaults, sexual harassment, and pornography. The law enabled special provisions, such as the establishment of Special Courts for the purpose of conducting speedy trials for those accused of committing these crimes. The word "rape" has been replaced with the phrase "penetrative sexual assault" in an effort to eradicate the societal stigma associated with the practice. The legal processes have been modified to make them more child-friendly, the privacy rights of the minor victims have been protected, and the courts are to infer that the accused had a guilty mental state when they hear the case.

In this research endeavour, efforts have been made to examine recent amendments in Act, Drawbacks and Implementation of Act and Review a plethora of court decisions pertaining to CSA cases in order to assess the administration of justice.

1. INTRODUCTION

The Act of 2012² is a piece of law that does not discriminate on the basis of gender. It protects all children from sexual abuse and defines a child as any individual under the age of 18, regardless of their age.

The term "child sexual abuse" refers to a wide range of inappropriate behaviours that might include the following:

The above offences are regarded as "aggravated" if either the victimised child suffers from a mental illness or the perpetrator of the violence is in a position of authority or influence over the youngster.

The Act calls for severe punishments that increase in severity depending on the seriousness of the crime, with the most severe penalty being a fine and a period of jail that lasts for life.

In addition, the POCSO Act³ contains provisions for the prevention of re-victimization, the establishment of an atmosphere that is child-friendly throughout the processes of the legal system, and the emphasis on the "child's best interest" concept.⁴

¹ .Protection of Children from Sexual Offences (POCSO) Act 2012-

² .Protection of Children from Sexual Offences (POCSO) Act 2012-

³ .Protection of Children from Sexual Offences (POCSO) Act 2012-

⁴ .Child Marriage and the Protection of Children from Sexual Offences Act, 2012, CCL-NLSIU Bangalore, available online at <https://www.nls.ac.in/ccl/justicetochildren/pooscoact.pdf> .-

It comprises child-friendly mechanisms for correct reporting, reliable evidence recording, investigation, and expedient prosecution of offences, as well as a trial in camera and without disclosing the child's identity via designated Special Courts. This does provide for the Special Court to decide the amount of compensation that is payable to a child who has been sexually abused, with the proceeds going toward the child's medical treatment and rehabilitation. Additionally, this does allow the Special Court to determine the amount of compensation payable to a child who has been sexually abused.

It mandates the appointment of a Special PP and the establishment of Special Courts, both of which are required to implement child-friendly procedures for reporting crimes, the recording of evidence, the investigation, and the swift prosecution of offenders. The Act provides stringent sanctions, the severity of which is scaled according to the seriousness of the offence.

2. RECENT AMENDMENT IN THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT 2012

As it seems to be the nature of law, changes are a law of nature; as a result, laws are enacted, and the introduction of amendments fills the voids within them.

Some of the following revisions to the “POCSO Act of 2012”, are included in the POCSO Amendment Bill, 2019. They are as follow:

1. The minimum sentence for penetrative sexual assault ranges from 7 to 10 years in length. In addition, the sentence may range from 20 years to life in prison if the offender commits the aforementioned crimes against a child under the age of 16.
2. Aggravated Penetrative Sexual Assault is such an offence, and if it is committed by a police officer, member of the armed forces, or other public employees, and if it results in the death of the child or if the kid becomes pregnant, or if it damages the child's sexual organs, the punishment will be increased from the original 10 years to a maximum of 20 years in prison.
3. There are two types of aggravated sexual assault that fall under the purview of this particular crime: the first is the assault that occurs during a natural disaster, and the second is the assault that occurs when a child reaches adulthood too early after receiving chemicals or other chemical hormones from someone.

It is important to keep in mind that the death penalty provisions might encourage the accused to kill the victims and raise the possibility of sex offenders disposing of their victims in order to remove key witnesses and destroy evidence. It is important to emphasise that the certainty of punishment deters crime more than its severity. Therefore, ensuring quick and effective POCSO case investigation, prosecution, and resolution should be the main priority.

3. DRAWBACKS AND IMPLEMENTATION OF PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT 2012

Our system for the protection of children is still in the very early stages of development. As a result, it is having trouble dealing with the high number of cases, adhering to the protocols, developing child-friendly processes, and meeting other requirements imposed by the POCSO Act.

1. The POCSO Act⁵ is silent and gives no clear instructions even if the child or teenager declines a medical assessment and a family member or involved official insists on one. In these situations, the consent issue must be handled. When there is a surviving kid (under the age of 12), it is preferred to get informed parental consent; however, if the surviving child is a teenager (between the ages of 12 and 18), consent should be obtained from both the parents and the survivor. Emergency therapy should be given regardless of consent or any potential legal issues, though, in order to save the baby's life.⁶

2. If a girl child is impacted, Section 27 (2) of the POCSO Act⁷ mandates that a gynaecologist conduct a medical examination. On the other hand, according to the legislation, the accessible healthcare provider must provide emergency medical treatment. On the other hand, Section 166A requires the state's duty medical officer to examine the victim of rape regularly. This odd legal circumstance develops since there isn't a female doctor accessible.⁸

3. The medical profession and the organisation are legally responsible for giving free medical treatment to those who have survived the attack due to the legislation. If the necessary facilities are lacking or an expensive procedure is not required, the government should be responsible for bearing the financial burden of the expenses; otherwise, the hospitals may be forced to provide medical care that is below acceptable standards or lose access to complete survival therapies.

4. Under the "Protection of Children from Sexual Offences (POCSO) Act 2012", sexual relations between teens or adolescents and adults are deemed prohibited since it is a felony to engage in sexual relations with a person under the age of 18. Confession or gender or marital status of the victim / suspect or age. However, it was maintained that any homosexual activity between two teenagers exposed to pervasive sexual misconduct should not be deemed a crime; otherwise, both adolescents would be prosecuted under the "POCSO Act of 2012". On the other hand, the 2013 amendment to the IPC concerning rape emphasises that the age of consent for sex is 18, making it feasible to prosecute someone with consensual sexual contact with a minor. It is probable that the rate of rape cases may increase. Obstetricians and gynaecologists are required to disclose any MTP (medical termination of pregnancy) procedures done on children less than 18 years of age.

5. In India, the marriage of minors is outlawed under the country's secular law, but certain private laws provide an exception for this practice, further complicating the problem. These concerns need to be addressed in the event that the legislation is subject to modification.

⁵ .Protection of Children from Sexual Offences (POCSO) Act 2012-

⁶ "Children's Rights", Human Rights Watch, available online at <https://www.hrw.org/topic/childrens-rights>.

⁷ Protection of Children from Sexual Offences (POCSO) Act 2012

⁸ .Child Marriage and the Protection of Children from Sexual Offences Act, 2012, CCL-NLSIU Bangalore, available online at <https://www.nls.ac.in/ccl/justicetochildren/pooscoact.pdf> .-

6. The Protection of Children from Sexual Offences (POCSO) Act 2012 demands training for medical, academic, judicial, legal, and law enforcement organisations. The most challenging challenges include research, information, surveillance, and awareness efforts. Training all parties involved is one of the most distinguishing features of providing high-quality care and equity. All medical students and primary care clinicians will get training on child-friendly interviews, systematic assessments, evidence collection, sexually transmitted diseases, and HIV.⁹

7. In cases of sexual assault on children, the key indicators of genital injury are seldom present. When conducting an evaluation of a kid who has been the victim of sexual abuse, it is necessary to have specialised knowledge, talents, and techniques in the areas of forensic questioning, examination results, and history. An important part of an interview with a child that takes place in a courtroom is played by the psychiatrist. Abuse of a child's sexuality may lead to both short-term and long-term psychological difficulties in the victim. Professionals in the field of mental health should be engaged in the case for the benefit of the victim by providing personal counselling, treatment for families, and rehabilitation for psychological disorders.

8. The fact that child sexual abuse incidents are seldom reported is generally accepted. Furthermore, knowing about child sexual assaults is a difficult and private choice for many family members and survivors. Victims, family members, and friends are embarrassed to bear the guilt, resentment, annoyance, and emotional pain that this act has caused them. Because of the medical examination, the criminal justice system, and the uninformed community members, they endure extended periods of muteness and suffering out of dread of being targets once again. Every medical practitioner treating children must disclose any reasonable suspicion of child sexual abuse to the appropriate authorities. Therefore, experts must keep an eye out for sexual abuse and properly investigate and analyse the youngster.

Despite the fact that the “POCSO Act of 2012” is a fantastic piece of legislation that makes almost every known kind of sexual abuse of children a crime, there are a few problems that still need to be resolved. Victims of child sexual abuse would have access to a multi-dimensional, multi-agency group, and multi-tier plan that included the availability of psychological help in order to give comprehensive, high-quality treatment under a single roof.

5. CASE LAWS UNDER PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT 2012

1. In the case of “Ms Era vs State”¹⁰, the Supreme Court of the United States "refused to extend the applicability of the Act to mentally challenged persons." Such an interpretation, according to the Bench, which is composed of Justices Dipak Misra and R.F. Nariman, "would lead to trespass of the judiciary in the sphere of legislative law-making."

⁹ .Children's Rights, Human Rights Watch, available online at <https://www.hrw.org/topic/childrens-rights>

¹⁰ .CRIMINAL APPEAL NOS.1217-1219 OF 2017; SC-

2. In the case of “Justin v. Union of India and others”¹¹, the Kerala High Court "upheld the constitutional validity of Sections 29 and 30, which place a reverse burden of evidence on the accused. The contentions that these laws infringed upon basic rights as outlined in Articles 14, 20(3), and 21 of the Constitution of India were dismissed by a single bench presided over by Justice Sunil Thomas. The court took notice of the fact that legislation which places a restricted duty on the accused to show certain facts which are particularly within his knowledge are not uncommon in Indian criminal law. In a later ruling, the court noted that" such rules cannot be considered to be unconstitutional owing to the fact that they flip the burden of evidence from the prosecution to the accused if they are "justifiable on the premise of prevailing public interest."

3. The Nagpur Bench of the Bombay High Court issued two judgements in separate cases of child sexual abuse in January 2021, “Libnus v. State of Maharashtra”¹² and “Satish v. State of Maharashtra”¹³, both of which have been severely criticised by everyone. The judgements were issued within a span of less than a week of each other. A lower court ruled that "groping without skin-to-skin contact" does not constitute "sexual assault" under the aforementioned Act; however, the Supreme Court has stayed this ruling, therefore the lower court's decision is no longer in effect.

4. In “Sakshi v. Union of India”¹⁴, the Supreme Court ruled that “sexual abuse of a girl child violates Article 21 of the Indian Constitution and Outrages the Modesty of Women under Section 354 of the Indian Penal Code, 1860. The culprit is strictly accountable for the crime he committed.”

5. In “BachpanBachaoAndolan v. Union of India”¹⁵, the court construed the PIL as a reaction to a breach of a child's rights. The appeal demoralised young Indian market workers. This is a violation of the Juvenile Justice Act and other international treaties and agreements.

6. The Hon'ble Court concluded in “Nishu v. Commissioner of Police, Delhi and Ors”¹⁶ that the rape of the Minor Girl Child was done in such a cruel manner that it constituted to Penetrative Sexual Assault for which the offender should be held severally and jointly accountable under the “POCSO Act of 2012”.

7. An important precedent was set in the case of “Vishal Jeet v. Union of India”¹⁷ about the issue of the sexual abuse and exploitation of children and women who have been trafficked. Regarding this particular matter, "a Public Interest Litigation was filed for the issuing of specific orders and to look into problems of Red Light districts and forced prostitution and to look into concerns with the devotion of young girls as Devadasi and Jogin and child prostitution." The Constitutional provisions on the right against exploitation, trade in human beings, and rights of children, as well

¹¹ WP(C).No.15564 OF 2017(U); Kerala HC-

¹² CRIMINAL APPEAL NO. 445 OF 2020; IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH, NAGPUR.

¹³ CRIMINAL APPEAL NO. 161 OF 2020; IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH.

¹⁴ WRIT PETITION (CIVIL) NO. 382 OF 2013

¹⁵ AIR 1997 SC 699

¹⁶ WRIT PETITION (CRIMINAL) NO. 211 OF 2013-

¹⁷ AIR 1990 SC 1412

as the principles outlined by the Declaration of the Rights of the Child in 1959, were investigated by the court. "The court took into consideration all of the aspects of the case that were brought before it before issuing several directions to the state governments and the union territories. One of these directions stated that the concerned law enforcement authorities must take prompt action to eradicate child prostitution. In addition, the necessary actions need to be performed in order to offer houses that are both appropriate and rehabilitative. In addition, the court ordered the formation of a separate Advisory Committee, which would be comprised of relevant government officials, sociologists, criminologists, and members of women's/child welfare/voluntary social organisations. This committee would be tasked with making recommendations for the elimination of child prostitution as well as the devdasi and Jogi tradition, as well as for the implementation of measures to care for, protect, treat, develop, and rehabilitate victims."¹⁸

Judiciary, as one of the cornerstones of Indian democracy, has always recognised that child welfare policies, the protection of children and their rights, and the fact that children are the future of our society are the most important considerations for any country. The judicial system contributes to society and the economy in positive ways. In a similar vein, the Indian legal system has been instrumental in safeguarding the health and safety of children in the country. It is important to keep in mind that sexual abuse has a social stigma, which has long-term negative effects on the victims and subsequently leads to a reluctance to disclose the crime. This is something that should be kept in mind.¹⁹

In certain cases, law enforcement agencies have a callous and unprofessional attitude, which contributes to a culture that is prone to self-blame and victim shaming and, as a result, fosters emotions of hopelessness and dissatisfaction in victims and the families of those who were harmed. A lack of a thorough and scientific investigation, in conjunction with exceptional delays in the processes of the court, will typically and often result in the accused individual being found not guilty of child abuse.²⁰ In addition to this, there is another cause for worry, and that is the rising backlog of cases in the lower courts, which is happening every year. In light of this, other than the prompt reporting and registration of cases, the prompt disposition of cases in a fair way is a vital necessity for criminal procedures dealing with child abuse in order to provide adequate and fair justice to victims.

6. CONCLUSION

The "POCSO Act" prioritises the concept of the "best interest of the child" and seeks to safeguard children at all stages of the judicial system. Despite the Act's extensive provisions, they were not properly carried out. As a consequence, due to ignorance, it was unable to accomplish the original purpose for which it was put into place. According to the researcher, unlike other acts, this "unique

¹⁸ https://sherloc.unodc.org/cld/caselawdoc/traffickingpersonscrimetype/ind/1990/vishal_jeet_v._union_of_india.html

¹⁹ Children's Rights, Human Rights Watch, available online at <https://www.hrw.org/topic/childrens-rights>

²⁰ Mookerjee, A.(2007) Commentaries on The Juvenile Justice (Care and Protection of Children) Act, 2000-, Kamal Law House.

statute" was significant because it created special courts to hear cases involving offences covered by the Act. This Act had the purpose of protecting larger child populations from heinous crimes and other forms of dangerous sexual sabotage that were being committed against child victims on a larger scale. These crimes included various acts of sexual sabotage that were committed against minor female children and male children. As a direct result of this, it has been proposed that in order to safeguard those aspects of the child's life that are most important to him or her, there has to be a comprehensive plan that involves each and every person.

Despite the fact that a profusion of papers posing as laws have been enacted, they do not always fulfil the requirements for giving adequate justice to child sexual assault victims, and criminals are free to escape their crimes. A culture of silence around this major problem, a fast growth in child sexual abuse cases, improper implementation of the law, and a lack of effective processes, especially in disadvantaged regions, to control child sexual abuse are among the most significant difficulties of the contemporary period. Consequently, strong measures must be taken to prevent and control child sexual abuse. In addition to legislative procedures and rules, parents may avoid injury to their children by recognising warning signals in them. The whole human population must unite to eliminate the problem of child sexual abuse.

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