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## **CRIME AGAINST WOMEN: A COMPARISON OF POCSO AND IPC**

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### **ABSTRACT:**

This paper examines the application of Indian criminal law in cases involving child sex crimes, highlighting India's unfortunate inclusion in the global epidemic of child sexual abuse. The severity of this crime is often underestimated due to underreporting. In reality, India is experiencing an epidemic of child sexual abuse, with only 53,874 reported incidents under the 2012 Protection of Children from Sexual Offences Act as of 2021. The Indian government introduced the Protection of Children from Sexual Offences (POCSO) Act in 2012 to ensure comprehensive protection for children, covering offenses such as pornography, sexual harassment, and assault. This act aligns with Article 15 of the Indian Constitution, mandating states to protect children, and the United Nations Conventions on the Rights of the Child, which outline standards for state parties to safeguard the best interests of children. The inadequacy of the Indian Penal Code and the absence of stringent legislation addressing heinous crimes like sexual exploitation and abuse of children further underscore the need for POCSO.

**Keywords:** Child, Women, Offense, Sexual assault, Sexual harassment.

**INTRODUCTION:**

Crimes against children witnessed a staggering surge of 529 percent between 2005 and 2015, with incidents of child rape and penetrative sexual assault alone escalating by 408 percent, quadrupling in number. Recognizing the urgent need for specialized legislation to address sexual offenses involving children, the Protection of Children from Sexual Offenses Act (POCSO Act) was enacted in 2012. This legislation aimed to enable stringent action against the rising prevalence of child abuse and establish a gender-neutral legal framework solely focused on safeguarding abused children, without granting any leniency to perpetrators.<sup>1</sup>

The Supreme Court correctly observed that the main objective of POCSO was to prevent children and minors from falling victim to sexual crimes and to legally recognize them as a distinct category of victims. However, ongoing discussions have questioned whether POCSO adequately addresses concerns and whether the loopholes in the law result in numerous cases of Child Sexual Abuse (CSA) going unpunished, since the enactment of the Act in 2012 and its subsequent amendment in 2019.<sup>2</sup>

Globally, there has been a significant increase in child sexual abuse cases, with India ranking among the top five nations in terms of the prevalence of such offenses. Despite this alarming trend, India's criminal legislation is lacking in effectively addressing this sensitive issue. In the aftermath of the Sakshi v. UOI case, the Law Commission conducted a comprehensive review of laws related to sexual offenses, as highlighted in its 172nd Law Commission report. The Commission made multiple appeals for amendments to relevant laws. Subsequent to the Nirbhaya case, the 2013 Criminal Law amendment bill introduced some modifications to the Indian Penal Code (IPC). However, the current legal framework remains inadequate in effectively combating child sexual crimes.

**INDIAN CRIMINAL LAW:**

One in five children worldwide under the age of 18 call India home, which is estimated to have

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<sup>1</sup> The Indian Express, <https://indianexpress.com/article/explained/explained-law/10-years-of-pocso-an-analysis-of-indias-landmark-child-abuse-law-8276030/> (last visited Feb 18, 2024)

<sup>2</sup> Eera vs NCT of Delhi, 2017

430 million youngsters.<sup>3</sup> Children in India face numerous challenges from the outset, including malnutrition, lack of education, trafficking, forced labor, drug abuse, sexual exploitation, and exposure to pornography, among other issues. This study focuses specifically on the problem of child sexual abuse in India, which involves inflicting physical or emotional harm on a child by someone they trust, often for sexual gratification. According to a UNICEF report following the 2012 Delhi gang rape, one in three rape cases involves a child as the victim, and these incidents are increasing alarmingly, with approximately 7,200 children, including infants, being raped every year. Prior to May 2012, certain sections of the Indian Penal Code addressing sexual offenses were applied to cases of child sexual abuse, leading to significant injustices due to insufficient legal provisions for such cases.

Globally, there is a disturbing upward trend in child sexual abuse cases, with India ranking among the top five countries in terms of the prevalence of such offenses. However, India's existing criminal laws inadequately address this critical issue. In response to the *Sakshi v. UOI* case, the Law Commission conducted a comprehensive review of sexual offense laws, resulting in multiple appeals for legal amendments. Despite some changes introduced to the Indian Penal Code following the *Nirbhaya* case through the 2013 Criminal Law amendment bill, the current legal framework remains insufficient in effectively addressing child sexual crimes.<sup>4</sup>

If Section 354 of the Indian Penal Code (IPC) were applied to a case of sexual assault involving a newborn, a significant concern would arise regarding the concept of modesty in a child as young as two years old. Section 354 of the IPC pertains to the offense of outraging the modesty of a woman through the use of criminal force. When laws intended for adults were used in cases of child sexual abuse, various challenges emerged. In response to these challenges, the Parliament enacted the Protection of Children from Sexual Offenses (POCSO) Act in May 2012. This legislation categorizes all forms of child sexual abuse as distinct offenses and imposes specific penalties on offenders. Previously, there was no law explicitly addressing non-penetrative sexual acts against boys. The POCSO Act also establishes guidelines for the handling of victims by police and judicial authorities. Additionally, special child courts have

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<sup>3</sup> The Planning Commission, Government of India, a, "Report of the Working Group on Child Rights for the 12th Five Year Plan (2012-17)," [http://planningcommission.nic.in/aboutus/committee/wrkgrp12/wcd/wgrep\\_child.pdf](http://planningcommission.nic.in/aboutus/committee/wrkgrp12/wcd/wgrep_child.pdf) (Last visited Feb 10, 2023)

<sup>4</sup> UNICEF, "UN in India condemns the gang rape of a student in New Delhi," December 31, 2012, [http://www.unicef.org/media/media\\_67097.html](http://www.unicef.org/media/media_67097.html) (Last visited Feb 18, 2024).

been established to address these cases; however, the effectiveness of these measures in practice remains uncertain.

### **After Nirbhaya case:**

Following the 2012 Delhi gang rape case, the media and other non-governmental organisations significantly contributed to raising national awareness of child sexual abuse. The government was pressed and forced to confront the issue and take appropriate action in the interest of the kid population as a result of the media's and NGOs' emphasis on the rising rates of child abuse and the system's failure to protect children.

In response, the government made a significant move, and the parliament passed its first law to protect child sexual abuse in May 2012. The incident involving Ruchika Girhotra case<sup>5</sup>, who was 14 when she was sexually assaulted by a police officer, the necessity for this law became more urgent. Because Ruchika was a talented tennis player, the accused in this case requested her parents to send her to Canada. The case was filed in accordance with Sections 354 and 509 of the IPC. Despite the fact that there was an eyewitness to the alleged activities, the accused, SPS Rathore, avoided prosecution for years. Yet, the Indian government has not yet established a reliable social network to safeguard children's welfare.

### **PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012:**

POCSO, which was passed in 2012, is gender-neutral, requires victims of abuse to report it, includes a list of all types of sexual offences against children, and offers protection for children during the legal process. Among the requirements outlined by POCSO are:

- Within 24 hours of receiving a report, police officers in all situations are required to bring a case to the Child Welfare Committee's notice.
- In order to prevent the juvenile from feeling intimidated when giving their statement, the police must likewise be dressed professionally.
- The minor's statement must be documented in front of the person they trust.

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<sup>5</sup> Mrs. Madhu v. State of Haryana, 2013

- Only a female doctor should examine the youngster in order to gather forensic evidence, and only in the company of someone the child trusts.
- Under the statute, specialised courts have been established to hold quick, private trials. The court must make sure that the minor is not exposed to the accused while recording his or her statement, that the minor's identity is kept secret, that the minor is not asked to repeat his or her testimony in court and that the minor can also give his or her testimony through a video, that the cases are not delayed and are resolved within a year from the date that they were reported, and that an interpreter, translator, special educator, or other expert is present.

### **WHAT SHOULD BE THE APPROPRIATE AGE?**

While the POCSO Act sets a higher age limit, there has been increasing public debate regarding the age of consent specified in POCSO compared to the previous age specified in the IPC. Under the POCSO Act, anyone under the age of eighteen is considered a child and incapable of giving consent. However, prior to the Criminal Law (Amendment) Act of 2013, which is a significant amendment to the penal code, the age of consent was sixteen years old. There has been recent advocacy for revising the age of consent under POCSO.

The National Council for the Protection of Child Rights (NCPCR) proposed the concept of a "close in age exemption," which would entail two exceptions. Firstly, it would allow for consensual but non-penetrative sexual activities between minors over the age of twelve who are of similar age or have a maximum two-year age difference. Secondly, it would permit consensual penetrative sexual activities between minors over the age of fourteen with a maximum three-year age difference. However, these proposals were not implemented, and the plan to raise the age of consent was abandoned.<sup>6</sup>

However, it is important to recognize that the definitions and strict criteria regarding the age of consent outlined above may not cover all cases of Child Sexual Abuse (CSA), and they could potentially have unintended consequences when it comes to consensual "romantic" relationships. It should be clarified that the POCSO Act does not consider consent in such romantic relationships, and no specific age range can fully address all aspects of these

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<sup>6</sup> National Commission For Protection of Child Rights, <https://ncpcr.gov.in/> (last visited Feb 16, 2024)

relationships. Therefore, it is imperative to issue a clear warning to ensure that the concept of consent is safeguarded and that there are no subtle manipulations, such as "grooming," to coerce consent, of which the victim may not even be aware.

Although the POCSO provision may initially appear regressive, it is essential to understand the underlying circumstances that led to its inclusion in the statute. Nearly half of the 8,664 POCSO cases registered by the National Crime Records Bureau (NCRB) in 2015 involved teenagers aged between sixteen and eighteen. Other studies also revealed similarly concerning numbers, indicating that the issue was not limited to the findings of the NCRB alone.<sup>7</sup>

One could argue that the high incidence of CSA cases among 16 to 18-year-olds is simply due to their natural inclination towards consensual sexual activity, which is considered normal at that age. However, due to the stringent guidelines set forth by the POCSO Act, consensual cases are subjected to the same penalties as non-consensual ones. The issue of consensual sex falls into a "grey area" under the POCSO Act, as noted by the Bombay High Court. Similarly, the Calcutta High Court acquitted a man charged with consensual intercourse with a minor, emphasizing that for a sexual act to be classified as rape under the IPC or the POCSO Act, it must be carried out against the victim's will.

### **GENDER NEUTRALITY:**

The POCSO Act's characteristic of being gender-neutral has been highlighted as one of its key aspects. The Delhi High Court affirmed that the POCSO legislation does not differentiate between victims based on gender and maintains gender neutrality. The primary obstacle to utilizing the IPC rather than the POCSO Act in any scenario lies in the fact that POCSO addresses sexual abuse against both male and female minors.<sup>8</sup>

In contrast, the IPC specifically addresses the sexual abuse of women, whether through Section 375, defining rape, or Section 354, addressing the outrage of a woman's modesty. Consequently, not all children who have experienced child sexual abuse can receive fair and just treatment under this provision of the IPC.

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<sup>7</sup> Delhi Commissioner for Protection of Child Rights, <https://dpcr.delhi.gov.in/> (last visited Feb 10, 2024)

<sup>8</sup> Alakh Alok Srivastava vs UOI, WRIT PETITION (C) No.76 OF 2018

Due to its gender-neutral approach, POCSO holds broader jurisdiction over matters related to Child Sexual Abuse (CSA). For instance, Section 7 of POCSO sets forth criteria for establishing the offense of non-penetrative sexual assault, stipulating that any individual who touches a child's "vagina, penis, anus, or breast" with sexual intent is deemed to have committed such an offense.

This gender-neutral aspect of POCSO holds contemporary relevance and can be elucidated further. A ruling by the Bombay High Court determined that inappropriate touching or touching with sexual intent of a clothed child would not constitute sexual assault but would instead constitute the violation of the child's modesty, leading to the case being adjudicated under the IPC rather than POCSO. According to Section 7 of POCSO, the offense of sexual assault necessitates "touching" of the child's "vagina, penis, anus, or breast." Justice Pushpa Ganediwala emphasized that "skin-to-skin" contact is therefore a fundamental requirement for sexual assault under POCSO.<sup>9</sup>

While much focus has been placed on the term "touch," it's worth considering a hypothetical scenario involving a male child victim facing a similar verdict. Since the IPC is gender-specific and pertains only to women, the child would be unable to seek recourse there. If the Court's interpretation regarding the requirement of skin-to-skin contact were deemed legally binding, the male child would also find himself without a legal remedy under the POCSO.

**SOME KEY DIFFERENCES BETWEEN THE TWO LAWS ARE AS FOLLOWS:**

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<sup>9</sup> Satheesh vs State of Maharashtra, 2021

<b><u>OFFENCE</u></b>	<b><u>POCSO</u></b>	<b><u>IPC</u></b>
<b>1. Age of Consent</b>	Under POCSO, sexual contact with a child under the age of 18 is considered a crime, regardless of whether the child has given consent.	The age of consent is 18 for girls and 16 for boys. Sexual contact with a child under the age of consent is considered statutory rape, even if the child gave consent.
<b>2. Bail</b>	Under POCSO, bail is not granted easily, and the accused must prove that he is not a threat to the child or society.	Under the IPC, bail can be granted more easily.
<b>3. Role</b>	POCSO is a specialized law that provides additional protection to children against sexual offenses, and its provisions are generally stricter	It is a penal law.
<b>4. Time Limit for Reporting</b>	The time limit for reporting sexual offenses under POCSO is much longer than under the IPC. For example, a victim of sexual assault can report the crime under POCSO until she turns 19.	In contrast, the time limit for reporting sexual assault under the IPC is within three years.
<b>5. Jurisdiction</b>	POCSO has a wider jurisdiction and can be applied throughout India	Whereas the IPC is a general criminal law that is applicable across the country.
<b>6. Role of Police and Prosecutors</b>	POCSO provides for special procedures for the police and prosecutors to handle cases of sexual offenses against children. The police are required to be trained in dealing with such cases, and the prosecutor is required to be a woman.	The IPC does not have any specific provisions regarding the training of the police or the gender of the prosecutor.
<b>7. Protection of Victims</b>	POCSO provides for the protection of victims, including the provision of a safe environment for recording statements, and	Under IPC, these provisions are not specifically provided.



	the option to use a screen or video conferencing for the victim's testimony.	
<b>8. Penetrative Sexual Assault</b>	The minimum punishment for penetrative sexual assault under POCSO is 10 years of imprisonment, which can extend to life imprisonment.	Under the IPC, the minimum punishment for rape is 10 years, and the maximum is life imprisonment.
<b>9. Aggravated Penetrative Sexual Assault</b>	The minimum punishment for penetrative sexual assault under POCSO is 20 years of rigorous imprisonment, which can extend to life imprisonment, also liable to fine or death.	No such provision.
<b>10. Sexual Assault</b>	The minimum punishment is 3 years imprisonment which may be extended to 5 years and shall be also liable to fine.	The minimum punishment not less than 1 year which may be extended to 5 years.
<b>11. Aggravated Sexual Assault</b>	The minimum punishment is 5 years imprisonment which may be extended to 7 years and shall be also liable to fine.	No such provision.
<b>12. Sexual harassment</b>	The minimum punishment is 3 years and fine.	The minimum punishment is 1 year which may be extended to 3 years and fine.

**CONCLUSION:**

In summary, POCSO stands out as a specialized law offering enhanced protection to children against sexual offenses, with stricter provisions compared to the IPC. Both legislations hold significance in addressing crimes against women, especially minors. While POCSO and IPC address similar issues, POCSO boasts broader jurisdiction, specialized procedures for law enforcement and prosecution, and provisions for victim protection.

The enactment of the POCSO Act in 2012 marked a significant step in combating child abuse by acknowledging various forms of sexual exploitation. Despite its commendable efforts,

unresolved challenges persist. Victims of sexual abuse, particularly children, require sensitive psychological support and counseling. A comprehensive societal approach, encompassing vigilance and thorough assessment of cases, is essential in addressing child abuse effectively. Regrettably, child sexual abuse cases remain significantly underreported in India, underscoring the prevalence of such offenses. It is imperative for medical professionals attending to abused children to prioritize compassionate and minimally distressing interactions.