

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIAL TEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted IMoot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

EVERY CHILD IS DIFFERENT – AN EXAMINATION OF CHILD SEXUAL ABUSE AND THE LAW IN INDIA (POCSO)

AUTHORED BY - YATI YADAV¹

ABSTRACT

A child is the most valuable resource in society, essential to the country's growth. They represent the nation's future. How well a nation raises and cares for its children will determine its destiny. Sexual abuse of children is one of India's biggest issues. To address this issue and safeguard children's rights, a special law known as the Protection of Children from Sexual Offences Act (POCSO) was passed.

The passage of this Act has unquestionably been a significant step in protecting children's rights. The research on child sexual abuse and the Act's implications for this considerable issue are covered in this paper. The paper also discusses the difficulties and disputes surrounding this Act and its impact on India.

KEYWORDS: Child Sexual Abuse (CSA), Punishments, Offences, POCSO Act, Judgements

INTRODUCTION

The promise and possibility of the future are embodied by children. Their passion, curiosity, and most crucially, innocence, are what define them. Every youngster has the right to a life filled with opportunities to experience their freedom and purity. Sadly, there are instances when youngsters experience things that change their ability to live a secure and innocent existence. This kind of abuse could be emotional, physical, or mental. "Child sexual abuse," or "CSA," is one of the harshest types of child exploitation that inflicts mental, physical, and emotional suffering on the kid.

"All forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment, or commercial or other exploitation, resulting in actual or potential harm to the

¹ LLM Student – Manav Rachna University, Faridabad

child's health, survival, development, or dignity in the context of a relationship of responsibility, trust, or power," is how the World Health Organization defines child sexual exploitation. This definition makes it apparent that CSA includes all forms of exploitation, including the less well-known and frequently overlooked emotional abuse. It also takes into account everything that could actually or potentially endanger the child's existence, growth, health, and dignity. This includes sexual abuse, careless or neglectful behavior, and using the child for profit. The term also discusses the link between power, trust, and responsibility, emphasizing the betrayal or misuse of authority that is almost always present in such situations. Concern over CSA is rising globally. Children are compelled to engage in sexually explicit behaviors that they are unable to understand or consent to voluntarily. CSA is a silent health emergency, meaning that when young children experience such traumatic events, they lack the language necessary to express their suffering. Moreover, these acts are frequently perpetrated by family members who can easily trick them into believing that the trauma is normal. 73% of victims stay silent about the assault for at least a year, 45% of victims do so for at least five years, and some victims never speak out at all.²

To gain the child's trust, the perpetrators build positive relationships with both the child and the child's family, use ridiculous strategies like bribing with material goods, promising advancements or "favours" when necessary, making increasingly sexually inappropriate remarks, and gradually increasing their physical contact, which ultimately results in overt sexual abuse. This pernicious behavior on the offender's part is commonly referred to as "grooming" the youngster. They coerce the victims into feeling ashamed of the conduct that has been done to them by threatening violence or applying pressure.

Inappropriate touching, fondling, and recording similar incidents are all part of CSA, in addition to sexual penetration or defilement. It is the most terrible and heinous violation of a child's rights and dignity. Numerous issues in the victim child's life are caused by child abuse. Their immediate families, neighbors, and society at large are all impacted in addition to their physical health, as well as their psychological and mental well-being. The effects of the trauma last well into the child's adult life. This could result in the youngster becoming a dismissive, avoidant, aggressive, frightened, or mentally unstable adult. The children of today will be the future of tomorrow, thus safeguarding the present is crucial to securing a possible future.

² The Children's Assessment Center, "Child Sexual Abuse Facts & Resources", fact no. 2, <https://cachouston.org/prevention/child-sexual-abuse-facts/>

Legal remedies for CSA were insufficiently robust, particularly concerning witness reports and child testimony. More significantly, the entire legal system was not "child friendly." Internationally, there was a need to safeguard children and stop such cruel and immoral acts against them. According to the National Human Rights Commission of India, the United Nations Convention on the Rights of the Child, which was enacted on November 20, 1989, by UNGA resolution 44/25³, is the most comprehensive declaration of child rights ever made.

PROTECTION OF CHILDREN AGAINST SEXUAL OFFENSES

(POCSO)2012⁴

When India ratified the UNCRC on December 11, 1992, it committed to upholding its principles and refraining from any actions that would compromise them. India saw a startling rise in the number of child abuse complaints. Given the increase in incidents, there was an urgent need for a law change that would shield kids from such horrific behavior.

The "Protection of Children Against Sexual Offence Bill (POCSO), 2011" was drafted and signed into law on June 19, 2012. According to the POCSO Act's lengthy title, it is an Act to protect children from sexual assault, sexual harassment, and pornography offenses and to establish Special Courts for the adjudication of such offenses and related or incidental matters. According to the Act, it is a horrible crime to sexually exploit or abuse children. Its purpose is to protect kids from sexual offenses.

In addition to safeguarding the children, it also establishes a victim-friendly framework and stipulates penalties for infractions. Additionally, it requires the creation of Special Trial Courts to expedite the administration of justice in such circumstances. According to the POCSO Act, everyone concerned in the legal process must uphold and preserve the child's right to privacy and confidentiality in order to ensure their unimpeded and healthy growth.

In order to guarantee the child's healthy physical, emotional, intellectual, and social development, it is also essential to comprehend that the law places a high priority on the child's best interests and well-being. It forbids forcing children into any illegal sexual activity, exploiting them by enlisting them in prostitution or other illegal sexual activities and using

³ United Nations, "Convention on the Rights of the Child" https://www.ohchr.org/en/instruments_mechanisms/instruments/convention-rights-child

⁴ The Protection of Children from Sexual Offences Act, 2012

them for pornographic purposes.

According to the Act, "Any person below the age of eighteen years" is considered a kid. Since the Act is gender-neutral, meaning it applies to all children regardless of gender, this is one of its highlights. The Act guarantees equal legal remedies and protection from sexual offenses for children of all genders by taking a gender-neutral stance.

The following are some of the POCSO Act's key provisions:

1. In all cases, the police officer is required to notify the Child Welfare Committee of any child abuse or related case within 24 hours of receiving a report.
2. To avoid reprimanding the youngster, the police officers handling the case must wear civil attire when recording the child's statement.
3. The child's remark regarding the offense needs to be documented in front of the person they trust.
4. The child's medical checkup should only be performed by the female doctor in front of a person the youngster trusts to gather forensic evidence.
4. To ensure fast trials, special courts have been established under this Act.
5. It is the responsibility of these courts to ensure that the child's name is kept secret and that the child is not exposed to the accused during the statement recording process.
6. The young witness may also testify by video and will not be required to repeat their story repeatedly.
It is important to remember that the case should not be delayed and should be resolved within a year of the day it was reported.
7. A special educator, translator, interpreter, or other expert should be present in court if the kid requires any assistance.
8. The family child ought to receive payment for the child's medical care and rehabilitation.

PUNISHMENTS UNDER THIS ACT

1. Section 4 of the Act stipulates a minimum penalty of seven years, with the possibility of five years in prison and a fine, for penetrative sexual assault.
2. Section 6 of the Act stipulates that aggravated penetrative sexual assault carries a minimum penalty of 10 years in prison, with the possibility of harsh life imprisonment and a fine.

3. The penalty for aggravated non-penetrative sexual assault committed by an authority figure is outlined in Section 10. The penalty, which can last up to seven years and shouldn't be less than five, also includes a fine.
4. Section 10 stipulates that non-penetrative sexual assault with sexual purpose has a minimum sentence of three years, with the possibility of an additional five years, as well as a fine.
5. Section 12 stipulates that sexual harassment carries a three-year sentence and a fine.
6. Section 14 (1) stipulates that exploiting a minor for pornographic purposes carries a five-year sentence and a fine; a second conviction carries a seven-year sentence and a fine.
7. Section 18 of the statute stipulates a one-year sentence and a fine for attempting to commit an offense.
8. Section 21 of the Act stipulates that failing to report an offense carries a six-month jail sentence and a fine.

Recognizing the POCSO Act's growing necessity and effective implementation strategies:

A substantial portion of the 162,449 recorded crimes against children in India were related to CSA, according to the NCRB's ⁵"Crime in India 2022" report. Considering that these figures have only been rising every year, the increase in child sexual offenses is extremely alarming. Our legal system depended on sections 375 (rape), 354 (outraging a woman's modesty), and 377 (unnatural offenses) of the Indian Penal Code before the passage of the POCSO Act, which failed to appropriately handle sexual offenses against children.

Nevertheless, there were numerous shortcomings and restrictions in these clauses. A male victim of rape is neither protected by Section 375 of the IPC nor is it protected against sexual penetrations other than conventional peno-vaginal penetration. IPC 354 does not define "modesty," which creates a lot of opportunities for interpretations. It also did not shield a male child's modesty from criticism. Additionally, "unnatural offense" is not defined in IPC 377, and it is not designed to address the demands of sexual offenses against minors. Because of these dangers, there was a need for a more robust framework to comprehend the seriousness of sexually explicit offenses against children. Previously, the only law that directly addressed offenses against children was the Goa Children's Act, of 2003. Thus, there was an urgent need

⁵ National Crime Records Bureau, Crime in India Year Wise 2022, volume 1, no. 317, <https://ncrb.gov.in/crime-in-india-year-wise.html?year=2022&keyword=>

for a more robust framework that addressed sexual offenses against minors.

As a sort of remedy for this issue, the POCSO Act was passed into law. Being child-friendly and gender-neutral, this Act accomplishes its goals. The values it upholds are reflected in its provisions. The Act is intended to protect children's rights to life and survival, privacy, information, hearing, and expression, as well as their right to be treated with respect and compassion, effective support, protection throughout the legal and investigative processes, compensation, and special preventive measures. The POCSO Act is based on these ideas, which are essentially codified in it. The Act makes incident reporting mandatory, which keeps people aware of their surroundings and instills a sense of responsibility in all citizens. The Act's efficient execution is crucial for protecting underprivileged children and expediting the legal system. Reporting is one area where the POCSO acts are difficult to apply.

Many persons choose not to report for unexplained reasons, despite the Act's requirement of reporting and security for reporters. Family members may choose not to disclose cases to avoid the strong opinions of their relatives, and if a family member is involved, they may be afraid that their reputation will be damaged. Children who commit such crimes are denigrated, given negative names, treated worse by society than the criminal, and subjected to severe discrimination. Therefore, due to the stigma associated with the problem in society, many cases remain unreported. An additional obstacle to the efficient application of the Act is the backlog of pending cases and the delays in case disposition.

The Supreme Court Committee on Juvenile Justice hosted a two-day National Stakeholders Consultation, where Justice BV Nagarathna spoke to the audience. She discussed the 2.26 lakh or more cases that are still pending nationwide about offenses under the POCSO Act. She asserts that without the appointment of additional judges who are educated and aware of child safety and protection issues, the central government's plan to expand the number of fast-track courts to hear and decide cases involving child sexual offenses would be "futile." The staff and facilities needed for these studies must also be well-versed in the standards and protocols while working with youngsters⁶. The rehabilitation of victims must be given more attention because the victims in POCSO instances are young children. It's urgent to address the dearth of qualified

⁶ Setting Up POCSO Fast Track Courts Will Be Futile Unless More Judges Are Appointed: Justice BV Nagarathna” Published by: Deepankar Malviya, published on: 11 Dec 2022, last accessed 17 Jun 2024. <https://www-livelaw-in>

personnel and institutions that are properly controlled for children who have been harmed. In order to disseminate the act's concepts and tenets throughout society, more awareness initiatives are required. For victims of child sexual abuse to come forward and express their suffering and obtain the justice they so richly deserve, measures must be taken to prevent victim blaming and victim shaming.

Evaluation of significant rulings made under or about the POCSO Act:

The POCSO Act places a great deal of weight on the child's age in certain situations. Section 2(d) defines a kid as any individual under the age of eighteen. The accused-appellant attorney contended in *Jarnail Singh v. State of Haryana (2013)*⁷ That Savitri Devi's daughter was not a juvenile and that she had voluntarily departed with Jarnail Singh. Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, which specified the criteria by which the age of a child in dispute with the law must be ascertained, was cited by the Supreme Court of India, nonetheless.

However, according to the Hon'ble Court, the clause must also be applied when determining the age of a kid who has been harmed by the crime. Jarnail Singh was found guilty of abducting a juvenile child and sexually abusing him after the court rejected the appeal. *Union of India v. Nipun Saxena*⁸ Was another noteworthy case. The question that was put before the court in this instance was how and how the identities of both adult and child victims of sexual abuse and rape should be protected. In its two-part ruling, the court addressed juvenile victims under the POCSO Act in the second section.

Section 23 of the Act, which requires the media to refrain from publishing the child's data or any material that could reveal the child's identity, was taken into consideration by the court. Additionally, under section 33(7) of the Act, the special courts themselves are tasked with making sure that the victim's child's name is kept secret throughout the trial and inquiry. The court ruled that the victim's identity and other information that could be used to identify them could not be printed or published in any media.

Additionally, it mandated that, unless the victim is deceased or mentally incapacitated, their name or identity shall not be revealed, even with the consent of their next of kin. This ruling

⁷ *Jarnail Singh vs. State of Haryana (01.07.2013 - SC) : MANU/SC/0626/2013*

⁸ *Nipun Saxena and Ors. vs. Union of India (UOI) and Ors. (11.12.2018 - SC) : MANU/SC/1459/2018*

appears to be significant since it addresses the issue of societal mockery of rape victims in India. In particular, if the identity of a small child who has been raped is made public, it may have a more severe effect on the child's and their family's mental health.

The final judgment analysis in this article is an example of how the Supreme Court emphasized the significance of the POCSO Act. In *Attorney General for India & Ors. v. Satish & Ors*⁹, the defendant Satish is accused of bringing a young girl to his house and sexually assaulting her. According to section 9 of the POCSO Act, Satish was found guilty of aggravated sexual assault by the trial court.

The Bombay High Court found the accused not guilty on this basis, but upheld his conviction for minor offenses under sections 342 and 354 of the IPC, noting that he did not have "skin-to-skin" contact or penetration with her breasts. Mr. K.K. Venugopal, the Attorney General of India, and Ms. Geeta Luthra, the Senior Counsel for the National Commission for Women, appealed to the Supreme Court of India because they were unhappy with the High Court's ruling and order.

Following the learned counsels' arguments, the court concluded that the ruling and order issued by the Nagpur Bench of the High Court of Judicature should be overturned. Section 8 of the POCSO Act was thus used to convict the accused, Satish. This ruling was essential in upholding the POCSO Act's legality in certain situations and the idea that a section's existence would be destroyed by incorrect interpretation.

Section 7 of the POCSO Act addresses the accused's sexual purpose in all of his actions, including bringing the victim to his house, pulling off her clothing, attempting to improperly touch her, and putting pressure on her mouth to stop her screams. Consequently, the POCSO Act itself would have been negated if the rejection of the application in this instance on the only grounds of the lack of "skin-to-skin" touch had been approved.

Conclusion

The Protection of Children from Sexual Offences Act of 2012 is a historic legislative initiative that protects children's rights against sexual assaults. This study paper looked at many parts of

⁹ Attorney General for India and Ors. vs. Satish and Ors. (18.11.2021 - SC) : MANU/SC/1086/

the Act and provided an in-depth overview of the Act's provisions chapter by chapter. The article included case examples to demonstrate the relevance of interpreting various provisions as well as the value of the Act in delivering prompt justice and protecting children from further physical, mental, or emotional damage. While the Act has proven to be effective in protecting victim children and their rights, it does have its own set of problems and challenges.

Unreported cases, societal stigma, insufficient training for law enforcement organizations, and delays in judicial proceedings all persist, undermining the Act's efficacy. The best method to apply the Act is to raise awareness about the provisions that protect both reporters and victims, ensuring quick reporting of incidents and securing justice as soon as possible. Sustained efforts must be made to improve victim rehabilitation programs, train workers involved, improve court infrastructure to ensure quick and sensitive treatment of CSA cases, and implement a firm zero-tolerance policy against CSA.

Additional steps must be taken to raise awareness among youngsters by instilling notions such as 'safe' and 'unsafe' contact through educational initiatives, as well as making them feel comfortable while breaking their silence about any such heinous acts committed against them, to promote early reporting. With its provisions and commitment to making the court process kid-friendly and gender-neutral, the POCSO Act has built a solid foundation for child protection in India.

Moving forward, the government, civil society, and the community as a whole must work together to make India a safer place for children. The Act and Rules must be reviewed on a regular basis, cases must be watched, and decisions must be examined to ensure that the Act not only successfully deters potential offenders, but also accomplishes its primary aim of safeguarding and guaranteeing a brighter future for children.