

# Impact of implementation of POSCO act on the status of Child Sexual abuse in India Legal Analysis

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## ABSTRACT

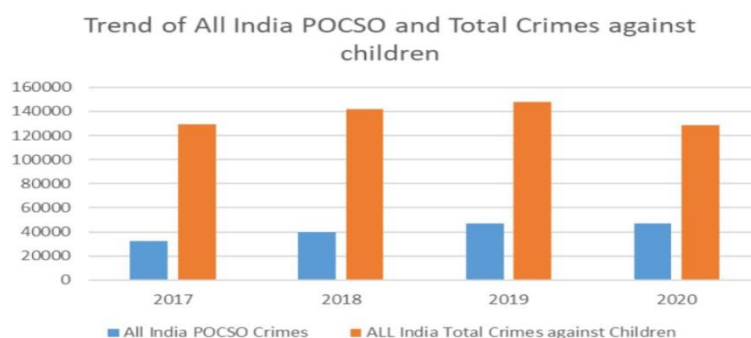
Worldwide, millions of children become child sexual abuse (CSA) victims every year; the problem is especially severe in several areas, including the Americas, Europe, and Africa. In 2012, India took a giant leap forward in combating this pressing issue with the passage of the Protection of Children from Sexual Offences (POCSO) Act, which overcame both legal and social obstacles. This paper examines the ramifications of the POCSO Act and offers a thorough analysis of CSA in India, focusing on its legal impact. The article identifies three main obstacles to the POCSO Act's effective implementation based on an analysis of field experience, media coverage, legal documents, and existing literature. These obstacles are underreporting of CSA cases, procedural complexity, and issues related to the presumption of guilt. These obstacles hinder the POCSO Act's practical implementation, even though it is a critical step forward in protecting children and guaranteeing victim protection and justice. The report highlights the critical importance of addressing structural reforms and raising public awareness to effectively combat CSA in India.

**Keywords:** POSCO Act, Child Abuse, Sexual Abuse, Crime.

## 1. INTRODUCTION

Millions of youngsters, regardless of gender, experience sexual abuse and exploitation annually on a global scale. About one in ten females below twenty years old are coerced into having sexual relations or engaging in other sexual behaviors, according to UNICEF (2022). As many as 90% of the time, the victim knows who is implicated. With a rate of 34.4%, Africa has the world's highest prevalence of CSA. There have been 9.2% documented cases of CSA in Europe and 10.1% in the United States. It is possible that underreporting is to blame for the low figure, rather than effective crime control. Even though CSA is extremely rare, the impact it has on victims should never be disregarded. (Maity & Chakraborty, 2023)

While children constitute 39% of India's population, many of them are susceptible to CSA, according to the 2011 All India Census. The national crime rate against minors rose from 21.1 – 2015 right to 28.9 inside 2017, as per National Crime Records Bureau (NCRB) data (Legal, 2023). Child Rights and You (CRY) found that sexual offenses account for about 50% of all crimes perpetrated against children inside India, with kidnapping and abduction accounting for nearly half as many. From 2016–2022, the shocking rate of sexual violence against minors increased by 96%. Child rape and penetrative assault charges increased significantly from 36,381 in 2021 to 38,911 in 2022.



**Figure 1:** Trend of All India POSCO Crimes and All India Total Crimes against Children. (Source: NCRB)

CSA has long been a taboo subject in India, within and also beyond the criminal justice system. Prior to recently, CSA was not considered a crime; in India, rape was the sole recognized specific sexual offense against children. Horrific behaviours like as harassment, sexual assaults on children that did not constitute rape, and their exploitation for pornography were never criminalized due to a lack of clear legislation. The problem has gained considerable political and public momentum in recent years due to the active participation of activists, NGOs, and also the Ministry of Women & Child Development (MWCD), which has broken "the conspiracy of silence". The campaign that led to the 2012 POCSO legislation was spearheaded by MWCD. (Singh, 2023)

2. Objectives

- To highlight the unique elements of POCSO and concentrates on three concerns that could hinder the legislation's practical use.
- To provide an overview of CSA incidence inside India and the judicial reaction to this problem.
- To gather information for the study past studies, media coverage, court documents, police records, and our own experience in the field was considered.

3. POCSO Act 2012

On 19th June 2012, the President signed the POCSO Act into law. To prevent sexual assault and harassment, along with pornography against minors, this law was passed. The Act streamlines administrative processes for evidence reporting and recording and is kid friendly. To make the judicial system easier to use, we have instituted special courts, public prosecutors, and expedited trials. For trying such crimes, it establishes special courts. Below, you will find a description of the Act's nine chapters and forty-six sections.



Figure 2: Child abuse (Renu & Chopra, 2019)

Table 1: Overview of POSCO Act 2012 (Naik et al., 2021)

Chapter	Description	Sections and salient features
I	Preliminary	Sections 1-2 Short title and definitions
II	Sexual offences against children	Sections 3- 12 A. Penetrative Sexual Assault B. Aggravated Penetrative Sexual Assault C. Sexual Assault D. Aggravated Sexual Assault E. Sexual Harassment And describes the punishment under each assault respectively. Section-6: (Amended in 2019) to include death penalty for aggravated penetrative sexual assault
III	Using child for pornographic purposes and punishment therefore	Sections 13-15 Describes the offence and punishment where a child is used for pornographic purposes.
IV	Abetment of, and attempt to commit an offence	Sections 16-18 Explains abetment of and attempt to commit an offence and describes the punishment related to such acts
V	Procedure for reporting of cases	Sections: 19- 23 Describes the procedure of reporting offences including the role of media and other organizations (securing the identity and privacy of the child). Prescribes punishments for not reporting the crimes and for false complaints (mandatory reporting).
VI	Procedures for recording statement of the child	Sections: 24-26 Explains the procedure of recording statement and medical examination of the child (child-friendly mechanisms are emphasized)
VII	Special courts	Sections: 27-32 Describes the appointment of special courts and special public prosecutors. Section-29 specifically states regarding the "presumption" of certain offences under section such as 3,5,7 and 9 Section - 30 states the mental state of the perpetrator is presumed to be "culpable" unless proved otherwise
VIII	Procedure and powers of special courts and recording of evidence	Sections: 33- 38 Describes the roles, responsibilities, procedures to be followed and powers of the special courts
IX	Miscellaneous	Sections: 39-46 Describes the rights and guidelines related to child availing assistance. Prescribes the roles of nodal agencies in creating awareness and monitoring the implementation of the Act.

#### 4. Positive Effects on Society

The word "person" expands the purview of the POCSO Act beyond that of previous laws, making it applicable to everyone normally residing in the country regardless of their gender or sexual orientation. Everyone, regardless of their gender identity or expression, shall be held equally responsible for any wrongdoing. The criminal statutes for sexual assault and harassment, along with pornography were crafted with the deterrent approach in mind, but the legislators also considered the gravity of the offense when deciding how to punish the perpetrator. It is indispensable the report is documented so as to allow the young victim to comprehend it. Within 24 hours after registering the report, the police unit may either deliver care & also protection straight to child victims or send the situation to the Child Welfare Committee (CWC), and SC, or even Sessions Court, according on what they think is necessary given the facts and circumstances. By penalizing staff who, for whatever reason, failed to submit the complaint, the Act's section 21 further guarantees that no offense remains off-record. (Chandel, 2022)

The statute also has the commendable quality of being "victim-friendly" in its prosecution. Victims' right to privacy is protected, and they can avoid media involvement if their personal information is kept confidential. The In addition, the Act's Chapter VI details a reliable process for documenting the victim child's statements. During the day, a female police officer (at least SI level) who is not wearing a uniform should visit the victim's residence to take a statement from a minor. Also, the accused must not come into touch with the minor victim in any way. Additionally, the statements must be taken while the victim's parents or trusted guardians are present. A fair trial for mentally ill and physically disabled people is guaranteed under the Act's specific provisions.

To guarantee openness, the clause was included. Along with that, Section 27 of the Act lays out the process for the victim kid to undergo a medical evaluation. It states that the victim's parents must be present throughout the medical inspection of the minor kid per requirements of Section 164A of the CrPC. In cases when the victim is a female, a female physician must perform the examination. in the text. During the trial, the queries put forward by the Public Prosecutor or even Counsel for Accused of examination-in-chief, and cross-/re-examination may only be asked of the Child by the Court. A victim-friendly prosecution is guaranteed by this entire system. (Kaur et al., 2023)

"Special Courts" creation accelerated the hearing of cases having violations of Section 28 of this Act is the bill's most salient provision. This is what sets the POCSO Act apart from its predecessors. A "Court of Sessions" designation is bestowed upon the SC. When trying an accused person for several violations under the Criminal Procedure Code at the same trial, the special courts can hear cases involving both the Act and other sections of the code (Thangavel.V, 2023).

When it comes to allegations of CA in India, the POCSO Act is a huge help. Almost all types of sexual assault are recognized by the POCSO Act, 2012. That kind of law is fantastic. However, there are still a few questions that need answering. Psychological help and counselling in the most compassionate manner are essential for children who have experienced SA. Inside India, the crime of CSA is extremely underreported. Cases of CA inside India are at an epidemic proportion. Medical professionals caring for children have a special obligation to treat them with the utmost kindness and compassion. (Hotchandani, 2018)

#### 5. Negative Effects on Society

The Special Court (SC) will assume the individual in question has committed, aided, or sought to commit the offense, unless evidence to the contrary is shown, according to the Act's Section 29, in cases where an individual is being prosecuted for an offense penalized under the Act. By contrast to previous laws, this one places the weight of evidencedirectly on the accused person, rather than the victim. Also, the SC will presume the accused is guilty unless the charges against them are proven to be false "beyond reasonable doubt. Despite how reasonable this clause seems in front of the growing crime rate; so, it violates criminal law's rules. Also, the prosecution must carry the onus of founding the defendant's culpability beyond reasonable doubt, per a fundamental premise of criminal law. Proving guilt requires a great deal of work; even if there is some validity to the accusation, there is still a long way to go. The burden of proof must be legally heavy, based on credible and unimpeachable evidence

One of the main obstacles to justice for all innocent individuals who are victims of malicious prosecution is the "presumption of guilt" prior to conviction. Used first as a "weapon to harass" and later as a "tool to get justice" since the year it was created. Because the POCSO Act's violations are cognizable, it unjustly targets innocent individuals who face charges under the law. The accused also has a very short window of opportunity to establish his innocence—just one year—because the cases must be resolved inside one year of their reporting. (Prasad et al., 2023)

There is no tangible "presumption of guilt" in accordance with natural justice (NJ) principles. NJ "is not an unruly horse, no lurking landmine, nor a judicial cure-all" and also the rule of law "cannot be viewed by courts as an artefact or in the abstract". "Audi alteram partem," which translates to "no man ought to be condemned unheard," is a tenet of natural justice. Narendra Babu, a 51-year-old music teacher from Vaikom, Kerala, was recently charged per the Act due to harassing a student counsellor studying at the Model Residential School in

Ettumanoor, in Kerala. He left a suicide note in which he claimed that three other school employees had conspired to have him wrongfully arraigned in the case. Afterwards, the accused who were charged of penetrative SA per the POCSO Act were acquitted by a division bench of the Kerala High Court (HC) that included Hon'ble Justices K. Vinod Chandran along with C. Jayachandran.

## 6. POCSO Act - Significant Cases

### Attorney General for India v. Satish and another -2021

According to the Satish Ragde v. the State of Maharashtra (2021) decision of the Bombay High Court's Nagpur Bench, it is considered molestation per the POCSO Act to grasp a child's breasts minus "skin-to-skin contact" (2021). The ruling of Justice Pushpa Ganediwalafaced intense animosity. The State of Maharashtra, the NCW, and the Attorney General (AG) of India all took issue with this HC's verdict in the present AG for India v. Satish and another (2021) case. S Ravindra Bhat, Bela M. Trivedi, and Uday Umesh Lalit served on the court that considered these appeals. Reversing the Bombay HC's ruling, the Supreme Court ruled that this case was appropriate for the "mischief rule" of statutory construction. To avoid injury and promote remedies, it stressed that courts must interpret the law consistently.

### Maharashtra State v. Libnus -2021

Is it possible to use the POCSO Act's Section 7 to define sexual assault as bringing a child's penis out in front of her while holding her hand? was the primary issue that the HC decided upon in this matter. Per the Nagpur bench's interpretation of the POCSO Act, 2012, sexual harassment, rather than sexual assault, include acts like touching a child's hand or unlocking their pants zipper. The appellant was acquitted of aggravated SA per Sections 10, 12, and other provisions of the IPC. This decision became divisive for the same reason as the skin-to-skin judgment.

### Shivanna v. State of Karnataka-2014

No statement made under CrPC's Section 164 is required to be recorded under the POCSO Act, 2012. The comment should be promptly deleted once the commission is reported to the police. It was also decided the victim must come before the Judicial Magistrate, ideally a Lady Magistrate, inside twenty-four hours following the rape for statement recording, mandated by CrPC's Section 164(5A) (a).

### State of Haryana v. Jarnail Singh-2013

The appellant reportedly kidnapped and raped Savitri Devi's sleeping daughter. The highest court in India ruled that the same procedure for determining a minor's age in cases involving the Juvenile Justice (Care and Protection of Children) Rules, 2007 can also be utilised for cases governed by the POCSO Act, 2012. Also, the court used this rule to find the appellant, Jarnail Singh, guilty.

## 7. Suggestions

- To enhance the study on the POCSO Act 2012 and its bearing on CSA in India, several key suggestions can be made. First, broaden data collection by including qualitative insights from interviews with legal professionals, social workers, and survivors.
- Analyzing judicial outcomes and landmark cases will provide insights into how the Act is applied and interpreted. Addressing gaps in victim support services is essential; evaluate the availability and effectiveness of counseling, medical care, and legal aid for CSA victims, and propose ways to improve access, especially in underserved areas.
- Enhancing public awareness through educational campaigns about CSA and the POCSO Act can improve community knowledge and reporting.
- Finally, promote interagency collaboration to improve CSA prevention and intervention. Implementing these suggestions will provide a proper assessment of POCSO Act and offer valuable insights for improvement.

## 8. CONCLUSION

Crimes perpetrated against children are on the rise, threatening the nation's future. Every establishment must fulfil its responsibility to safeguard children by implementing appropriate measures. The crime of rape is a particularly heinous one when it involves children. To put it simply, it is among the most abhorrent forms of child abuse imaginable. The children are imbued with profound feelings of anger, distrust, and betrayal during a critical phase of their development, when they should be exploring new perspectives and experiences. As a result, police must use their authority fairly, and system efficiency and transparency are of the utmost importance. Everyone, especially parents, must know their rights and how to use them. Another important thing to let them know is that they shouldn't be scared to approach the police. Additionally, there must be a training

session that both students and teachers may benefit from. Everyone in the building or hospital should be able to call the kid line if they see or suspect child abuse.

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