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ANALYSIS OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT

~ *Saif Alam*

ABSTRACT

The Protection of Children from Sexual Offences (POCSO) Act is examined in this research, with particular attention paid to its theoretical underpinnings, application, and changing difficulties in India. Any sexual act that involves a person under the age of 18 is illegal according to the POCSO Act, which also establishes child-friendly policies and harsh punishments for violators in an effort to stop sexual abuse of children in all its manifestations. Recent research reveals difficulties in its application, particularly the intricate relationship that exists between strict age-specific participation requirements, which occasionally make peer-to-peer consenting sexual activity illegal, and the growing requirements of teenagers. According to a review of legal and medical information, most suspected victims are educated, and caregivers present their concerns, and they frequently know the offenders. A summary of medical and legislative data shows enduring deficiencies in reporting procedures, organizational backing, and consciousness, which frequently result in psychological trauma and failed fairness. According to the paper, efficient regulation relies on integrating community outreach, aligning the rules with the foremost intentions of children, and addressing structural weaknesses. The research paper advances a more just and safer structure to govern welfare for children under the provision of the POCSO Act by arguing for specific changes which tackle both practical issues and behavioural requirements via a holistic approach.

KEYWORDS: POCSO Act, Child Sexual Abuse (CSA), Age of Consent, Psychology, Gender-Neutral, Forensics, Mandatory Reporting, Judicial Delays, Child Justice.

INTRODUCTION

Countless numbers of children worldwide are subjects of cruelty and neglect, making child sexual abuse (CSA) an important cause for concern and this also applies to India.¹ Even though the rise in child sexual assault incidents in India is disheartening, there is a greater need than ever to provide victims with protection as soon as possible.² The POCSO Act³, which governs sexual misconduct involving youngsters across our nation, imposes severe penalties on violators.⁴ According to a 2007 study by the "Ministry of Women and Child Development," fifty-three percentage of youngsters examined seemed the targets of CSA violence, and twenty-one percent of the young people were verbally abused and victimized.⁵ Since parental figures are familiar with the perpetrator, they typically do not file a complaint.⁶ State has an ethical obligation to protect the well-being and welfare of youngsters, who are a fragile segment of the general population, and for this, they establish ordinances and provide a structure for the execution of those laws.⁷ In Indian courts, there exists an enormous pile of POCSO matters and according to a report published in the second quarter of 2024, there were actually more than 2.43 lakh matters still pending but in India, the verdict of guilty proportion for POCSO instances is still relatively small. The low statistic deters people from notifying and gives offenders an impression of freedom from punishment. Despite the UN's 1989 adoption of the International Covenant on the Basic Rights of youngsters, India had no laws protecting children against sex abuse until 2012, when the act that is being discussed was passed.⁸ It stipulated severe penalties for crimes towards minors, from the impending execution in cases of serious pervasive assault with sexual intent to an initial sentence of two decades in sentence. Thus, the POCSO Act is a crucial regulatory protection that seeks to prevent children who are at risk

¹ Aslam Moideen Chekkara and Dr. Sony Kunjappan, *Social Management Model Of Holistic Governance Framework For Prevention Of Child Sexual Abuse*, 10 INTERNATIONAL JOURNAL OF RESEARCH - GRANTHAALAYAH (2022).

² Dr.V. Thangavel, *The Analysis of Research Review for the Protection of Children from Sexual Offences Act* (2025).

³ The Protection of Children from Sexual Offences, 2012, Acts of Parliament, 2012 (India).

⁴ Dr.V. Thangavel, *supra* note 2.

⁵ Aslam Moideen Chekkara and Dr. Sony Kunjappan, *supra* note 1.

⁶ Dr.V. Thangavel, *supra* note 2.

⁷ Manral, Ishita T., Panjrattan, Carol, Saini, Rajiv K., Roy, Shuvendu and Singh, Avinash, *A multi-speciality approach to the protection of children from sexual offences act: A review*, 32 INDUSTRIAL PSYCHIATRY JOURNAL (2023).

⁸ Dr.V. Thangavel, *supra* note 2

from assault, intimidation, and victimization and by looking at it, we become more familiar with the laws protecting youngsters and pinpoint elements that could use advancement.⁹

RESEARCH METHODOLOGY

This research is based on a comparative method to analyse different notions of Child Sexual Abuse (CSA) and its legal implementation in India with POCSO Act and over the globe. It also contains a multifaceted methodology with secondary sources that uses various websites and several journal articles for the research.

REVIEW OF LITERATURE

An important piece of legislation designed especially to shield Indian children from sexual misconduct is the Protection of Children from Sexual Offences (POCSO) Act, 2012. The regulations of POCSO are thoroughly examined in important books like "The Law of Crimes" by Ratanlal & Dhirajlal¹⁰ and "Indian Penal Code" by K.D. Gaur¹¹, which emphasize the statute's wide spectrum of violations, pediatric-friendly processes, and severe penalties. These types of works highlight the significance of required reporting and the gender-blind nature of the Act and these books also address important shortcomings in implementation, such as law enforcement organization's ignorance, court backlogs, and obtaining proof obstacles.

BACKGROUND

Child Sexual Abuse (CSA) is discussed by the World Health Organization (WHO) as when a young person engages in physical behaviour for which the minor lacks the capacity to comprehend or give permission.¹² This behaviour occurs when a youngster engages in something to satisfy or meet the desires of a mature individual or another youngster who, because of their age or developmental stage, is in an arrangement of obligation, reliability, and power. In India, child sexual abuse (CSA) has long been disregarded by laypeople and the justice system in general as a covert problem, until recently, rape was the only acknowledged particular sexual misconduct against youngsters in India and CSA was not considered a crime.¹³ The government's organisation that works for females and young people's development, nongovernmental organizations (NGOs) and activists have all played a key role in ending "the

⁹ Dr. Sudhir Kumar, *The Protection of Children from Sexual Offences Act (POCSO): A Legal Shield for Vulnerable Children*, INTERNATIONAL JOURNAL OF SCIENCE AND RESEARCH.

¹⁰ 30 RATANLAL & DHIRAJLAL, LAW OF CRIMES (Bharat Law House 2007).

¹¹ 7 K.D. GAUR, INDIAN PENAL CODE (LexisNexis 2020).

¹² Aslam Moideen Chekkara and Dr. Sony Kunjappan, *supra* note 1.

¹³ Dr.V. Thangavel, *supra* note 2

cult of slumber" in the last decade, which has greatly boosted the general and legislative pressure on tackling the problem.¹⁴ Thus, The 2012 Protection of Children from Sexual Offenses (POCSO) law was the product of a program spearheaded by the Ministry of Women and Child Development.

WHAT IS POCSO ACT, 2012?

India's regulatory reaction to child sexual abuse has been greatly strengthened by the Protection of Children from Sexual Offences Act (POCSO), which has made protecting young people at risk a top priority.¹⁵ There are other laws in India that deal with child sexual abuse besides this act of 2012. The protection of young people from acts of sexual assault is known as POCSO.¹⁶ This procedure is covered, and the charges are defined by the provisions of the IPC, 1860¹⁷, the JJ Act, 2015¹⁸, IT Act, 2000¹⁹, and the Law of Criminal Procedure, 1973. According to the POCSO Act of 2012, an individual who is under the legal age of eighteen is considered a child.²⁰ According to the Penal Code of India, girls were sole individuals who could legally give permission to having sexual relationships prior to the passage of this statute and it was increased from 10 years to twelve in the year 1891, fourteen in the year 1925 and 16 in 1940.²¹ It remained unchanged until the Criminal Law (Amendment) Act, 2013 was put into effect, which was accompanied by a national outcry over the 2012 Delhi-based horrific gang rape involving Nirbhaya.²² As a result, the POCSO Act by its own does not qualify as a complete criminal statute.

ESSENTIAL FEATURES OF POCSO ACT 2012

1. The Identities of the victims will be kept confidential: Section 23 of the POCSO Act describes the news media procedure, which requires that the target's personal information be kept private unless the release has been authorized by the Special Court and Clause (2) of this section states that "no news coverage in any medium must reveal the private information of a young person, such as his title, location, snapshot, personal specifics, instructional institution,

¹⁴ *Id.*

¹⁵ Dr. Sudhir Kumar, *supra* note 9.

¹⁶ Dr.V. Thangavel, *supra* note 2.

¹⁷ Indian Penal Code, 1860, Acts of Parliament, 1860 (India).

¹⁸ Juvenile Justice Act, 2015, Acts of Parliament, 2015 (India).

¹⁹ Information Technology Act, 2000, Acts of Parliament, 2000 (India).

²⁰ Aslam Moideen Chekkara and Dr. Sony Kunjappan, *supra* note 1.

²¹ Veenashree Anchan, Navaneetham Janardhana and John Vijay Sagar Kommu, *POCSO Act, 2012: Consensual Sex as a Matter of Tug of War Between Developmental Need and Legal Obligation for the Adolescents in India* 43 INDIAN J PSYCHOL MED. (2020).

²² *Id.*

community, and any extra information that might give rise to a revelation to anyone the personal information of the youngster." as it also states that any individual who disobeys this regulation, including law enforcement personnel, will face legal action.

2. Gender-blind clauses: The Act on POCSO makes no distinction among offenders and victims based on sexual orientation, in contrast to the IPC and without any hesitation, this fixes one of the Indian Penal Code's main issues that anybody below maturity, that is eighteen, is regarded as a minor.²³

3. Required notification regarding child harassment: Most instances of sexual misconduct occur in confidential settings, and those who commit them frequently attempt to hide what happened, so, to implement the POCSO Law, individuals and organizations are obliged to provide notice of such events in accordance with Sections nineteen to twenty-two.²⁴

TYPES OF CHILD SEXUAL ABUSE

1. Penetrative sexual assault: Any kind of physical interaction with a young person, irrespective of the object that is applied or if penetration occurs, is considered penetrative sexual assault.²⁵

2. Sexual assault and harassment: Sexual assault includes a wider variety of behaviours, such as contacting with a child's intimate areas, making a child embrace the offender, or any other non-penetration-based sexual misconduct. On the other hand, Sexual harassment may entail making inappropriate sexual advances, remarks, or displaying child pornography.

3. Child Pornography: To combat this terrible crime, the Ministry of Women and Child Development has clarified what exactly qualifies as child pornography, which includes multimedia material that features youngsters in a physically explicit manner.²⁶ The idea of pornography involving children was laid out by the POCSO bill of 2012, which also covered internet-based or digitally produced material. The law defines child pornography as "any visual depiction of sexually explicit behaviour featuring young people, that involves a picture, footage, electronic or digitally produced graphic which appears identical compared to a real child." Furthermore, using "a picture that was developed, altered or transformed" to show a child could be deemed pornography involving children and this would also hold true for films

²³ Dr.V. Thangavel, *supra* note 2.

²⁴ *Id.*

²⁵ Dr. Sudhir Kumar, *supra* note 9.

²⁶ Dr.V. Thangavel, *supra* note 2.

based on movies with animation, etc. and if someone keeps this kind of material for later distribution, they could be punished for up to three years.

4. Sextortion: Sextortion is when abusers force kids to upload inappropriate pictures or recordings that include them by warning to post them online if they don't comply with additional requests.²⁷

5. Broadcasting CSA: Broadcasting footage of kid sexual assault is a troubling trend in which abusers assault youngsters and show it on the internet for commercial audiences.²⁸

CONSEQUENCES OF CHILD SEXUAL ABUSE

Sexual abuse of young people can have severe consequences and children who have been abused are susceptible from:

1. Psychological Health: Cognitive illnesses like depressive disorders, anxiety, and post-traumatic stress disorder (PTSD) are more common among youngsters who are abused, and they might also experience feelings of guilt, poor self-worth, and trouble establishing positive connections.

2. Growth Problems: Abuse-related anxiety can interfere with the growth of a kid's brain, especially in the parts that regulate feelings, cognition, and ability to learn and this may result in issues with focus, attention, and achievement in school.

3. Physical Health: Victimized youngsters are more likely to experience medical conditions such as compromised immunity, persistent ailments, and sometimes early death.²⁹

4. Drugs: Alcohol and illicit substances are more frequently used by victims of child abuse as a coping mechanism for their mental anguish.

5. Violent behaviour: Victimized youngsters are more inclined to experience physical abuse themselves or commit acts involving force in the future.

6. Academic Problems: A youngster's capacity to pay attention and succeed at university may be hampered by the anxiety and trauma of assault.³⁰

²⁷ Dr. Sudhir Kumar, *supra* note 9.

²⁸ *Id.*

²⁹ *Child maltreatment*, WORLD HEALTH ORGANISATION (Nov. 5, 2024).

³⁰ Dr. Sudhir Kumar, *supra* note 9.

DIFFERENT NOTIONS OF CHILD SEXUAL ABUSE (CSA)

To protect the well-being and growth of children, several nations have implemented a wide range of countermeasures against CSA. Outlined are a few examples of diverse or integrated strategies aimed at improving the child environment as a whole:

1) Training Teens toward Maturity (USA): This tiny-group initiative in the United States aims to shift the loyalty to cruel and non-scientific sex stereotypes in grown males and females as the WHO (2016) reports that the number of cases of assault or sexual assault against one's spouse has decreased by thirty-eight percent in the period of 2 years since it went into effect.³¹

2) SASA (Uganda): SASA is a community-driven approach used to prevent assaults on females given that this scheme ended up being so beneficial since it transformed the societies that have been involved as it provides an example of how practical approaches to cultural alteration might prove fruitful.³² There were fifty-two percent less cases of verbal assault by companions among women who took part in this program as WHO claims that within women who had experienced assault by their companion, appropriate neighbourhood reactions seemed increased by twofold, and subsequent studies revealed that the benefits for youngsters were triple greater than they actually were.³³

3) Nurse-Family Partnership (USA): As a means to promote an optimal living atmosphere, the NFP was created in the year 1977 for the goal of encouraging the parents and improving financial assistance "for households by linking them with healthcare and community assistance" and within gestation and within up to two years after childbirth, nurse practitioners visit youthful, economically disadvantaged new moms at their residence. In the very initial trial, household members who received periodic house calls experienced forty eight percent lower rates of neglect and abuse of children versus those that did not participate.

4) Parenting for lifelong health (South Africa): Because it is founded on broadly recognized developmental ideas, which include "modelling ingrained behaviours, proper methods for parental redirection, using encouragement for fostering decent conduct, offering constructive directives, minimizing inappropriate impulsive behaviour, and implementing voluntary constraints," this strategy was implemented to prevent child abuse and also various kinds of aggression, like as "private relations alongside youthful aggressive behaviour." While in

³¹ Aslam Moideen Chekkara and Dr. Sony Kunjappan, *supra* note 1.

³² *Id.*

³³ *Id.*

contrast with a baseline population, it was determined that there was a forty-four percent reduction in verbal misconduct within caregivers and a forty-eight percent reduction within teenagers.

5) A secure and supportive atmosphere for learning (Croatia) : There were two phases to the scheme, the initial effort launched the "stop violence against children" drive that sought to increase knowledge regarding verbal and psychological assault at educational institutions in order to promote social transformation and secondly, to improve protection and start a participatory educational approach where pupils participate in the creation of educational regulations and carry out various tasks to prevent aggression.³⁴ More than fifty-five percent of kids seem at relaxed at their educational institution, and the percentage of kids who harass other kids has dropped from thirteen percent to three percent.³⁵

IMPORTANT CASE LAWS OF POCSO ACT IN INDIA

1. Attorney General for India v. Satish and another (2021)³⁶

In *Satish Ragde v. State of Maharashtra (2021)*³⁷, the High Court of Bombay's Nagpur Bench ruled that, in accordance with the the POCSO law (2021), grasping female kid's chest without making "skin-to-skin interaction" amounted to sexual assault. The Highest law officer of the country, the country's body for females, and the region of Maharashtra submitted challenges contrary to this High Court's judgment in the present case of the Highest law officer of the country. The Supreme Court declared that the "mischief rule" of legislative comprehension would apply in this instance, overturning the Bombay High Court's ruling. It underlined how important it is for judges to apply the regulations constantly to avoid adverse effects and promote alternatives.

2. Maharashtra State v. Libnus (2021)³⁸

The primary issue the High Court considered in the present instance was "if grabbing hands with a minor and unzipping pants in view of the girl child could be included under the meaning of assault on a girl child under the seventh section of the POCSO Act?" According to the POCSO Act, 2012, the Nagpur bench decided that the behaviours like grabbing the hand of a

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Attorney General for India v. Satish and Another, (2021) 4 SCC 712.*

³⁷ *Satish Ragde v. State of Maharashtra, Criminal Appeal no.161 of 2020.*

³⁸ *Maharashtra State v. Libnus, Criminal Appeal No. 445 OF 2020.*

kid and unzipping a child's pants are considered sexual misconduct rather than sexual assault and the plaintiff had been not deemed liable for forceful physical battery in compliance with the Indian Penal Code regulations.³⁹ Thus, this decision turned out to be controversial, much like the skin-to-skin decision.

REFORMS REQUIRED

National Commission for Protection of Child Rights, within the newly published guide on the Act, acknowledges that anyone, which includes youngsters, can be charged as a perpetrator of sexual misconduct, however, it also recognizes that appropriately supervised voluntary sexual conduct between youngsters is not required to be classified as a sexual crime and this is just one of several loopholes in the act which have to get addressed.⁴⁰

The act lacks clarity in several matters, including how regulation might respond to teenagers who explore their passionate relationships via kissing and physical contact. Can it be regarded as innocent contact or an offense? The legal limits of "psychologically suitable physical conduct" are set by whom? While bearing in mind that the deliberate act of speaking to youngsters using sexual intentions is even included in the legal term of sexual assault or if a teenage boy discloses the truth about his illicit sexual behaviour against another youngster while he is ill, what should we do? What happens if an adult discloses that they experienced assault when he/she was a kid? Who bears the responsibility of evidence in these situations?

At the level of government, this law remains inadequate although it is currently extensively in effect. Professional organizations must hold sessions with useful suggestions for resolving its moral, constitutional, and medical conundrums and awareness about young people's privileges and safeguards should be prioritized, and specialists, educators, parents, kids, and the general public should all become more aware of these issues.

CONCLUSION

An important turning point in the country's continuous fight in opposition to child sexual abuse is the Act of POCSO, which provides abused young people with a thorough regulatory protection. The study shows that although POCSO's framework, which includes gender-inclusive clauses, obligatory disclosure, and kid-friendly practices, represents an essential

³⁹ Dr.V. Thangavel, *supra* note 2.

⁴⁰ Aloka Joy, Manoj Kumar Therayil and Vasudevan VT Namboodiri, *The Protection of Children from Sexual Offences Act (Pocso), 2012' In Clinical Settings –Promises and Challenges*, 31 KERALA JOURNAL OF PSYCHIATRY (2018).

regulatory advancement, its strict prerequisite for authorization and wide classifications can occasionally have unexpected repercussions, particularly for teenagers establishing relationships that are mutual. Rapid defence for those affected is still hampered by organizational consciousness deficits, notification barriers, and tardiness in legal proceedings, according to a survey of judiciary developments and clinical information. Implementing the Act is made more difficult by ingrained negative stereotypes, a lack of public involvement, and irregular technicalities that make enforcement difficult. A multifaceted, comprehensive strategy is needed for tackling these issues, one that includes systematic community awareness, focused changes in the law, and the bolstering of inquiries and assistance networks. India can change POCSO from a potent enforcement instrument to a genuinely socially conscious structure by putting victims welfare first, incorporating emotional aid, and improving legal simplicity. To create a more secure, more equitable space for all children, this necessitates tenacious efforts from legislators, instructors, doctors, families, and the community overall.