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**“A CRITICAL ANALYSIS OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012”****Author:** Ms. Naina & Ms. Sweksha**ABSTRACT**

The Protection of Children from Sexual Offences Act, 2012 is one of the important pieces of legislation brought by the Parliament to address the offences and harassment faced by children (who are considered to be part of the weakest and defenseless segments of society). Children are the most vulnerable group in our society. In recent times, sexual offences against children has increased a lot. In India before 2012, there was no specific law related to protection of child from sexual offences, it was covered within the ambit of Indian Penal Code, 1860. With the increasing sexual cases against child parliament has enacted a legislation i.e. Protection Act, 2012 find its sanctity from UN Convention on right to child 1992, and Offences Act, 2012 was enacted with the objective to protect the children from the offences of sexual harassment, sexual assault, and pornography, for safeguarding the interests of the child at every stage.

The POCSO Act was started because the IPC was insufficient and there was no strict legislation to effectively address and combat heinous crimes like sexual exploitation and abuse of children. The goal of government institutions was to protect children from crimes like sexual assault, sexual harassment, and pornography and to facilitate adequate legal machinery by establishing special courts for trial of such offences and matters related to them. This was done in accordance with Article 151 of the Indian Constitution, which requires states to safeguard children inside their borders, as well as the UN Convention on the Rights of the Child, which lays out a series of guidelines for states to follow in order to protect children's best interests. Despite the fact that this legislation is generic in nature and applies to everyone regardless of caste, creed, gender, or religion, it specifically punishes those who commit crimes against children in both rural and urban sections of the nation.

**INTRODUCTION:**

*“There can be no keener revelation of a society’s soul than the way in which it treats its children.” – Nelson*

Child sexual abuse is a heinous crime that violates a child's rights, jeopardizes their physical and emotional well-being, and leaves deep scars that can last a lifetime. The Indian government recognized the need to protect children from sexual exploitation and enacted the Protection of Children from Sexual Offences (POCSO) Act in 2012. The POCSO Act aims to provide a legal framework to protect children from sexual abuse and exploitation by providing stringent punishments for sexual offences against children, defining child-friendly procedures for the investigation and trial of such offences, and promoting the rehabilitation and reintegration of child victims.

Despite its well-intentioned objectives, the POCSO Act has faced criticism on several fronts. Some critics have questioned the effectiveness of the Act in addressing the root causes of child sexual abuse, such as social and cultural norms that perpetuate gender inequality, lack of awareness about the issue, and inadequate access to education and healthcare. Others have raised concerns about the implementation of the Act, citing delays in the investigation and prosecution of cases, lack of resources for victim rehabilitation, and the need for greater sensitivity and understanding of the needs of child victims.

Moreover, there have been debates on the adequacy of the punishments provided under the Act, with some arguing that the punishment for certain offences is not severe enough to act as a deterrent, while others have criticized the provision of the death penalty for certain crimes, arguing that it could lead to further victimization of child victims, who may be forced to recant their statements or face greater risk of retaliation from the perpetrator.

Given the diverse perspectives on the POCSO Act, this dissertation seeks to critically analyze the Act by examining its objectives, provisions, and implementation, and assessing its effectiveness in protecting children from sexual offences. Through an in-depth analysis of existing literature, case studies, and interviews with children, this dissertation aims to identify the gaps and challenges in the Act and propose recommendations for enhancing its effectiveness and ensuring greater protection for child victims of sexual abuse.

### **HISTORY OF POSCO ACT, 2012**

Prior to the enactment of the Protection of Children from Sexual Offences Act, 2012, there was no specific law which deals with particular offences relating to sexual offences against children. The Protection of Children from Sexual Offences Act, 2012 derive its sanctity from The UN Convention on Rights of Child and The Constitution of India, 1950

**The UN Convention on Rights of Child** on 11th December, 1992 where all the State parties to the Convention are to ensure protection of child's right against any unlawful sexual activity, exploitative use of children in prostitution or other illegal and exploitative sexual practices using children in pornographic performance or materials, number of sexual offences committed against children were increasing with every passing moment.

**The Constitution of India, 1950** has several provisions that guarantee the safeguarding of every child's childhood and subsequent youth. The Constitution of India, 1950 promises every child the right to lead a life of dignity and the right to privacy under Article 21, the right to equality under Article 14, the right against discrimination under Article 15, and the right against exploitation under Articles 23 and 24. It makes elementary education for children from age 6 to 14 a fundamental right under Article 21A of the Constitution of India, 1950. Article 15(3) of The Constitution of India, 1950 said "Nothing in this article shall prevent the State from making any special provision for women and children".<sup>4</sup> Article 39(f) of The Constitution of India, 1950 under the Directive Principles of State Policy<sup>5</sup> obligates the State governments to make certain that equal opportunities and facilities are provided to children so as to enjoy their childhood and youth, free from any and all exploitation. Generally, Indian Penal Code, 1860 dealt with the offences and doled out punishment for the offenders. Even though, IPC, 1860 did not have any specific provisions which solely deals with sexual offences committed against children but existence of sections such as Section 322 which deals with causing physical grievous hurt, Section 354 which provides for punishment for assault towards a woman which outrages her modesty, Section 375 which deals with rape and lastly Section 377 which provides for unnatural offences, were often being applied in the cases of sexual assault or abuse against children. As these sections of IPC failed to provide for a concrete definition of modesty, included only traditional penovaginal intercourse in the definition of rape, and only female victims were given priority and hence, was not gender neutral, many offenders slid through these cracks of technicality and went unpunished for their transgression. The non-existence of a proper statutory solution for the ever-increasing number of sexual offences committed against children posed a real threat to the welfare of children and to the maintenance of justice in the society

Hence, on May 22nd, 2012 the Houses of Parliament passed the Protection of Children from Sexual Offences Act, 2012 and it came into force on 14th November, 2012. The POCSO Act is a self-contained statute which ensures providing protection of children from sexual offences,

sexual assaults and pornography. The Act also provides safeguarding measures to maintain the welfare of the child during every stages of judicial process and provides for establishment of special courts with the objective of speedy trial. The main objective of The Protection of Children from Sexual Offences (POCSO) Act, 2012 is to ensure protection of every kind of sexual offences of child's right against any unlawful sexual activity, exploitative use of children in prostitution or other illegal and exploitative sexual practices, using children in pornographic performance or materials.

### **SALIENT FEATURES OF THE POCSO ACT:**

The salient features of the POCSO Act are as follows:

- This act gives the child's best in interests and wellbeing a top importance at every step in order to encourage the child's proper physical, social, emotional and, intellectual growth.
- According to this act, any individual who is below the age of 18 years is a child, and the act further emphasizes that the best interests of the child and welfare must every time come first in order to guarantee their good physical, psychological, intellectual, and social development.
- The provisions related to gender neutrality are another important facet of this act as it makes no discrimination on basis of gender between victims and offenders. This corrects one of the major problems with the Indian Penal Code's provision. Any individual who is below the age of eighteen years shall come in the definition of a child, and in certain instances.
- Mandatory communication and reporting of matters related to child abuse is a very important feature of this act. This is because of the disgrace attached to these offenses, elder people try to hide child abuse cases from society. This is because under this act reporting of such incidents or happening can report regarding it if he/she has information about it by virtue of sections 19 to 22 under the POCSO Act so that this law is properly enforced. The aim behind the creation of these provisions was that children are a part of the helpless sections of society and ultimately it is the duty of society as a whole to protect their interests.
- Maintaining the Victim's Identity in Confidence: Section 23 of the POCSO Act mandates that the child victim's identity be kept secret unless the Special Court has authorized disclosure. No reporting in the medium may reveal a child's identity,

including his/her name, information related to his/her family, residing place, neighbourhood areas from here the victim belongs, any kind of portrait, the school where he/she is studying, or any other facts that might reveal the identity of the victim, as per Section 23(2). According to the landmark judgment of the Calcutta High Court in the case of *Bijoy @ Guddu Das v. The State of West Bengal*, the court reiterated the provision created in Section 23 and ruled that anybody can be punished under the provisions of the section if a breach is committed by them including police officials as well.

- The last-seen theory is an important theory of law that is also used in matters of child sexual abuse. In accordance with this concept, it is believed that when the time duration is very small between when any individual was last seen and further they were seen with the victim last time, it is supposed that the crime is committed by them. In the case of *Shyamal Ghosh v. State of West Bengal*, it was observed that when there is a remarkable time gap then in such cases it is not reasonable for the courts to rely upon the last-seen theory.
  - Women have even been found guilty of child sexual assault by courts.
  - It outlines many types of sexual abuse, such as penetrative and non-penetrative abuse, in addition to the issues of pornography and sexual abuse or harassment. Further, it is specified that in the case where a sexual assault is "aggravated," and the child is mentally unsound or ill, or such offense is committed by the individual who is in the capacity of power over that victim child, like the family members, teachers, doctor or police official.
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- The person(s) selling children for the purpose of sexual activity also are also liable to be under the provisions of the act for abetment. The law provides for harsh penalties of up to life imprisonment and fines, depending on the severity of the crime.
  - According to the act, the term "child pornography" is defined as just like a visualization of child sexual activity, including videos, photographs, digital or computer-generated images that are indistinguishable from real children, and images that have been developed, adapted, or manipulated to seem like children. • The trial and investigation procedures are made in a child-friendly manner in this act. According to Sections 24,

26 and 33 of the act, the investigation and trial procedure is designed as per the requirements of a child.

### PRESENT INDIAN CRIMINAL LAW

One in five children worldwide under the age of 18 call India home, which is estimated to have 430 million youngsters. They start off life with enormous obstacles to overcome. Children in India frequently experience malnutrition, illiteracy, trafficking, forced labour, drug misuse, sexual abuse, pornography, etc. The study focuses in particular on the issue of child sexual abuse in India. Maltreatment of a kid, typically by a human, either physically or psychologically constitutes child sexual abuse. Who, in regard to the child, is in a position of trust and confidence, For sexual stimulation or gratification, the person utilizes the child. The Ministry of Women and Child Development's national study defined "sexual assault" as forcing a youngster to touch his or her privates or forcing a child to show their privates and be photographed in the nude. The report, however, did not accurately reflect the situation because the majority of cases went unreported due to the stigma associated with them in our culture. After the 2012 Delhi gang rape, the UNICEF performed a study that indicated that children are the victims of rape in one out of every three cases, and that these incidents are rising alarmingly. Every year, around 7200 children, including infants, are raped, which is a grave worry. Before May 2012, cases of child sexual abuse were also prosecuted under other IPC sections dealing with sexual offences, which resulted in grave injustices because the laws were not followed. For their application to sex abuse situations involving children, they are arguably adequate. Article 354 IPC penalises someone who violates a woman's modesty by using unlawful force. However, if we apply this provision to an instance of, say, new born sexual abuse, the significant issue question would be: How much modesty does a two-year-old possess? When regulations relating to adults were applied, many issues arose. Used in situations of child sexual abuse. Therefore, in order to address these issues, parliament enacted the POSCO Act, a special law, in May 2012. All types of child sexual abuse are considered distinct offences under this statute, and offenders face unique penalties.

Prior to now, there was no law that covered any non-penetrative sexual conduct. Which is now specifically classified as boys. The new law has also established a few rules. For the victims' care to be handled by police and court officials. There are even special kid courts. Created to address the issue, but the successful implementation of these recommendations still is still a cause for concern. The implementation issue has significantly impeded the protection of

children in the country against sexual abuse. Additionally, the National Commission for the Protection of Child Rights, a body founded independently in 2007, ensures compliance with all applicable laws, policies, and programs. Accord with the principles of child rights as forth in the UN Charter and the Indian Constitution convention on children's rights the task has also been given to the Commission of monitoring the POSCO Act's Implementation.

In addition to these domestic laws, India is a signatory to numerous international covenants and treaties pertaining to human rights, such as the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights, which contain detailed provisions. Protection of children's rights. They necessitate several effective preventative actions. And penalise wrongdoing, and make sure the government accepts and puts these abuse prevention measures into action. Human Rights Network requires that the Adoption and enforcement of sexual harassment prevention and reparation measures by the Indian government effectively stopping violence against children and ensuring justice.

#### **OBJECTIVES OF THE POCSO ACT:**

The objective of the POSCO Act, which stands for the Protection of Children from Sexual Offences Act, is to provide a robust legal framework for the protection of children from sexual abuse and exploitation in India. The Act defines various forms of sexual abuse against children and prescribes stringent punishments for perpetrators. It also incorporates provisions for the establishment of special courts for the speedy trial of such offenses, as well as measures for the rehabilitation and support of victims. Overall, the POSCO Act aims to create a safer environment for children by preventing and addressing instances of sexual offenses against them, ensuring swift justice for victims, and facilitating their rehabilitation and support. By addressing the specific vulnerabilities of children to sexual abuse and exploitation, the Act plays a crucial role in safeguarding their rights and well-being.

#### **LITREATURE REVIEW:**

The Protection of Children from Sexual Offences (POCSO) Act, 2012, is a comprehensive legislation enacted by the Government of India to provide protection to children against sexual offences. The Act defines a child as a person below the age of 18 years and includes various sexual offences such as sexual assault, sexual harassment, and pornography, among others. Since its enactment, the Act has been subject to various critical analyses by scholars, legal experts, and human rights activists,



**1. Vrinda Grover**

Vrinda Grover, a prominent human rights lawyer, underscores the comprehensive nature of the POCSO Act, which meticulously defines various forms of sexual abuse. She praises the Act for its child-friendly procedures, such as special courts meant to make the legal process less traumatic for children. However, Grover identifies critical challenges in the Act's implementation, notably the insufficient training of law enforcement and judiciary personnel, which hampers the Act's effectiveness.

**2. Arvind Narrain**

Human rights advocate Arvind Narrain provides a nuanced critique of the POCSO Act, cautioning against over-criminalization due to its broad definitions of sexual offenses. He calls for a balanced approach that protects children while ensuring fair legal processes to prevent wrongful accusations. Narrain also emphasizes the importance of awareness programs and ongoing training for law enforcement, judiciary, and other stakeholders to enhance the Act's effectiveness.

**3. Shubhangi Naik**

According to Shubhangi Naik (2014), "The POCSO Act has significantly increased awareness about child sexual abuse in India. The mandatory reporting provisions have resulted in higher reporting rates, reflecting a greater societal acknowledgment of the issue." Naik's analysis highlights the Act's role in bringing these crimes to light and creating a pathway for justice.

**4. Enakshi Ganguly**

Enakshi Ganguly, a prominent child rights activist, offers valuable insights into the POCSO Act, particularly regarding its implementation and impact on child victims of sexual offenses. Ganguly appreciates the Act's provisions for protecting children during legal proceedings, such as conducting trials in camera, which helps prevent further trauma. However, she highlights the inconsistency in implementing these provisions across different regions, indicating a gap between legislative intent and practical application. This inconsistency undermines the Act's ability to provide timely justice and support to victims. Ganguly also stresses the importance of improved data

collection and monitoring to accurately assess the Act's impact and identify areas for enhancement. By addressing these implementation challenges and strengthening monitoring mechanisms, Ganguly advocates for a more effective and comprehensive approach to protecting children from sexual offenses under the POCSO Act.

In conclusion, while the POCSO Act, 2012, marks a significant legislative effort to protect children from sexual offenses in India, its implementation faces several challenges. The literature suggests a need for improved judicial efficiency, better training for law enforcement, and enhanced support services for victims to ensure the Act's effectiveness. Future reforms should aim to address these gaps to better protect and support child victims of sexual abuse.

### **RESEARCH OBJECTIVES:**

The following are some objectives of the Article: –

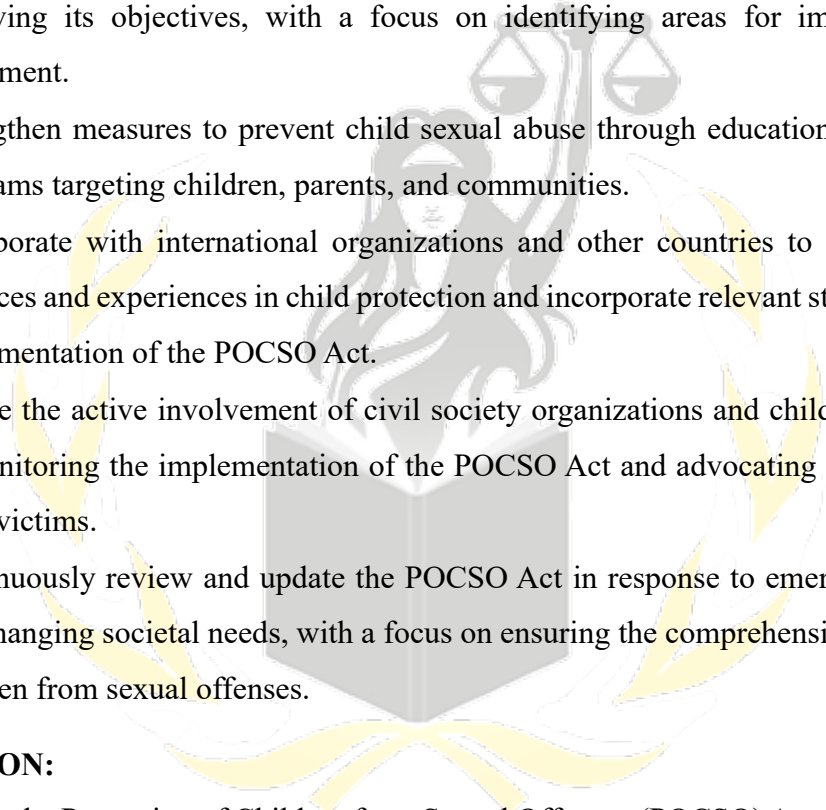
- To study about The Protection of Children from Sexual Offences in India.
- To study about the laws for The Protection of Children from Sexual Offences Act, 2012 in India .
- Identify the key provisions and legislative framework of the POCSO Act.
- To study about the strengths and weaknesses of the POCSO Act in protecting children from sexual offenses.

### **RESEARCH METHODOLOGY:**

This research relies on the doctrinal method, drawing insights from both primary and secondary sources. Primary sources include the analysis of statutory laws and court decisions, forming the backbone of our study. We've also delved into secondary sources such as books, articles, journals, websites, and newspapers. The approach involves analytical, evaluative, and descriptive methods, allowing us to derive meaningful inferences and conclusions. By combining these research techniques, we aim to provide a comprehensive understanding of the subject matter, leveraging legal frameworks and court precedents alongside a broader array of literature and information sources.

### **SUGGESTIONS:**

- Strengthen the implementation of the POCSO Act by addressing delays in trials through measures such as increasing the number of special courts and providing adequate resources for their functioning.

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- Enhance awareness and training programs for law enforcement officers, judges, and other stakeholders to ensure a better understanding of the Act and its provisions.
  - Improve the coordination between different agencies involved in child protection to ensure a holistic approach to addressing child sexual abuse cases.
  - Implement measures to provide comprehensive support and rehabilitation services for victims, including access to counseling, medical care, and legal aid.
  - Conduct regular evaluations and assessments of the effectiveness of the POCSO Act in achieving its objectives, with a focus on identifying areas for improvement and refinement.
  - Strengthen measures to prevent child sexual abuse through education and awareness programs targeting children, parents, and communities.
  - Collaborate with international organizations and other countries to learn from best practices and experiences in child protection and incorporate relevant strategies into the implementation of the POCSO Act.
  - Ensure the active involvement of civil society organizations and child rights activists in monitoring the implementation of the POCSO Act and advocating for the rights of child victims.
  - Continuously review and update the POCSO Act in response to emerging challenges and changing societal needs, with a focus on ensuring the comprehensive protection of children from sexual offenses.

**CONCLUSION:**

In conclusion, the Protection of Children from Sexual Offences (POCSO) Act, 2012 represents a significant step forward in addressing the pervasive issue of child sexual abuse in India. Through its comprehensive legal framework, the Act aims to define and combat various forms of sexual offenses against children, establish special courts for expedited trials, and mandate reporting of such crimes.

However, despite its noble objectives, the POCSO Act faces numerous challenges in implementation. These include delays in trials, lack of awareness and training among stakeholders, gender biases in victim acknowledgment, and insufficient support services for survivors. While the Act has undoubtedly increased awareness and reporting of child sexual abuse cases, its full potential remains unrealized due to these implementation gaps.

Moving forward, it is imperative to address these challenges through targeted reforms and initiatives. Enhancing the efficiency of legal proceedings, ensuring comprehensive victim



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- <https://blog.ipleaders.in/short-guide-pocso-act/>
- <https://theleaflet.in/classification-of-offences-under-the-protection-of-children-from-sexual-offences-act-a-legal-conundrum/>
- [https://en.wikipedia.org/wiki/Protection\\_of\\_Children\\_from\\_Sexual\\_Offenses\\_Act](https://en.wikipedia.org/wiki/Protection_of_Children_from_Sexual_Offenses_Act)
- <https://wcd.nic.in/act/protection-children-sexual-offences-act-2012>
- <https://indiankanoon.org/doc/103108231/>
- <https://www.nature.com/articles/s41599-022-01469-x>

