

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 1Moot 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.

GENDER NEUTRALITY IN CHILD PROTECTION LAWS: DELVING INTO THE POCSO ACT- IS THERE A REQUIREMENT FOR RESTRUCTURING?

AUTHORED BY - KHUSHI PAWAR

SVKM's Narsee Monjee Institute of Management Studies, Indore
Super Corridor Rd, Gandhi Nagar, Indore, Madhya Pradesh 452005

Course- B.A.L.L.B. (Hons.)

ABSTRACT

The Protection of Children from Sexual Offences (**POCSO**) Act, 2012 has been the bedrock of child protection laws in India. It is a comprehensive legislation focusing on the critical concern of growing crime rates against children, particularly relating to their sexual exploitation. While the POCSO Act has been instrumental in resolving lakhs of cases throughout the country, its gender-neutral framework has often been questioned. This article closely scrutinizes the gender-neutral framework of the legislation while also analyzing the societal and legal challenges that act as hindrances in its effective application. It also throws light on the inadequate recognition of male victimization and the often neglected issue of female offenders, which are the associated challenges to the problem.

The article also presents a comparative analysis of the existing international frameworks on child protection in countries such as the United Kingdom, the United States of America, Canada, etc., thus emphasizing the need for an all-encompassing strategy to bring effectiveness and efficiency to Indian laws. Along with this, the analysis of landmark judgments clarifies the judiciary's stance on the matter, thus elucidating the interpretation of the legislation. It also explores the various international treaties and protocols ratified by India that show its commitment to address the issue with absolute seriousness, raising its accountability to strengthen its child protection legislation.

The research, while underscoring the challenges also explores the potential areas that can be worked upon to fulfill the existing lacunas. Overall, it necessitates a holistic approach to dealing with the issue, thus bringing attention to making the legal atmosphere an all-inclusive one, where the principles of equality and justice are upheld in their truest sense.

KEYWORDS: Gender-Neutrality, POCSO Act, Child Protection, International Frameworks, Equality and Justice.

GENDER NEUTRALITY IN CHILD PROTECTION LAWS: DELVING INTO THE POCSO ACT- IS THERE A REQUIREMENT FOR RESTRUCTURING?

In the last few decades, the world has witnessed an inordinate growth in the crime rates against children. The situation has turned even worse when it comes to crime against the girl child. This alarming trend reinforces a need to bring in more gender-specific laws to protect women and curb the proliferating crimes against them. However, an apparent question in such a scenario is, whether this indispensable inclination shifted our attention from preventing the crimes committed against the other genders who also form a large part of the population. Also, do societal norms deny them victimhood? One such piece of legislation that is often examined for its gender-specific application is the Protection of Children from Sexual Offences Act, 2012 (hereinafter the POCSO Act).

Crime against children is showing an alarming rise in the entire world. According to data published in the peer-reviewed PMC Journal, in countries in Asia, Africa, and Northern America, a minimum of 50% of children have faced past-year violence. Further, data from NCRB reflects that the majority of Indian states have also witnessed significant growth in crimes against children. The number has grown from 89,423 in 2014 to 162,449 in 2022¹. This trend is seen not just in major cities but small cities, are also equal contributors. In such a situation, the presence of robust frameworks for child protection becomes indispensable to curb the increasing crime rates.

Overview of the Act-

Among the other frameworks, the POCSO Act is a dedicated legislation in India for the prevention of children from all types of sexual abuses, also covering both aggravated penetrative and non-penetrative abuses, thus increasing its ambit. Its child-friendly procedures, speedy disposal of cases through fast-track courts, wide and inclusive definitions, stringent punishments, privacy safeguards, etc., make the legislation one of its kind. With an intent to serve justice to child victims of sexual offences, the act has been able to resolve close to 12

¹ Suresh Deepal, 'Data: Between 2014 & 2022, Number of Crimes Against Children Increased by Over 80%, Increase Observed in Most States' (*FACTLY*, 19 December 2023) <<https://factly.in/data-between-2014-2022-number-of-crimes-against-children-increased-by-over-80-increase-observed-in-most-states/>> accessed 15 December 2024.

lakh cases since its enforcement. The legislation also marks a significant step towards achieving the Sustainable Development Goals 5 and 16² and the UNCRC's³ aim of protecting all children regardless of their gender.

The Enhancements brought by the 2019 amendment

The 2019 amendment to the act, which is also the most recent one, was a concerted effort towards increasing the efficiency of the legislation by introducing newer punishments such as the death penalty in certain cases while the minimum imprisonment for various offenses has also been increased. The introduction of upgraded definitions now provides clarity in solving the cases. Moreover, the focus of the amendment on technology-driven offenses is a step to combat the new-age criminal behavior. It is to be noted that earlier, the Indian laws lacked frameworks that could protect children, especially boys, from sexual abuse, and to fulfill this lacuna, the need for this legislation arose.

In recent times, the central question is upon the gender-specific application of laws and the inclination of our legal system towards a specific gender. Essentially, there are two glaring yet significant concerns associated with gender-specific laws: one, inequitable access and distribution of justice, and the other, they are prone to misuse. For identical reasons, at several instances, the POCSO Act has also been questioned on the same grounds. It is significant to note that integral to all the major changes in the act, what remains unchanged is its essence, i.e., the use of pronouns such as 'child' or 'children' throughout the act, which itself is suggestive of its extreme focus on protecting crime against the child population in its entirety. Furthermore, it also points towards the gender-neutral nature of the act. But POCSO could achieve its true aim only when it imparts justice impartially, and it is therefore essential to fathom its scope in its rightest sense. This is where the judiciary steps in. It has consistently attempted to resolve the ambiguities around this aspect of the legislation through various judgments and case laws.

One such pivotal judgment emanated in the case of **Rakesh v. State of NCT of Delhi**⁴ and

² — 'THE 17 GOALS | Sustainable Development' (*Sustainable Development*) <<https://sdgs.un.org/goals>> accessed 10 January 2025

³ — 'What is the UN Convention on Child Rights?' (*UNICEF UK*) <www.unicef.org.uk/what-we-do/un-convention-child-rights/#:~:text=What%20is%20the%20UNCRC?,their%20race,%20religion%20or%20abilities.> accessed 18 December 2024

⁴ *Rakesh v. State of NCT of Delhi*, High Court of Delhi, 31 July 2024, CRL.M.C. 5032/2023 (India) <<https://indiankanoon.org/doc/122744439/>> accessed 31 December 2024

others. Hon'ble Justice Swarana Kanta Sharma, particularly dealing with this question, clarified her position on the issue and noted that POCSO is a gender-neutral legislation and does not deal with a specific gender; rather, it protects all minors against sexual offenses. She also pointed out the accused's claim regarding the act being gender-based and prone to misuse and thus termed such contentions as 'insensitive,' 'inappropriate,' and 'misleading'⁵. Her judgment also resolves that a law, irrespective of its nature, can be prone to misuse, which should not be a hindrance to its implementation. Furthermore, the Delhi High Court also once observed that gender-specific laws are not against a particular gender; rather, it is upon the courts to ensure gender neutrality while adjudicating such cases⁶.

Also, this has been the opinion of the court in the case⁷ of **Alakh Alok Shrivastava v. Union of India**⁸, wherein the court, while dealing with issues such as the implementation as well as enforcement of the POCSO Act, affirmed that "At the very outset, it has to be stated with authority that the POCSO Act is a gender-neutral piece of legislation." The case emerged around 2017-18, and the judgment was delivered by a three-judge bench comprising Chief Justice Dipak Misra, along with Justice A.M. Khanwilkar and Justice D.Y. Chandrachud. This reflects the judiciary's opinion about the nature of the act as gender-neutral, which can very well be gauged from its judgments.

It is equally important to recognize that the gender-neutral application of this law not only extends to victims but also to offenders and perpetrators. Recently, in the case of **Sundari Gautam v. State of NCT of Delhi**⁹, one of the major discussions revolved around the pronouns used in sections 3 and 5 of the POCSO Act and their applicability to female offenders. The essential idea was, that the use of pronouns such as 'person' in itself conveys the legislative intent of holding perpetrators, regardless of their gender, accountable for sexual offenses

⁵ Prashant Jha, 'POCSO Act is gender neutral; most insensitive to say it is being misused: Delhi High Court' (*Bar and Bench - Indian Legal news*, 8 September 2023) <www.barandbench.com/news/litigation/pocso-act-gender-neutral-most-insensitive-misused-delhi-high-court> accessed 31 December 2024.

⁶ Prashant Jha, 'Gender specific laws not anti-men; courts must be gender neutral while dealing with such cases: Delhi High court' (*Bar and Bench - Indian Legal news*, 29 September 2023) <www.barandbench.com/news/gender-specific-laws-not-anti-men-courts-must-gender-neutral-while-dealing-cases-delhi-high-court> accessed 31 December 2024.

⁷ Oshika Banerji, 'Landmark judgments under POCSO Act, 2012 - iPleaders' (*iPleaders*, 23 November 2021) <<https://blog.ipleaders.in/landmark-judgments-under-pocso-act-2012/>> accessed 31 December 2024.

⁸ *Alakh Alok Shrivastava*, Supreme Court of India, 1 May 2018, WRIT PETITION (C) No.76 OF 2018 (India) XXXX <<https://indiankanoon.org/doc/140831979/#:~:text=The%20instant%20Writ%20Petition%20initially,of%20the%20trials%20under%20the>> accessed 1 January 2025.

⁹ *Sundari Gautam v. State of NCT of Delhi*, High Court of Delhi, 9 September 2024, CRL.REV.P. 852/2024 (India) XXXX <<https://indiankanoon.org/doc/93871204/>> accessed 1 January 2025.

against minors and, thus, a narrow interpretation of the same renders it unfair.

Every legal framework has its limitations and flaws, and due to its very nature of being dynamic, a law needs certain modifications and adjustments. The gaps and ambiguities in any law always prevent the operation of the law to its fullest potential; thus, identifying the grey areas and refining the unclear provisions is a significant step to bringing efficiency to its operation. POCSO's case is no different. It certainly has areas that need attention for the law to realize its fullest potential. Undoubtedly, amendments are indispensable to resolve this issue, but lessons can also be learned from the successful practices at the global level and can be infused into the domestic legislation.

Analyzing the International Frameworks: Lessons to be learned-

Countries like Canada had long-standing practices of using pronouns such as 'he' with a legislative intent to refer to all the persons, also called the default masculine rule, which has now been replaced by a more gender-inclusive drafting approach to promote gender equality while also showcasing a progressive approach. Besides, like the General Clauses Act of 1897 in India, Canada also has an Interpretation Act of 1867 to streamline legal interpretation, but the Canadian act more strongly emphasizes gender inclusivity, especially through its section 33(1), which is a reflection of the same.¹⁰

While the law prevailing in England, which is an integration of the globally adopted principles such as the UNCRC¹¹ as well as the human rights frameworks, uniquely asserts that the welfare of children is the most important consideration, also known as the paramountcy principle when dealing with cases relating to child protection, along with using gender-neutral language throughout the legislation to remove ambiguities in interpretation.

The USA, for instance, has recently finalized a policy that strengthens protection for youth in the child welfare system¹². This policy specifically deals with LGBTQIA+ children,

¹⁰ Government of Canada D of J, 'Gender-Inclusive Language' (*Legistics*, 27 February 2024) <https://www.justice.gc.ca/eng/rp-pr/csj-sjc/legis-redact/legistics/p1p15.html> accessed 3 January 2025

¹¹ 'What is the UN Convention on Child Rights?' (*UNICEF UK*) <www.unicef.org.uk/what-we-do/un-convention-child-rights/#:~:text=What%20is%20the%20UNCRC?,their%20race,%20religion%20or%20abilities> accessed 10 January 2025.

¹² '2025-01-02 05:49: Archive of Hhs.Gov' (2025-01-02 05:49 | *Archive of HHS.gov*, 29 April 2024) <https://public3.pagefreezer.com/browse/HHS.gov/02-01->

considering the fact that they are subject to higher levels of harassment. Though this doesn't specifically deal with sexual harassment, it is a constructive step when it comes to the promotion of gender inclusivity. In fact, the Child Abuse Prevention and Treatment Act (CAPTA), a major piece of legislation of the USA dealing with child sexual abuse, underscores a distinguishing feature of organizing and funding training programs for professionals to address bias and recognition of abuse regardless of the child's gender.

Drawing lessons from the globally accepted practices can help boost the efficacy of the domestic laws, thereby filling the existing lacunas in our laws.

India's commitments at the global level

India's strong commitment to the protection of children is demonstrated by its ratifying various treaties at the international forefront. UNCRC is one such prominent treaty that was ratified by India in 1992. Article 2¹³ of this treaty puts an obligation upon the states to secure equal rights for all children and promote non-discrimination. In a report based on a comparative study published by the National Human Rights Commission in 2019, a total of 26 recommendations were also made to fulfill the existing gaps between the UNCRC and Indian legislations, schemes, and judgments¹⁴. In its attempt to address emerging crimes such as child trafficking, child prostitution, child pornography, and other forms of exploitation of children, India in 2005 also ratified the Optional Protocol to the UNCRC on the Sale of Children, Child Prostitution, and Child Pornography¹⁵. The focused objectives of this protocol included the enhancement of prevention mechanisms for combating these new forms of exploitation. During the early 1990s, as a measure of gender equality and empowerment of women¹⁶, India also ratified CEDAW¹⁷ i.e. Convention on the Elimination of All Forms of Discrimination Against Women, which was a focused attempt to safeguard women, including girl children against all forms of discrimination.

2025T05:49/<https://www.hhs.gov/about/news/2024/04/29/biden-harris-administration-finalizes-rule-strengthen-protections-youth-child-welfare-system.html> accessed 4 January 2025

¹³ (NHRC 2020) publication https://nhrc.nic.in/sites/default/files/UNCRC_2020.pdf accessed 6 January 2025

¹⁴ (NHRC 2020) publication https://nhrc.nic.in/sites/default/files/UNCRC_2020.pdf accessed 6 January 2025

¹⁵ Pledge by India | ohchr. (n.d.). <https://www.ohchr.org/en/treaty-bodies/crc/celebrating-30-years-convention-rights-child/pledge-india> accessed 10 January 2025

¹⁶ 'Measures for Gender Equality and Empowerment of Women' <https://pib.gov.in/PressReleaseDetailm.aspx?PRID=1779252®=3&lang=1> accessed 6 January 2025

¹⁷ (2006) rep <https://newapps.nic.in/pdfReports/CEDAW%20The%20Reservations%20And%20Optional%20Protocol.pdf> accessed 7 January 2025

The authorization and validation of all these treaties and protocols in itself is suggestive of the fact that India provides serious consideration to the crimes taking place against children, but at the same time, it puts an onus upon India to ensure that robust and resilient laws are in place to address the issue. Hence, revising the laws to meet the current requirements is non-negotiable.

In the Indian scenario, apart from the legal challenges, other socio-economic challenges also persist, which impedes the comprehensive implementation of these laws. Gender stereotypes, perceived notions about a victim's gender, etc., are so deeply ingrained in our minds that they often extensively shape our perceptions. Associating victimhood with a specific gender is highly unfair, as it completely disregards the other genders. In fact, in the larger societal percept, there exists an ingrained association of offenders and perpetrators with the male gender. Furthermore, problems such as lack of financial resources, inadequate (gender-neutral) training programs, lack of awareness and support systems, social stigmatization, etc. tremendously contribute to the underreporting of cases countrywide. Changing societal norms and perceptions is both a strenuous and a prolonged process, but small steps at an individual level can offer substantial aid in the short run.

Conclusion

The above analysis of the act, specifically the judicial understanding of the nature of the legislation, favors gender neutrality in the law, but ambiguities still persist, especially in its interpretation. A more effective implementation of such a crucial piece of legislation calls for clearing these ambiguities through reforms. This may include a comprehensive training mechanism for the judiciary, increased legal awareness, timely access to justice, international collaborations, adopting globally accepted best practices, more inclusive legislative drafting, etc.

At a time when questions are being raised on the gender-biased nature of laws, POCSO can stand out as a significant example of promoting gender neutrality in child protection, laws by introducing relevant alterations. Law is a reflection of societal values, and it progresses with the advancement of society and the societal mindset. Thus, we, as responsible members of the society, need to understand that effective implementation of laws requires not just legal reforms but also alterations in societal attitudes, which have a very crucial role to play in this respect. After all, our ultimate aim is to make the legal environment an all-inclusive one, where each child has a fair and equal chance of accessing justice, devoid of gender being an obstacle.