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JUDICIAL INTERPRETATION OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENSES ACT (POCSO), 2012: A LEGAL ANALYSIS

~ *Kanika Amol Pradhan*

CHAPTER 1. INTRODUCTION

The issue of Child Sexual Abuse (CSA) is a grave and profoundly depressing phenomenon impacting a multitude of children domestically and internationally. Child Sexual Abuse is not just an alarming breach of human and child rights, but it also affects the victim's (child) physical, mental, and psychological interests, giving that child a lifetime and unforgettable blow. For several decades, this issue was overlooked, neglected, and unchecked in India. These child sexual abuse cases were hidden and unreported owing to social taboos, honor and prestige of families, social stigma, and unawareness regarding such crimes to be reported.

India comprises almost 444 million children, which leads to 40% of the country's population. According to the reports, approximately $\frac{1}{4}$ th girl population gets abused and harassed sexually and mentally prior to the age of 18. Many such episodes go unreported, even after being detected, since the person doing this is acquainted with the girls. It mostly includes people from nearby compounds, within the family, teachers, family friends, etc. To address these paucities, India introduced the Protection of Children from Sexual Offences Act (POCSO), 2012¹. The United Nations Convention on the Rights of the Child (UNCRC) was ratified in 1992, with 172nd Law Commission Report, 2000², being published. Yet the POCSO Act ³ was finally enacted in 2012. The President's assent was acquired on 19 June 2012. The Act came into force

¹ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012).

² Law Commission of India, "172th Report on Review of Rape Laws" (March, 2000).

³ *Supra* note 1.

on 14 November 2012. It came along with the dynamic involvement of NGOs and the Ministry of Women and Child Development. This marked a shift in child abuse and harassment cases by rightly recognizing them and providing formal procedures. Before this some heinous crimes were recognized under the India Penal Code (IPC). This even stems from Art. 15⁴ of the Constitution, which protects children's rights. A unique characteristic of the POCSO Act is its child-oriented perspective. It is focused on speedy trials and limiting the trauma faced by children, at least in suits and proceedings. This Act has commenced and focused on several forms of child abuse with equal protection for boys and girls. It includes that if a person suspects any case involving child abuse, then it should be immediately reported. Under S.44⁵ of the POCSO Act, the National Commission for Protection of Child Rights (NCPCR) and State Commissions for Protection of Child Rights (SCPCR) have been handed over the responsibility of fair execution of this Act. Even though there have been several reforms brought through the implementation of the POCSO Act, 2012, it still suffers from certain drawbacks and loopholes that should be addressed.

In this paper, doctrinal research methodology has been applied. Doctrinal research includes primary and secondary sources such as the POCSO Act, 2012 (bare act), articles, Law Commission reports, surveys, and graphs from relevant articles and government websites.

The present research paper has talked about the implementation, challenges, and advantages of the POCSO Act, 2012. It clearly illustrates the interpretation of this statute and cases falling under it.

CHAPTER 2. DEFINING THE CONCEPTS

2.1 Scope of the Act

Chapter 1 of this Act has discussed the scope of this Act. The jurisdictional scope of the POCSO Act is explained under S.1⁶- short title, extent, and commencement of the POCSO Act, which applies to the whole of India, including the territory of Jammu and Kashmir, under the Jammu and Kashmir Reorganization Act, 2019.

2.2 Necessity of the Act

⁴ The Constitution of India, art. 15.

⁵ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 44.

⁶ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 1.

Before the enactment of POCSO Act, 2012, there was an absence of particular legislation in India dealing with child sexual abuse. Under child abuse, the rape of a minor girl was counted and included under the Indian Penal Code provisions. These provisions did not exclusively deal with child sexual abuse against male/ boy victims. The explanations of key terms like "modesty" and "unnatural offense" were ambiguous. Hence, several episodes of child abuse and exploitation went unattended or unreported owing to the lack of provisions. One of the state-specific statutes dealing with child sexual abuse was the Goa Children's Act, 2003, and the Rules of 2004. Owing to rapid instances of child sexual abuse, the need for unified, nation-centric laws governing child sexual abuse cases in India was evident. All of this underlined the necessity of national law dealing with child sexual abuse. The POCSO Act, 2012, came into force on 14 November 2012, along with the dynamic involvement of NGOs and the Ministry of Women and Child Development.

The Act covers explicit and unambiguous definitions, gender-neutral clauses, child-friendly techniques to report incidents, and harsh penalties and consequences. The 2019 amendments to this act have established resilient mechanisms and stringent punishments.

The necessity and requirement of this Act are to ensure the child's dignity and safety, not having the child exposed to sexual or mental abuse, while fixing the deficiencies in the Act.

2.3 Importance of the Act

Observing the rapid increase in child abuse cases, the POCSO Act, 2012, was implemented. This makes sure the presence of child-friendly regulatory environment and safeguards children from sexual assault, abuse, harassment, and pornography. This Act is extremely necessary since juveniles are prone to abuse at home, schools, parks, hostels, religious places, and several public places. The Act has prohibited and illegalized both penetrative and non-penetrative sexual actions. The Act includes punitive penalties and punishments.

The atmosphere and environment around these child victims during the investigation should be safe and appropriate. The Act is gender-neutral. The fundamental objective of this act is preventive and punitive. With the implementation of this Act, people are cautious about committing child abuse since it imposes punitive measures, hence acts to be preventive in one way. If they commit any sort of child abuse against girls or boys, then they have to face these harsh penalties.

2.4 Salient features

Some of the salient features of this Act are:-

- a. To prioritize the child's greatest interests and welfare
- b. Universal and accepted definition of 'child'
- c. Gender neutral character of the statute
- d. Compulsory communication regarding any child sexual abuse offenses
- e. To have secrecy and safety regarding the personal identity of the child
- f. Implementing 'Last-Seen Theory' in child sexual abuse situations.
- g. To have categories and proper descriptions regarding various types of penetrative and non-penetrative sexual offenses that could possibly be committed
- h. Proper and detailed definition and safeguards in cases of child pornography
- i. To have child-friendly inquiry and prosecution proceedings

2.5 Definitions

A few important definitions under S.2⁷ of the POCSO Act, 2012 have been discussed as follows:-

- ❖ The term 'aggravated penetrative sexual assault' under S.2(a)⁸ is the same as explained in S.5⁹.

It refers to any penetrative sexual assault perpetrated under highly grave circumstances:-

- a. By those persons who hold a place of prominence and power
- b. Harming by any brutal, aggressive, and grave means
- c. Against vulnerable and helpless children- below the age of 12, insane, or pregnant
- d. Some exceptional instances include- public humiliation, gang assault, repeated assault, assault by recurrent criminals (person previously convicted under the POCSO Act or for any sexual offences), etc.

- ❖ Under S.2(b)¹⁰, aggravated sexual assault is the same as defined and explained in-depth in S.9¹¹.

⁷ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 2.

⁸ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 2(a).

⁹ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 5.

¹⁰ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 2(b).

¹¹ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 9.

It refers to grave, vicious sexual assault based on authority and power over the child.

- a. By any person having a position of power and authority or in a fiduciary relationship or in a position of trust with the child.
- b. Some instances of sexual assault include:- gang assault, continuous assault, assault in homes/ schools, assault of a girl below 12 years of age, coercing the child to strip/ parade naked
- c. Certain techniques for assault- deadly equipment/ tools, corrosive chemicals, and inducing drugs for early maturity/ adolescence

When any person who is in a position of power, authority, or trust commits sexual assault on the child using harsh and severe means and repeatedly, having severe consequences upon that child, leading to grievous hurt/damage to sexual organs, pregnancy, HIV, etc, is known as 'aggravated sexual assault'.

- ❖ Child as defined under S.2 (d)¹² means any person who is below 18 years of age.
- ❖ According to S.2 (da)¹³, child pornography refers to any visual and photographic portrayal of sexually illicit and express conduct engaging a child involving photographs, clips, footages that are computer or AI generated that cannot be differentiated from actual and genuine children where the photos or videos of the children appear to modified, cropped or edited yet it potrays the same child.
- ❖ Penetrative sexual assault, as mentioned in S.2 (f)¹⁴, is the same as being defined in S.3¹⁵.

It refers to any type of sexual activity with or without the penetration of the penis. This act includes:-

- a. Penetration of the penis
- b. Injecting any items or body parts other than the penis
- c. Tricking to have penetration with the child's body parts or forcing the child to do so

¹² The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 2(d).

¹³ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 2(da).

¹⁴ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 2(f).

¹⁵ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 3.

- d. Oral movements like putting the mouth to the child's urethra, anus, or genitals, or forcing the child to do so

Any activity of penetration or oral contact with the child's private parts or sexual organs results in penetrative sexual assault.

- ❖ Under S. 2(i)¹⁶, the term 'sexual assault' is the same as defined and elaborated in S.7¹⁷. It means any act involving sexual or physical contact with a child's private parts or sexual organs or forcing the child to touch such organs, or any other sexual activity involving bodily touch without any sort of penetration
- ❖ The term sexual harassment in S. 2 (j)¹⁸ has the same meaning as under S.11¹⁹. It refers to doing any act with sexual intention, like:-
 - a. Using any language, sounds, expressions, or behavior, or revealing the body of that child
 - b. Coercing the child to uncover or reveal their body
 - c. Exhibiting pornography
 - d. Tracking, monitoring, or interacting with the child (with the help of online modes)
 - e. Intimidating to display, expose, or release any authentic, genuine, or fictitious sexual material
 - f. Tempting to have satisfaction for pornographic purposes

- ❖ S. 2 (l)²⁰ refers to Special courts as appointed and delegated under S. 28²¹.

Hence, all the crucial concepts and reasons for enforcing the POCSO Act, 2012, have been discussed.

CHAPTER 3. LITERATURE REVIEW

The article, named 'A Critical Analysis of Protection of Children from Sexual Offences Act (POCSO), 2012', has been authored by Pratyush Jha²². This mentions regarding the evolution

¹⁶ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 2(i).

¹⁷ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 7.

¹⁸ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 2(j).

¹⁹ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 11.

²⁰ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 2(l).

²¹ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 28.

²² Pratyush Jha, "A Critical Analysis of Protection of Children from Sexual Offences Act (POCSO), 2012" 5 Indian Journal of Law and Legal Research, 1 (2023).

and need for such acts against child abuse and protecting the innocence and dignity of minors. It has clearly explained how the POCSO Act, 2012 came into force and the interpretations of child sexual offenses which were penalized in the CrPC prior to the enactment of the POCSO Act, 2012. The Act emphasizes being a gender-neutral provision where offenses against boys have also been included. Each type of sexual offense has been precisely covered, categorized, and defined properly in the Act. Even after this, there persist certain shortcomings in the Act that have to be looked into. The 2019 amendments have provided for stringent and harsher punishment. This further poses a question whether punitive measures are enough and whether they correct the offender, or whether preventive steps should be taken as well.

The next paper has been authored by Dr.V. Thangavel, having the title 'The Analysis of Research Review for the Protection of Children from Sexual Offenses Act (POCSO)'²³. This article has explained the Act in depth, along with the 2019 amendments. It has addressed the essential features, misuse, loopholes, challenges being faced, and explained child pornography. It has even provided the statistical records of sexual offense cases state-wise. While contributing a precise overview of the Act, it's particularly beneficial along with relevant and landmark case laws.

'Investigation Process under the POCSO Act: Legal Provisions Governing Investigation' has been published by Anuj Gandhi²⁴. This has clearly illustrated the inquiry process in POCSO matters by explaining how the trial proceedings take place in Special courts while adhering to provisions from CrPC/ BNSS. It clearly outlines the procedures for investigation and the flow of action after reporting the offenses, or in cases where such an offense goes unreported, even after having adequate knowledge about the commission of such an offense.

CHAPTER 4. ANALYSIS

4.1 Constitutional and Jurisprudential Validity

In this, the jurisprudential validity and constitutional legitimacy of the POCSO Act, 2012, have been discussed.

²³ Dr. V Thangavel, "The Analysis of Research Review for the Protection of Children from Sexual Offenses Act (POCSO)" Social Science Research Network.

²⁴ Anuj Gandhi, "Investigation Process under the POCSO Act" 4 INTERNATIONAL JOURNAL OF HUMAN RIGHTS LAW REVIEW, 1185 (2025).

The POCSO Act, 2012 stems from Art. 15 (3)²⁵ read with Art. 14²⁶. In Art. 15(3)²⁷, states have been granted special authority to make exclusive provisions for women and children, taking into consideration their best interests. Art. 21²⁸ further affirms the enactment of POCSO Act. Art. 21²⁹ focuses on the protection of life and personal liberty, and this Act has been brought into force to protect and safeguard interests of children and juveniles against any offenses taking place against them. **Purposive rule of interpretation** is applicable in this case as it helps to bridge the objective for enacting the POCSO Act with the foundational constitutional provisions.

Under Art. 14³⁰, the concept of equality before law is explained, but it gives room for reasonable classification, which has been discussed. Such reasonable classification rests on the concept of 'intelligible differentia'. Intelligible differentia provides reasons as to why the two groups are different and distinct, and not put in the same category. This clearly relates to the object of POCSO Act. In the POCSO Act, special protection and safeguards are given to children in comparison to adults since children are more prone to sexual harassment and abuse, and protecting their rights, freedom, and dignity is of primary importance. This has even been mentioned in various articles of Constitution. This can even be interpreted through the maxim **ut res magis valeat quam pereat**. Here, the court interprets the law in such a way that keeps it effective and valid when the law has 2/ more meanings. This protects the law from being struck down for being unreasonable or creating differences between child and adult victims. The maxim interprets the law in such a way that its

Under the Directives Principle of State of Policy Art. 39 (e)³¹ and Art.39 (f)³² provide for fair opportunities to be given to children, and they should not be exploited from a tender age. Their childhood and youth should be safeguarded, which is the primary function of the Constitution. These provisions reflect the **mischief rule** since the POCSO Act came into force to fix the defects of earlier statutes that did not correctly address the offenses, penalties, and remedies in case of child sexual assault and abuse.

²⁵ The Constitution of India, art. 15(3).

²⁶ The Constitution of India, art. 14.

²⁷ *Supra* note 25, art. 15(3).

²⁸ The Constitution of India, art. 21.

²⁹ *Id.*

³⁰ *Supra* note 26, art. 14.

³¹ The Constitution of India, art. 39(e).

³² The Constitution of India, art. 39(f).

Now looking into jurisprudential validity and mens rea. S.11³³ of the POCSO Act, which defines sexual harassment, has been **literally interpreted**. The law has been interpreted literally, word by word. In case of grave offenses and crimes committed under S.3³⁴, S.5³⁵, S.7³⁶, S.9³⁷, of the POCSO Act, the **golden rule of interpretation** has been applied. In those sections, words are read literally, but if their meaning involves any sort of absurdity or vagueness, then it has to be interpreted in a manner that benefits the law.

This is the constitutional and jurisprudential validity of the Act.

4.2 Investigation procedures under POCSO Act, 2012

In the POCSO Act, 2012, procedures for investigation and inquiries mentioned and given are more focused on the minor victims while convicting the offenders harshly. Below are discussed the investigation proceedings under the POCSO Act, 2012.

1. Reporting of offense

The investigation procedures first commence when any criminal offense against a child has been reported. Under S.19³⁸ of the POCSO Act, any person having adequate knowledge of any child sexual abuse offense has a compulsory legal obligation to report the commission of such offense to the police. If any such information goes unreported, then it leads to a punishable offense. On obtaining such knowledge with respect to child sexual abuse, the police should immediately file an FIR. Reporting of such offenses promptly and immediately is crucial because both physical and oral witnesses can be safeguarded. It even safeguards the child from further harm and injury.

Any person who does not report a case related to child abuse or sexual offenses, even after having knowledge, is punished under S. 21³⁹ of the POCSO Act. It imposes imprisonment for 6 months or a fine or both.

2. Identification, Authorization, and Purpose of Special Juvenile Police Units (SPJU)

³³ *Supra* note 19, s. 11.

³⁴ *Supra* note 15, s. 3.

³⁵ *Supra* note 9, s. 5.

³⁶ *Supra* note 17, s. 7.

³⁷ *Supra* note 11, s. 9.

³⁸ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 19.

³⁹ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 21.

After the FIR is registered, the case has to be taken up by an SPJU or by any police officer having expertise in juvenile-related matters. The POCSO Act urges that the investigation procedures should be appropriate for children, considering the trauma they have been through.

- Authorities and cops should restrain themselves from aggressive and prolonged inquiries, extensive questioning, and intimidating attitudes.
- SPJU inspectors have their expertise in juvenile psychology and have learned to strike a balance between probe and affection. This is to prevent victimizing the child further during the inquiry procedures.

3. Prompt security, Assisting individuals, and Comprehensive engagement

One of the distinguishing traits of the POCSO Act, 2012, is to focus on the immediate protection of children. After any incident regarding child abuse comes to light, then:-

- The inspector handling such a case becomes liable for ensuring the safety of the child
- Child Welfare Committee (CWC) or District Child Protection Unit (DCPU) is instantly notified
- Such a juvenile is allocated a social worker, counselor, or NGO representative to assist the child throughout the procedure

4. Clauses regarding the statement of the child being recorded

Under S.24⁴⁰, one of the primary facets of the POCSO Act is the evidence and statement of the child. Under S.24⁴¹, while recording a statement of the child, a child-friendly approach has to be applied.

- Child's statement has to be recorded mostly at that child's dwelling place, preferred location, as opposed to the police station. The investigating officer should not go for interrogating the child in uniform.
- Presence of parent, guardian, or any trustworthy/ competent adult is mandatory
- As far as practicable, statements should be transcribed by a female police officer not below the rank of sub-inspector as under S.24 (1)⁴².

⁴⁰ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 24.

⁴¹ *Id.*

⁴² The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 24(1).

- To prevent frequent interrogation, the audio-visual method or video recording method is applicable
- The art of inquiring should be friendly, respectful, and calm, considering the trauma that the child has suffered. The child's dignity, mental state, and emotional well-being have to be given thought to.
- Special educators or interpreters can be relied upon if necessary, as under S.26⁴³ of the POCSO Act.
- No child can be remanded in custody at night for any cause.
- Statement of a child being recorded before the magistrate is explained under S.25⁴⁴.

5. Medical Evaluation and Medico-Legal Reports

Under S.27⁴⁵ of the POCSO Act, 2012, medical examination of the child is one of the crucial clauses.

- Registered medical practitioner to examine the child, and in case of a girl child, it should be by a female medical practitioner.
- Presence of a parent, guardian, or any trustworthy/ competent adult is mandatory during medical check-ups. If any of the persons are not available during the medical examination of the child for any reason, then a female has to present for such examination as is appointed by the head of the institution
- In-depth medico-legal document to be produced and maintained on record
- Vile and abusive procedures like the "two-finger test" have been declared unlawful and erroneous

6. Acquiring and maintaining physical and electronic evidence

Some of the aspects to be focused on by the investigating officers are:-

- Physical and tangible proof- apparel, mattresses, sheets, pillows, and any other evidence having forensic value.
- Verification of the crime scene- photos, images, audios, videos from the crime scene.

⁴³ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 26.

⁴⁴ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 26.

⁴⁵ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 27.

- Electronic and digital evidence- phone call records, CCTV footage and clips, conversations on social media networks, activity regarding child pornography and abuse.

The officer in charge of the investigation has the authority to send protection notifications to such electronic sites and service suppliers. Cyber forensic experts provide assistance in recovering and extracting the evidence. All of these procedures are to be followed in the POCSO cases in the same way as mentioned under the CrPC/ BNSS and the Information Technology (IT) Act, 2005. This is based on S.31⁴⁶ of the POCSO Act, 2012.

7. Filing the charge sheet and closing report prior to submitting to the Special Court

- Usually, criminal lawsuits are handled under the Criminal Procedural Code, now Bharatiya Nyaya Suraksha Sanhita, 2023.
- Under S.31⁴⁷ of the POCSO Act, 2012, it is said that all procedures of CrPC/ BNSS are applicable to the Special Courts where child sexual abuse matters are tried. Here, the Special Court would be treated in the same way as a Session court under CrPC/ BNSS.
- In POCSO cases, a Special Public Prosecutor is to be appointed, who would have the same powers, functions, and role as that of the Public Prosecutor under CrPC/ BNSS.
- According to S.173 CrPC⁴⁸, upon completion of the investigation, a final and closure report has to be filed by the investigating police officer and shall be put forth before the magistrate before the POCSO case goes for trial before the Special Courts

8. Trial of the cases under the Special Court

- S.33⁴⁹ provides an approach and jurisdiction of special courts.
- In cases where the offense has been committed by the child and the age of the child is in question, reference has to be made to the Juvenile Justice (Care and Protection of Children) Act, 2015, as under S.34⁵⁰.
- Under S.35⁵¹, the time limit for recording evidence and disposal of the case is written. The statement of the child has to be recorded within a period of 30 days after the Special

⁴⁶ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 31.

⁴⁷ *Id.*

⁴⁸ The Code of Criminal Procedure, 1974 (Act 2 of 1974), s.173.

⁴⁹ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 33.

⁵⁰ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 34.

⁵¹ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 35.

Courts gain knowledge of the offense. The completion of the trial should be done by the Special Court within 1 year from the date of knowledge of such offense.

- As provided under S.36⁵², while giving statements or testifying in the Special Courts, the child and the accused cannot see each other.
- The Special Courts should carry out the lawsuits related to child sexual abuse and exploitation mostly in camera. This is provided under S.37⁵³.
- If a child is suffering from any sort of disabilities, then special educators or interpreters can be relied upon to have the evidence and testimony of the child collected in Special Courts under S.38⁵⁴.

9. Providing the child with compensation, rehabilitation, and support due to the trauma

- Under S.33(8)⁵⁵ POCSO Act, 2012, provides for compensation to the child victim who has undergone the physical and mental trauma. This compensation is in addition to the sentence.
- With respect to pre-trial and trial stages, the State Government, by preparing rules and guidelines, has experts, social workers, or people from NGO who are good at dealing with juvenile cases to assist the child as provided under S.39⁵⁶.
- The child has the right to have a lawyer as under S.40⁵⁷. If the parents/ legal guardians of the child are not in a position to afford the expenses of the lawyer, then the state shall allot a lawyer to the child. This appointment of a lawyer is not a charity but a fundamental right of the child under the Constitution.
- According to S.44⁵⁸, the National Commission for Protection of Child Rights and the State Commission for Protection of Child Rights have the responsibility to look after the proper implementation of this Act.

⁵² The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 36.

⁵³ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 37.

⁵⁴ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 38.

⁵⁵ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 33(8).

⁵⁶ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 39.

⁵⁷ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 40.

⁵⁸ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 44.

4.3 Concept- Reverse burden of proof

One of the crucial concepts introduced in the POCSO Act is the reverse burden of proof.

❖ S.29⁵⁹ – Presumption as to certain Offences

The general rule under criminal law is that it is the prosecution that has to prove the accused guilty beyond a reasonable doubt. The accused is said to be innocent until proven guilty. Here, the burden of proof lies upon the prosecution. But in the POCSO Act, 2012, it's the other way round. Here, the accused is automatically presumed to be guilty by the court, and the burden of proof lies upon them to prove themselves to be innocent. This is when the allegation against the accused in POCSO cases is with respect to sexual assault, aggravated sexual assault, penetrative assault, and aggravated penetrative assault. The law and judiciary assume that the accused is guilty, and the burden of proof to prove the innocence lies upon them.

❖ S.30⁶⁰ – Presumption of culpable mental state

The words Culpable mental state refer to having 'a guilty mind or to possess the required mens rea'. It's assumed that the person has a mens rea to commit such an offence. Here, the court has already assumed that the person had mens rea, which led him to commit the act. Now the accused has to prove that he did not have the required mens rea to commit such an offence, and it should be proved beyond a reasonable doubt. Proving this is slightly tough as there can be no assumptions made in this. The standard of proof has to be strictly followed by providing evidence as to the accused did not commit the offence and did not have any mens rea to commit the offence.

This is the explanation of the reverse burden of proof under the POCSO Act, 2012.

4.4 Landmark Judgments

- One of the landmark cases is *Attorney General of India v. Satish (2021)*⁶¹. The verdict given by the Bombay High Court here was considering **the literal meaning and literally interpreting** S.7⁶² of the POCSO Act. It was said that in case a child's breast

⁵⁹ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 29.

⁶⁰ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 30.

⁶¹ 2021 SCC OnLine SC 1076.

⁶² *Supra* note 17, s. 7.

is squeezed over the garments, then it does not lead to sexual assault. It was because skin-to-skin contact was required in sexual assault. The way of interpreting was very narrow. However, the Supreme Court applied the **golden and mischief rules of interpretation**, thereby overturning the Bombay High Court's literal interpretation. It held that even over clothes, if there is any physical contact with a woman for sexual purposes, then it leads to sexual assault. SC stated that the purpose of the POCSO Act was to safeguard the child's freedom and dignity and not let offenders walk away.

- Another case is *Jarnail Singh v. State of Haryana (2013)*⁶³. This case occurred before the POCSO Act came into force. But it has left a deep impact while framing the Act. Here, the accused Jarnail Singh was convicted of kidnapping and gang rape of a minor. The Court clarified that the consent of a minor is clearly void, especially in such grave and heinous crimes. Here, the Court clearly applied the **golden rule of interpretation** to clarify that the consent of a child does not count & is invalid. It was dependent on Rule 12 of Juvenile Justice Rules, 2007. The contentions provided by defendants were flatly rejected, holding them liable for the crime. The case has even applied harmonious and strict interpretation.
- The next case is *Alakh Alok Srivastava v. Union of India (2018)*⁶⁴. Here, PIL was filed concerning the medical facilities of 8-month-old child abuse victim. The focus was on the provisions of POCSO Act, which contained provisions for victim compensation, fair and speedy trials, proper rehabilitation, and good inquiry procedures. However, there were failures in the implementation of the act. Here, the courts basically used **Literal interpretation** to interpret and enforce the clauses. It even applied the **Golden rule** to clarify vagueness in the clauses, thereby providing a relevant meaning to the clauses.

4.5 Loopholes and Challenges in POCSO Act, 2012

- ➔ Few challenges observed under the POCSO Act, 2012 are as follows:-
 - Procedural shortcoming in medical evaluation
 - Gender-biased clauses at some points
 - Forbidding and criminalizing voluntary teenage relationships
 - Controversy between POCSO Act and private statutes on child marriage

⁶³ 2013 SCC OnLine SC 507.

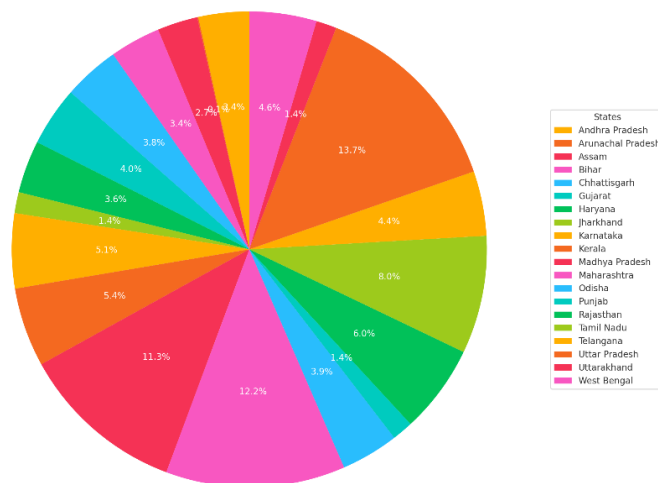
⁶⁴ 2018 SCC OnLine SC 478.

- Prohibiting dependent adults and those having less psychological and maturity capacity from being safeguarded
- Failure to report commission of child sexual offences
- Demand for fair and speedy trial, along with the reverse burden of proof
- Harsh probation clauses with delayed proceedings of the case
- Lack of precise victim support and compensation
- Judicial interpretations are narrow and complex
- Lack of empathy amongst investigating officers, medical practitioners, and judges
- Lack of special courts
- Difference of opinion while convicting for stringent penalties and the death penalty.

4.6 Overall POCSO cases in India- Statistics⁶⁵

❖ Statistics of POCSO offenses committed state-wise in 2022

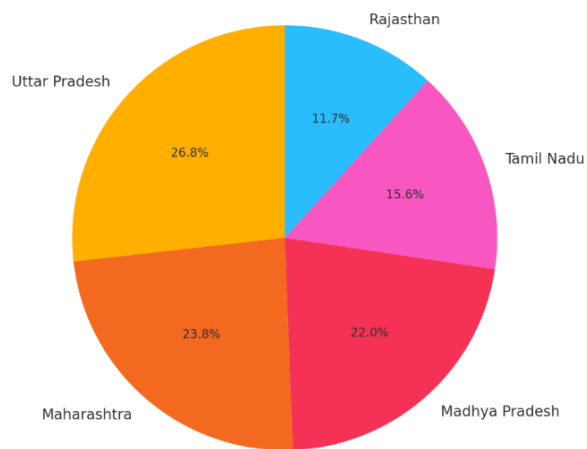
State-wise Distribution of POCSO Offences in India (2022)



⁶⁵ National Crime Records Bureau, "Crime in India 2022 – Statistics, Volume I" (Ministry of Home Affairs, Government of India, 2023).

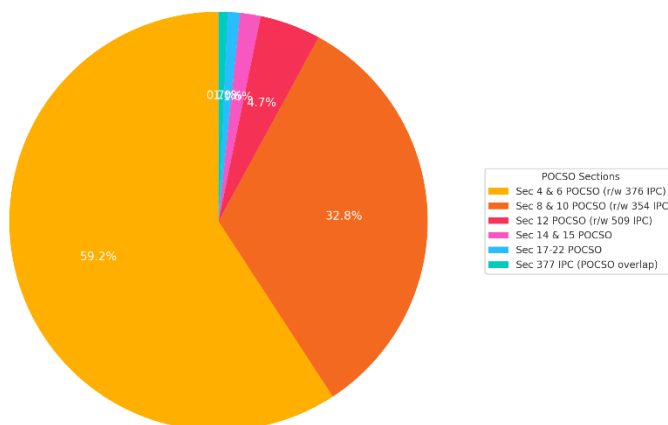
❖ Top 5 states in India with sexual assault and child abuse cases in 2022

Top 5 States with Highest POCSO Offences (2022)



❖ Major POCSO offenses committed in India in 2022

Distribution of POCSO Offences by Section (2022)



CHAPTER 5. 2019 Amendments to POCSO, 2019

➔ Some of the key amendments of 2019 are:-

- Gender-Neutral clauses
- Injecting any drugs or hormones to cause premature adolescence
- Precise and Unambiguous definition of child pornography
- Ban on transfer of pornographic materials

- e. More stringent consequences for penetrative sexual assault
 - In cases where such assault has been done on children below sixteen years of age
 - Here, the minimum sentence is 20 years imprisonment, which can be extended to life imprisonment with a fine
- f. Cases of aggravated sexual penetrative assault can result in death penalties
 - Previously, for this offense, the minimum sentence was 10 years
 - Now it has been elevated to a minimum of 20 years that can be extended to life imprisonment with fine
- g. Sentences involving child pornography
 - For first-time offenders- sentence up to 5 years with a fine
 - For repeated offenders- sentence up to 7 years with a fine
- h. Introduction of fast-track courts
 - Introducing more than 1000 fast-track courts specifically for quick and speedy trials of POCSO cases

CHAPTER 6. SUGGESTIONS

In order to increase the implementation of the POCSO Act, 2012, it should lead to addressing the problems, gaps, and inconsistencies being faced in the present. However, there are theoretical provisions for each part with precise wordings, but they aren't implemented and brought into effect practically. In case of medical evaluation in such cases, female medical practitioners should be made available to do the evaluation when necessary. The investigation officers, judges, and the support persons around the child abuse victim should make the child comfortable. Since that child has recently undergone a lot of trauma, keeping the physical and mental state of the child into consideration, the inquiries should be made in the investigation and trial processes. These inquiries should not be for long hours, tiring the child victim mentally. The victim protection scheme should be brought into force, with victims being compensated adequately. There should be compulsory appointments of 'support persons' to help the kid heal from their wounds. Since the Act clearly states it is gender-neutral, there should not be any partiality with regard to gender. The provisions present should punish offenses against boys and girls in an equal manner. The provisions should not only be present in the bare act, but their effective implementation should also take place word by word.

The crucial issue is the universal criminalization of all sexual offences below 18. In the Law Commission Report, 283⁶⁶ proposed the age of consent to be 18 years. In cases of consensual relationships between 16-18 years, there should be some punishments introduced at the judiciary's discretion. The concept of criminalizing consensual relationships below 18 has been a subject of debate. According to Justice Jasmeet Singh, POCSO has been implemented to protect children below 18 years of age from sexual exploitation. It does not mean to criminalise consensual relationships between young adults. The Act should even extend its protection to adults with a mental age below 18. This safeguards such populations as well. If there are any conflicts between child abuse laws and child marriage laws, they should be brought into sync, considering the best interests of the child.

Lastly, restrictive rulings and harsh penalties should not be the only ways applied. Along with being punitive, preventive measures should also be applicable.

CHAPTER 7. CONCLUSION

The POCSO Act, 2012, is a crucial legislation. It has been introduced in addition to the criminal laws. Previously, child abuse and harassment mostly included the rape of minor girls. Since then, there have been several amendments made in the thought process of citizens, which led to the enactment of the act. POCSO Act, 2012 gets its validity from Constitution. This Act aims to be gender-neutral and provides for speedy, fair, and quick trials. The paper has elaborated on the investigations for procedure, explaining that any person having knowledge of any sort of child abuse should immediately report such an offence. Non-reporting also leads to penalties. Then, after investigation of the offence and filing of a closure report, the trials take place in Special Courts. Most of its procedural techniques for investigation and trial have been adopted from the CrPC. At times, there are key references made to CrPC/ BNSS and the IT Act, 2005. The Act has even made crucial amendments and changes in 2019. Overall, this POCSO Act, 2012 has been analyzed, and landmark judgments have been discussed along with the style of interpretation as to how the judiciary has interpreted this statute at various times.

To conclude, this would be our message to society: "Child abuse is not a shame; it's a crime. Be alert and report child abuse."

⁶⁶ Law Commission of India, "283rd Age of Consent under The Protection of Children From Sexual Offences Act, 2012" (September 2023).