



Email: editorijless@gmail.com

Volume: 10, Issue 4, 2023 (Oct-Dec)

**INTERNATIONAL JOURNAL OF LAW, EDUCATION,
SOCIAL AND SPORTS STUDIES
(IJLESS)**

A Peer Reviewed and Refereed Journal

[DOI: 10.33329/ijless.10.4](https://doi.org/10.33329/ijless.10.4)

<http://ijless.kypublications.com/>

ISSN: 2455-0418 (Print), 2394-9724 (online)
2023©KY PUBLICATIONS, INDIA

www.kypublications.com

Editor-in-Chief
Dr M BOSU BABU
(Education-Sports-Social Studies)

Editor-in-Chief
DONIPATI BABJI
(Law)

©KY PUBLICATIONS





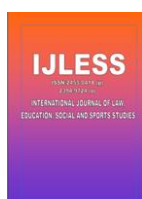
A STUDY OF CHILD SEXUAL ABUSE LAW (POCSO) IN INDIA

Dr. S. Durgalakshmi¹, S. Ilavenil²

¹Principal and Research Supervisor, Government Law College, Salem, Tamil Nadu, India
Email: durgaharidas@yahoo.com

²Research Scholar, Dr. Ambedkar law university, Chennai, Tamil Nadu, India
Email: ilavenilss.adv@gmail.com

DOI: [10.33329/ijless.10.4.40](https://doi.org/10.33329/ijless.10.4.40)



ABSTRACT

The most valuable resource in a society is a child, and children are essential to the growth of a country. Their generation is the nation's future. How well a nation's children are raised determines how that nation will develop in the future. One of India's biggest issues is child sexual abuse. A special law called the Protection of Children from Sexual Offences Act (POCSO) has been passed in response to this issue with the goal of defending children's rights. A significant step towards protecting children's rights has undoubtedly been taken with the passage of this Act. The analysis of child sexual abuse and the impact of this Act on this serious issue are covered in this essay. Additionally, the study addresses difficulties.

Keywords: Child, Child sexual abuse, POCSO Act, Offences, Punishment.

INTRODUCTION

Child sexual abuse is a widespread issue that affects every country in the world. A child is immature, frail, and reliant on other people. They are exposed to problems with their health, discipline, academic pressure, and sexual exploitation, among other things. Any country's future is dependent on the growth of its children. They comprise the most vulnerable groups in society. The Indian government is focusing on issues like child welfare, development, and education for India's future citizens, among other things. India's population grew to 1.29 billion people as of January 2, 2016. Of which, 39% of the population are children. The rights of each and every Indian citizen are protected by the different provisions of the Indian Constitution. The constitutional provisions also aimed to safeguard children's rights. Giving special consideration to children is mentioned and guaranteed in Article 15. To protect their interests and rights, it enshrined the provision of the essential and unique laws and regulations.

The issue of child sexual abuse is mostly unacknowledged and taboo in public conversation. Only cases of rape against children were recognised as crimes in the absence of an appropriate Act. A legal sanction for punishment did not exist in cases of child sexual assault, harassment, objectionable behaviours directed at them, or pornography.

A FEW FACTS RELATING TO CASES OF CHILD ABUSE IN INDIA

1. A severe issue in India is the prevalence of sexual abuse and human trafficking.

2. A survey of teenagers in Kerala revealed that 36% of boys and 35% of girls had been sexually abused.
3. A study involving 17220 kids and teenagers was carried out by the Indian government. According to the survey, sexual abuse occurs to every second child in the nation.
4. Assam (57.27%) reported the most cases of sexual assault, followed by Delhi (41%), Andhra Pradesh (33.87%), and Bihar (33.27%).
5. The state of Uttar Pradesh has reported the most instances of sexual abuse.
6. The youngster knew 50% of the perpetrators of the abuse. The incidents happened in an environment of trust and accountability.
7. The abuse suffered by children between the ages of 5 and 12 was more severe. The majority of cases go mostly undetected.

AREA OF RESEARCH

The study is limited to India because it examines the 2012 Protection of Children Against Sexual Offences (POCSO) Act.

The POCSO Act has been carefully examined by the researcher.

SIGNIFICANCE OF THE RESEARCH

Child sexual assault charges are rising alarmingly quickly. India is one of the top five nations in the world for child abuse cases. Before the POCSO Act was passed, India's criminal code was insufficient given how sensitive and important this subject is. The 172nd Law Commission Report by the Law Commission examines the entire law, including sexual offences. The Law Commission requested different changes pertaining to the topic. When it came to child sex crimes, the legislation was ineffective. The POCSO Act was passed in 2012 with the intention of preventing child sexual exploitation. Due to the requirement for the separate act. The POCSO and the issues and debates surrounding it will be covered in full in the current paper in this regard.

RESEARCH QUESTION

The first step in solving and discussing any problem is to identify it. The central issue in this study is whether Indian criminal law is sufficient to handle incidents of child sexual abuse following the passage of this Act.

OBJECTIVES OF THE RESEARCH

1. To research the effects of the POCSO Act after it was passed and put into effect.
2. To evaluate the POCSO Act's role in resolving child sexual abuse cases.

REVIEW OF LITERATURE

The researcher has examined numerous pieces of domestic and foreign legislation that are directly relevant to criminal law, including cases involving child sex abuse. In her study, the researcher analyzed the Indian Penal Code, the POCSO Act, UNICEF publications on child sexual abuse, and other local, regional, and global legal frameworks pertinent to this topic.

PROTECTION OF CHILDREN AGAINST SEXUAL OFFENCES (POCSO) ACT, 2012

In 2012, the POCSO Act (Protection of Children Against Sexual Offences) was passed. To safeguard children from exploitation and sexual abuse, the Act was passed. It also enables the creation of special courts for the adjudication of cases involving child sexual abuse. It also establishes the use of kid-friendly procedures for gathering evidence, looking into the crime, and trying those responsible. A

"child" is defined as a person who has not reached the age of 18 in accordance with the POCSO Act of 2012.

The following sexual offences against minors are defined by the POCSO Act:

1. Penetrative Sexual Assault;
2. Trafficking in minors for Sexual Abuse.
3. sexual assault.
4. sexual assault.
5. utilising a kid for pornographic purposes;
6. aggravated penetrative sexual assault.

If a child who has experienced sexual abuse is mentally ill or if the assault was carried out in a situation of trust, the abuse is referred to as being "aggravated." Legislation under this Act is gender-neutral. According to the Act, a "child" is any person who is less than 18 years old. Every child is protected against sexual abuse by it. Through all phases of the legal process, the Act provides for a child-friendly environment. The "best interest of the child" principle is given top priority by the Act.

The provisions of this Act offer a method for reporting, recording evidence, investigating the case, and completing crimes trials quickly. The case is handled by a designated special court under the Act without disclosing the child's identify. The amount of compensation to be paid to the child in this case to cover their medical care, rehabilitation, and counselling is decided by a special court.

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

1. Within 24 hours of receiving a report of child abuse or any case connected to it, a police officer shall bring the situation to the Child Welfare Committee's notice.
2. In order to prevent the youngster from being reprimanded, the police officers handling the case must be dressed appropriately when recording the child's statement.
3. In the presence of the person the child trusts, the child's statement of the crime must be recorded.
4. Only the lady doctor, present in the presence of a person the child trusts, should examine the child medically in order to gather forensic evidence.
5. Special courts have been established under this Act to hold trials quickly.
6. It is the responsibility of this court to keep the kid's name a secret and to prevent exposing the child to the accused while the statement is being recorded.
7. The child can share his or her testimony through video as well; they won't need to urge them to do it repeatedly.
8. It should be mentioned that the case shouldn't be delayed and should be resolved a year after it was reported.
9. A special educator, interpreter, translator, or other professional should be present in court if the kid needs any assistance.
10. The family's child should get payment for the necessary medical care and rehabilitation.

PUNISHMENTS UNDER THE ACT

1. Section 4 of the Act stipulates a sentence of at least 7 years, with a maximum of 5 years in jail, as well as a fine for penetrative sexual assault.
2. Section 6 of the legislation specifies the penalty for serious penetrative sexual assault, which should not be less than 10 years in jail; it may also include a fine and strict life in prison.

3. The penalty for aggravated non-penetrative sexual assault committed by a person of trust or authority is outlined in Section 10. The penalty, which must be less than five years in prison but may go up to seven years, as well as a fine.
4. Section 10 stipulates a minimum sentence of 3 years, with a possible maximum sentence of 5 years, and a fine for non-penetrative sexual assault committed with a sexual aim.
5. Section 12 of the law stipulates that sexual harassment is punishable by three years in prison and a fine.
6. Section 14 (1) of the Penal Code imposes a sentence of five years in prison and a fine for using a minor for pornographic purposes, and seven years in prison and a fine in the event of a subsequent conviction.
7. Section 18 of the statute stipulates a one-year sentence and a fine for attempts to commit crimes.
8. According to Section 21 of the Act, the penalty for failing to report an offence is a six-month jail sentence and a fine.

CHALLENGES AND CONTROVERSIES

The issue of child sexual abuse is complex since it affects the victims' physical, emotional, social, economic, psychological, and legal well-being. Although the POCSO Act, 2012's procedure is kid-friendly, some of its provisions are silent, which adds to the challenge and controversies. There are some topics that can be discussed:

1. **MEDICAL EXAMINATION** - Section 27(2) of the POCSO Act stipulates that a female doctor must conduct the medical examination of a female child. While Indian Penal Code Section 166A requires the government medical officer on duty to evaluate the rape victim without fail. When there isn't a female doctor available, this issue occurs.
2. **CONSENT RELATING TO MEDICAL EXAMINATION** - In the event that a child refuses to undertake a medical examination despite the investigating officer's insistence, the POCSO Act is silent and offers no guidance. The clause in question has to be clarified. To protect the child's life, treatment must begin as quickly as feasible in this situation without including the issue of permission.
3. **CONSENT RELATING TO MEDICAL EXAMINATION** - In the event that a child refuses to undertake a medical examination despite the investigating officer's insistence, the POCSO Act is silent and offers no guidance. The clause in question has to be clarified. To protect the child's life, treatment must begin as quickly as feasible in this situation without including the issue of permission.
4. **CONSENTED SEXUAL INTIMACY** - According to the POCSO Act, sexual relationships between teenagers or between teenagers and adults are prohibited. In the Act, no exemption has been made. However, it is proposed that under this Act, any consensual sexual act between consenting teens should not be a crime. However, the age of consent for sex has been set at 18 years old as per the most recent change to the Indian Penal Code.
5. **CHILD MARRIAGE** - India's secular legislation forbids child marriage. However, it is legal under personal law. Due to the fact that child marriage and the consummation of a child marriage are both unlawful under the POCSO act of 2012, it complicates matters.
6. **TREATMENT COST** - The POCSO Act imposes a legal obligation on the medical facility to offer the kid with free medical services. The child might not receive the entire therapy to which he or she is entitled if the necessary facilities are not available or if an expensive operation is required. The state has an obligation to cover the expense.

7. REPORTING ISSUE - It is a fact that the majority of child abuse instances are not properly reported due to the fear of being ridiculed, humiliated, and ashamed in front of the entire society. Reporting instances of child abuse is a very sensitive and challenging choice for family members. They typically avoid to escape torture such as fear, insult, and teasing, which prevents incidents from being reported.
8. THE PROBLEM WITH TRAINING - A youngster is the most defenceless member of society. They are an extremely emotional and sensitive member of the community. In accordance with the POCSO Act of 2012, there is an urgent need for training of medical trainers, doctors, practitioners, instructors, judges, attorneys, and law enforcement agencies in child-friendly questioning, medical examination, counselling, and routine follow-up.

CONCLUSION

POCSO Act has made a significant contribution in the cases of child abuse cases in India. POCSO ACT, 2012 recognises almost every form of sexual abuse. It is an excellent form of legislation. Though, there are few challenges which are remained to be answered. A child who suffers sexual abuse need to have a psychological support and counselling in a best friendly way. Every individual of society needs to accept a holistic approach towards the child abuse cases in India. They need to keep watch on sexual abuse. They must explore and assess the child thoroughly. The cases of child sexual abuse are the most under-reported offences in India. The proportion of child abuse cases in India is epidemic. The doctor who is attending a child must deal with him/her in a most friendly form feeling them least distressful.

REFERENCE

- Barath K..Susheel, Mahalakshmi V., January 2016, Legal Implications of POCSO Act, 2012 - An Analysis, International Journal of Multidisciplinary Research Review. Pp. 155-162
- Belur Jyoti, Singh Brijesh Bahadur , December 2015, Child Sexual Abuse and Law in India, Crime Science - An Interdisciplinary Journal.
- Child Sexual Abuse: Issues and Concerns, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4557243/>, Accessed on February 09, 2018
- Forensic Study on Child Sexual Abuse under POCSO Act, [http://ijar.org.in/stuff/issues/v2-i3\(3\)/v2-i3\(3\)-a011.pdf](http://ijar.org.in/stuff/issues/v2-i3(3)/v2-i3(3)-a011.pdf), Accessed on February 10, 2018
- Journal on the Rights of the Child, https://www.unicef.org/french/adolescence/files/Every_Childs_Right_to_be_Heard.pdf, Accessed on February 10, 2018
- Moharana ,S.D.,(2015)Protection of Child against Sexual Offences Act, 2012: An Analytical Study, International Journal of Academic Research, Pp- 85-92
- Research Paper Analysis of Indian Legal Position on Child Sexual Abuse, <https://knallp.com/files/3.pdf>, Accessed on 2018 February 10, 2018
- Reviewing India“ s Protection of Children from Sexual Offences Act three years on, <http://blogs.lse.ac.uk/southasia/2015/12/18/reviewing-indias-protection-of-children-from-sexual-offences-act-three-years-on/>, Accessed on February 12, 2018
- Dr. Khushboo R. Hotchandani, Every Child Is Special - A Study Of Child Sexual Abuse And The Law (POCSO) In India, Volume 6, Issue 1 February 2018