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**Juvenile Justice and Protection of Children from Sexual Offences  
Act (POCSO) 2012: A Socio-Legal Analysis of Existing Law and  
Practices**

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## ABSTRACT:

Children are especially vulnerable to abuse, most often sexual exploitation, which prevents them from spending time playing outside or in school. Children are abused instead of having fun at school and outside. People face discrimination regarding resources to meet their fundamental requirements and the chance to express their opinions and have them fairly considered. Therefore, prejudice against people also affects their opportunities and means of meeting their basic needs. The criminal views sexual exploitation and abuse as the worst crime since it harms victims' mental and physical well-being. Criminal laws shield kids because of the offense's nature and susceptibility. The Protection of Children from Sexual Offences (POCSO) Act, 2012, was enacted in response to the rise in child sexual crime to safeguard the development and health of children. This law became operative on December 1, 2012. Children are more likely to commit this form of crime because they do not have the mental capacity to understand the seriousness of their situation. Their danger of being a victim rises as a result.

The tragedy will have a lasting impact on the bodies and minds of the helpless youngsters, and all they can do is endure the pain. The POCSO Act, which superseded the Juvenile Justice Act of 2003, is the subject of this essay. The Juvenile Justice Act 2003 was repealed and replaced with the POCSO Act. This research will examine the constitutional provision and UN Convention that served as the foundation for this statute. Through the use of many case studies, the scope and limitations of this Act will be addressed. Doctors, law enforcement, courts, and human rights activists must protect children. The student must reconsider their assignments given today's societal climate.

**Keywords:** Juvenile Justice, Protection of Children from Sexual Offences Act (POCSO) 2012, Socio-Legal Analysis, Existing Law, Practices, Child Protection, Sexual Offences, Juvenile Offenders, Legal Framework, Children's Rights.

## INTRODUCTION:

The most horrific crimes that may be perpetrated in a society include acid attacks, trafficking, pornography, sexual assault, and sexual exploitation. These offenses are also some of the most frequent. A nation is declared extinct when all current and future generations pass away for whatever cause. The fundamental principle that must be upheld to achieve national sustainability is generational fairness in all its manifestations. The most effective and comprehensive tool to protect children from sexual abuse is the



Protection of Children from Sexual Offenses Act (POCSO), approved in 2012. Due to the restrictions it placed and the primitive character it displayed, the Act that produced useful tools is both a blessing and a burden. The Act was written to heal the wounds caused by sexual abuse and offer consolation to the affected children. The child's interests are hurt when sexually abused children are made to rely on their elders, who may not only sexually abuse them but also deny them access to necessities like food, clothes, and shelter. This is not in the child's best interests.

### **Research Objective:**

This study aims to provide a thorough socio-legal analysis of POCSO 2012 (the Juvenile Justice and Protection of Children from Sexual Offenses Act), emphasizing the many provisions of the law currently in force and the methods used to implement them. This study aims to examine the Act's effectiveness in preventing young people from sexual crimes, its consequences on juvenile offenders and victims, and potential areas for improvement, both theoretically and practically.

### **Research Questions:**

1. How does India's 2012 Juvenile Justice and Protection of Children from Sexual Offenses Act (POCSO) deal with sexual crimes committed against minors?
2. What are the most important parts of the Act in protecting the rights of juvenile victims and offenders in sexual offense cases?
3. How well do current procedures for enforcing the POCSO Act correspond to its aims of safeguarding children and ensuring their fair treatment in the legal system?
4. How do the existing legal framework and its implementation affect the overall result for victims and offenders when dealing with sexual offenses involving adolescents, and what obstacles and gaps exist in this area?
5. How effective has the POCSO Act been in raising public consciousness, halting the spread of sexual violence against minors, and facilitating the successful reintegration of young people who have committed crimes?
6. How can we improve the POCSO Act's ability to prevent and resolve sexual offenses against children while still preserving the values of justice and child rights?
7. What suggestions may be made for legislative revisions and practical interventions?



## **SIGNIFICANCE OF THE STUDY:**

One of the top five nations in the world for the prevalence of sexual offenses against children is India. Throughout the world, the prevalence of child sexual abuse is rising alarmingly, with India being among the top five. India's criminal code appears ill-equipped to handle such a delicate matter in various ways. Following the widely reported case of Sakshi v. Union of India and Ors.<sup>5</sup>, in which the petitioner Sakshi, an organization that offers legal, medical, residential, psychological, or other help, assistance, or charitable support for women, in particular those who have been victims of any sexual abuse and or harassment, violence, atrocity, etc., filed a writ petition under Article 322 of the Indian Constitution as public interest litigation on the nature of sex abuse, Despite this, it was determined that the statute was insufficient to stop child sex abuse.

## **POCSO ACT, 2012:**

India is the most populous democracy in the world. It is home to 17% of the world's population, according to the findings of the most recent census, which was carried out in 2011. More than one-fifth of all children live in India, making up 42 percent of the nation's overall population, or more than one-third. About half of these children fall into the vulnerable category and require care and protection. Even though child sexual abuse is the most common worldwide in India, there is no specific regulation to address this pervasive problem. To protect kids and teenagers from sexual assault, sexual harassment, and exposure to pornographic material, the Protection of Children from Sexual Offenses Act, 2012 (POCSO<sup>4</sup>) was passed into law in 2012. The law states that persons who have not attained the age of 18 are still regarded as minors. There are several types of sexual abuse, some of which are listed here:

- Attack from inside
- To attack without penetrating
- Assaults against women
- Pornography

In the past, the Indian Penal Code (IPC) had various clauses that addressed sexual offenses against children. This is so because adults and children are treated the same under Indian law. POCSO is responsible for investigating and pursuing charges for sexual offenses committed against minors. To ensure that the victim receives quick medical attention and rehabilitation, POCSO acts as soon as a complaint is filed to either the



specialist Juvenile Police Unit or the local police.

## **Provisions of the POCSO Act**

The POCSO Act was passed to prevent sexual assault, sexual abuse, sexual harassment, and the exposure of children and teens to pornographic material.

The trial must start within six months of the day the FIR was filed, and the investigation into the occurrence must be finished within two months of that date.

Everyone younger than eighteen is considered a kid following the Act.

A sexual assault is deemed to be of an aggravated character, per the POCSO if the victim is a juvenile afflicted with a mental illness or the perpetrator is a member of the military or security forces.

Any individual who works in the public sector

A person who fits this criterion has the child's trust and authority over them, such as a member of the child's immediate family, a law enforcement officer, a teacher, a doctor, or a member of the hospital's administration or staff.

Aggravated penetrative sexual assault carries a severe fine, a mandatory minimum sentence of 10 years, and a potential life sentence as a punishment.

Safeguards are in place to ensure that the youngster won't endure any further abuse at the hands of the legal system.

The Act also mandates that incidents of this nature be reported. If a person has any knowledge of a sexual abuse violation, they are legally required to report it. He faces the possibility of up to six months in jail or a fine if he decides to disobey.

The possible criminal penalties for anybody involved in the sexual exploitation of children are also covered in length.

Falsely filing a complaint or giving false information is illegal under the Act.

2019 saw a revision to the Act that increased the minimum sentence from seven years to 10 years in prison.



The perpetrator of a penetrative sexual assault on a child under 16 is liable to a monetary fine and a jail sentence lasting anywhere from 20 years to life.

Aggravated penetrative sexual assault is equivalent to aggravated rape, as defined by the POCSO Act, 2012.

An aggravating situation increases the likelihood that a rape complaint will be filed. Examples of aggravating circumstances are when the alleged Act of rape occurs in a position of trust or power or when it results in the victim becoming pregnant.

No matter the circumstances of the sexual encounter or the other person's identity, it is illegal under POCSO to obtain a child's permission for any sexual activity. Sexual activity with a minor is viewed as a kind of rape.

## **CASE STUDY AND THE CHALLENGES:**

During our conversations, we discussed the POCSO Act of 2012, which was subsequently signed into law on November 14 of the same year. On the other hand, a case analysis reveals that there have been challenges along the way.

The POCSO Act was utilized by a special court in Thane, Maharashtra, to issue a perjury notice to a 16-year-old girl who was engaged in the case on December 22, 2016. A first for the country, this. The girl's father was accused of sexually assaulting her when she was younger. She had testified against her father during the prosecution's examination-in-chief. However, she became combative during the defense's cross-examination. Implementing the POCSO Act in this specific situation will be more difficult. The examples that follow also provide light on the problems:

Whether or not the victim consents to being examined by a doctor may be difficult to ascertain. It is fairly uncommon for family members to provide permission when the victim refuses to give it themselves. No provisions in the POCSO Act deal with this specific situation.

A female medical officer or doctor must physically examine a female child in compliance with the POCSO Act's rules. However, if the female doctor is not accessible, various contradictory legal viewpoints come into play.



The POCSO Act mandates that the medical facility pay for the survivor's medical bills; if the former option is not feasible, the state should reimburse such fees.

A juvenile must first obtain parental consent before engaging in sexual activity with another minor or an adult, as per the POCSO Act. However, the POCSO Act does not make adult consent-based sexual activity illegal. On the other hand, the IPC was altered in 2013 to classify any sexual activity between a juvenile and an adult that received the permission of both parties as a kind of rape. Due to this, it could take longer for courts and law enforcement to figure out how to apply the POCSO Act of 2012 and the IPC amendments from 2013, which would eventually cause the victim greater suffering.

It is common knowledge that not all instances of sexual assault against kids are reported to the police. Even though they should, victims' families frequently don't want to report these crimes to the police and hospitals. Usually, people do this out of dread of further injustice and humiliation.

## **CONSTITUTIONAL PROVISION:**

Provisions 15(3), 39(e), 39(f), and 452 of the Indian Constitution will give information on the legal framework for handling situations involving child sexual abuse, and these provisions will be especially useful.

The state is prohibited from discriminating against anybody, according to Article 15's third paragraph. However, it is permitted to take further measures to protect the rights of women and children. Despite the passing of this Act, women and children in India continue to lack the respect and dignity to which they are constitutionally allowed.

According to Article 39(e), employees, including men, women, and children, are not subjected to abuse of their health and strength. Individuals are also not pushed by the economic need to pursue careers inappropriate for their age or strength. The essay also asserts that one is not required to follow a career inappropriate for physical capabilities or age.

Children and young people are safeguarded from being exploited and abandoned morally and materially, following Article 39(f). They are provided with the resources they need to grow and flourish in a setting marked by freedom and respect.





All children up to 14 are obliged under Article 45 of the Indian Constitution to attend school, and this requirement must be met at no expense to the child. As a result, they will be made aware of the sexual assault and harassment the offenders have committed against others. The government passed the Right to Education Act, 2009–2010, for some reasons, including these and others. However, it is far further from being used in real-world contexts than initially thought.

## **ANALYSIS OF THE INDIAN CRIMINAL LAW TO PROTECT SEXUALLY ABUSED CHILDREN:**

Children in India suffer disproportionately from malnutrition, illiteracy, human trafficking, drug addiction, sexual abuse, and pornography. Although there are many various ways that a child's sexuality might be abused, each one involves a breach of the child's trust and confidence on the part of the abuser. The findings of research conducted nationally by the Ministry of Women and Children Development<sup>9</sup> indicate that coercing a kid into fondling or revealing private body parts while being photographed falls within the criteria of sexual assault. The report does not adequately reflect the reality because most occurrences never receive reports due to the shame they carry in our culture.

Because the parts of the IPC that dealt with sexual offenses before May 2012 were not adequate for their application to cases involving child sexual abuse, there were numerous instances of grave injustices. There were a variety of factors at play in this. According to Article 354 of the Indian Penal Code, using criminal force against a woman is a serious violation. However, applying this provision to an instance like the sexual assault of a baby creates significant challenges, such as determining the level of modesty a kid under two has.

Beyond what is provided by Indian domestic law, the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC) also provide further protection for children's rights. This protects against prejudice based on handicap, gender, sexual orientation, race, and religion.

## **THE FLAWS IN THE JUSTICE SYSTEM:**

One of the many shortcomings of the POCSO Act of 2012 is that it does not require reporting sexual abuse, which frequently occurs within families. 2. The concern that others will reject one. Third, many medical professionals do not have the resources to deal with this problem. Although keeping the matter quiet is in the





child's best interests, administrative and law enforcement personnel aren't always aware of or ready to abide by these standards. The matter should remain private in the child's best interest.

## **JUDICIAL PRONOUNCEMENT:**

### **Pre POCSO:**

To codify and alter the legislation about young people who are in trouble with the law and kids who require care and protection, the Juvenile Justice Act for the Care and Protection of Children was adopted in 2000. By offering a child-friendly approach to adjudication and disposal of cases in the children's best interest and for their appropriate rehabilitation as mandated and led by the law, it was able to achieve this. The care and protection of children was another reason why this law was passed. On December 11, 1992, the Indian government ratified the Convention on the Rights of the Child (commonly known as the CRC), which obliged the country to create a juvenile justice system that adhered to the CRC's tenets. The Juvenile Justice Act of 2000 was modified by parliament as a result.

But as time passed and society changed due to several factors, including economic changes and globalization, grave adolescent crimes like rape and murder began with frightening regularity.

### **After POCSO:**

The POCSO 2012 Act was designed to make the process for sexual assault victims to seek restitution easier. The Act forbids children from being victims of the legal system and mandates more compassionate approaches to victim care. The number of reports of such situations has increased by 100% due to increased public awareness of the need to report such incidents. The Delhi District Court noted that "even though the investigative agency does not disclose proper shreds of evidence, the testimony of the child victim inspired trust and confidence" in a case where the accused was accused of violating Sections 8, 11, and 12 of the POCSO Act as well as Section 506 of the IPC for mistreating the victim.

## **ECONOMIC ASPECTS:**

Two important components of the economic plan should be highlighted in particular. The government has responded to the growing need to protect children from sexual assault by enacting laws like the Juvenile Justice Act of 2000 and the Protection of Children from Sexual Offenses Act of 2012, as well as by



amending existing laws like the sections 354, 375, and 376 of the Indian Penal Code and Articles 39(e), 39(f), and 45 of the Indian Constitution. These modifications were developed to guard against sexual abuse of youngsters. To create a balance between supply and demand, improving economic opportunities for both men and women is essential. This may be done by empowering women and expanding access to education by implementing the Right to Education Act, 2009–2010, which was approved in 2009–2010.

## **THE STATISTICS OVERVIEW BY SAVE THE CHILD ORGANIZATION BIG PICTURE OF POCSO ACT ACROSS INDIA**

According to research done in India by Save the Children, recent changes to child protection laws, such as the Protection of Children Against Sexual Offenses Act (2012), have made it easier to file criminal cases against anyone who violates children's rights.

According to the POSCO Act, 14,913 child abuse occurrences were reported to the authorities in 2015 compared to 8,904 in 2014. Preventative efforts directed at strangers, such as installing CCTV cameras and giving self-defense training, will be futile since youngsters do not know how to prevent unwelcome sexual attempts from known relatives, friends, or workplace elders they trust. 81% of crimes against the youth population are sexual assaults and abductions. Children lack the skills to resist unwelcome sexual attempts from familiar relatives, friends, or trusted elders on the job.

### **Global laws to protect children from sexual harassment**

All countries that sign the United Nations treaty on the child's rights, often known as the CRC, are required to ensure that children's rights are upheld.

States are required under CRC articles 34 and 35 to protect children from sexual exploitation and abuse in all of its manifestations. These offenses might take many different shapes. Additionally, it is forbidden to force teenagers into prostitution and use youngsters as laborers to produce pornographic material. Every state is responsible for safeguarding its citizens' children from being kidnapped, used for personal gain, or sold into slavery.



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## CONCLUSION:

The nation's youth are its most precious assets and resources. Because of this, it is crucial for their upbringing in the community to give them enough care, security, and counseling. They should be given the chance to experience childhood in a fair and welcoming atmosphere so that they may develop into wonderful citizens who are mentally and physically healthy and strong and who have the abilities and effectiveness that the community values. Equal opportunities should be provided to all people without using discriminatory methods to create social justice, eliminate inequality, and minimize juvenile delinquency.



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