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# PROTECTION OF CHILDREN FROM SEXUAL OFFENCES: A SOCIO-LEGAL ANALYSIS WITH SPECIAL REFERENCE TO POCSO ACT

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## ABSTRACT

"Safety and security don't just happen; they are the result of collective consensus and public investment. We owe our children, the most vulnerable citizens in our society, a life free of violence and fear."

Children's Day, celebrated on November 14th in India, serves as a reminder to enhance awareness about the rights, education, and welfare of children. However, the unfortunate reality remains that children face darkness and vulnerability beyond just this day. The National Crime Records Bureau (NCRB) reported an overwhelming 1,49,404 cases of crimes against children in 2021, with 53,874 cases (36.05 percent) falling under the ambit of the Protection of Children from Sexual Offences Act (POCSO). The POCSO Act, established in 2012 under the Ministry of Women and Child Development, sets forth a comprehensive framework to shield the interests of children, irrespective of gender, who have endured sexual abuse or harassment.

The POCSO Act stands as a crucial bastion of protection for children in dire need. The act recognizes the inherent vulnerabilities children face within their families and society at large. Children, often unaware of the state of affairs they are subjected to, fall victim to sexual abuse or harassment due to their innocence and lack of understanding. Fear and pain further silence them, preventing them from confiding in their parents or guardians.

Frighteningly, children are frequently coerced, threatened, or even subjected to violence in order to deter them from revealing the truth. Tragically, in some cases, perpetrators resort to extreme measures by eliminating the child victim to evade accountability. Occurrences also happen, particularly in cases involving girl children, parents refrain from pursuing legal action against the accused due to concerns about their family's reputation. This prevailing mindset conceals numerous cases, emboldening offenders and perpetuating a cycle of abuse.

The multifaceted nature of child sexual offenses transcends age boundaries for both victims and perpetrators. Individuals of any age can fall victim to such offenses, while individuals of varying ages can also commit them. The aftermath of such offenses leaves children physically and emotionally scarred. The POCSO Act of 2012 serves as a lifeline for these children, offering them a platform to advocate for their rights and protection, alongside their parents. By delivering legal safeguards, the act ensures that felons are held accountable for their actions through punitive measures.

This paper delves into analysing the social and legal aspect of protection of children from sexual offences, shedding light on the urgent need to uphold the rights and ensure the well-being of children younger than eighteen irrespective of their gender. Through an exploration of the Act's provisions and its impact, the paper emphasizes the critical role it plays in curbing child sexual offenses and providing recourse to victims. In a world where children deserve a childhood free from harm, the POCSO Act stands as a guardian of their innocence, ensuring that safety and security prevail over darkness and fear.

**Keywords:** sexual offence, safeguard, children, gender neutral.

## **INTRODUCTION**

On 19 June, 2012, the president gave formal approval to the protection of children from sexual offences Act, to lay the foundation of a legal system that provide a shield to children from sexual offences. The POCSO Act provides special courts for the trial to keep children safe from sexual assault, sexual harassment and the influence of pornography. The word 'children' define any person who is younger than the age of eighteen. The Act accommodate the gender-neutral provisions which are same for both girls as well as for boys.

## **CONCEPTUAL CLARITY:**

Every law concerning children should be designed to protect them comprehensively, ensuring their physical, emotional, intellectual, and social well-being at every stage of their development.

Due to the absence of specific legislation addressing the alarming increase in instances of child sexual abuse in the country, it became imperative to establish a statute that squarely addresses this issue. With the collaborative efforts of numerous NGOs, activists, and the Ministry of

Women and Child Development, the Prevention of Children from Sexual Offences Act, 2012 ('Act' herein after) was enacted.

The Act serves as a lifeline for children who unfortunately become victims of sexual offenses. It safeguards their interests throughout all stages of legal proceedings, ensuring that investigations and trials are conducted in a child-sensitive approach. The Act encompasses 46 sections, each applicable to children below the age of eighteen, making it clear that anyone who commits an offense in opposite to a child in this age group will face punishment under this Act.

### **Who is a child? The age factor<sup>1</sup>**

Determining who qualifies as a 'child' primarily revolves around age considerations. A child is commonly referred to as a youngster, particularly during their early years and adolescence. Notably, some legal contexts even consider an unborn baby as a child. Age is a sensitive topic when discussing child rights, as it varies based on different laws.

For instance, the Convention on the Rights of the Child broadly A child is described as anyone younger than the age of 18, but it allows for national laws to specify a younger age of Dominance. The Juvenile Justice (Care and Protection of Children) Act of 2015 defines a child as any being who has not reached the age of eighteen. The Prohibition of Child Marriage Act of 2006 offers a different perspective, defining a child as a male under 21 years old and a female Beneath 18 years old. The Immoral Traffic (Prevention) Act of 1956 sets the age of a child as someone who has not yet reached 16 years old and defines a 'minor' as an individual aged 16 but fewer than 18 years old. Lastly, the Child and Juvenile Work (Restriction and Regulation) Act of 1986 introduces two terms: a child is any individual under 14 years old, and a young adult is someone aged 14 but under 18 years old.

### **FEATURES OF ACT: -**

The Act incorporates several key provisions to safeguard children from sexual offenses.

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<sup>1</sup> Who is a Child? Definitions of 'child', (May 8, 2023, 10:08 AM ),<https://lawtimesjournal.in/who-is-a-child-why-is-it-difficult-to-define-a-child/>

### 1- Confidentiality of victim's Identity-

Section 23 of POCSO Act acts as a trump card for the victim to conceal their identity and get justice Without divulging child's identity. According to section 23, no person is allowed to make any report in Any configuration of media or in any way in which the identity of victim including child's name, address, photograph, family details, school, neighbourhood or any other information in which identity of child is revealed. But if in the Supreme Court's opinion, it is for the good of the child then the Supreme Court may permit such disclosure.

### 2- Gender neutral provisions: -

Another appreciable feature of the Act is that it does not make any discrimination between girl child or in boy child. section 2(1)(d) of POCSO Act defines 'child' as any person who is below the age of eighteen including both the girl child as well as boy child whosoever needs protection from sexual offences.

### 3- Mandatory reporting of child abuse cases: -

Section 19 of the Act mandates the reporting of all cases involving sexual offenses to ensure Instantaneous protection for the child. According to the Code of Criminal Procedure, 1973, any person, including a child, who has committed such an offense or has knowledge of its occurrence, can report it to either the Special Juvenile Police Unit or the Local Police.

Section 20 of the POCSO Act requires that information be provided to the Special Juvenile Police Unit or the Local Police by any person, whether from the media, hotels, lodges, hospitals, clubs, studios, or photographic facilities, if they possess any object or material that sexually exploits a child

In the case of *Nar Bahadur v. State of Sikkim* (2016), an eleven-year-old, had been subjected to repeated sexual assault by a resident of the same locality In response to the FIR, a Sombaria P.S. Case was registered on the same day, invoking Section 376 of the Indian Penal Code read Section 4 of the Act, and the investigation commenced

### 4.- Child-friendly investigation and trial:

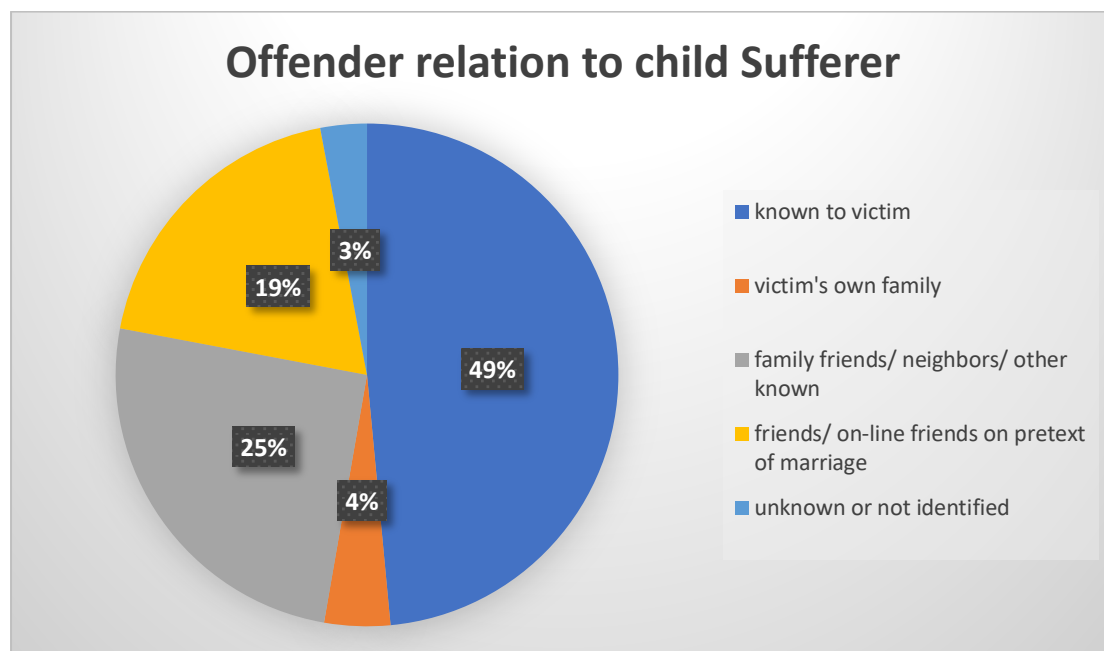
The procedures established by the POCSO Act are designed to be child-friendly.

Section 24 of the POCSO Act provides a significant benefit to child victims by allowing them to have their statements recorded at their own residence or any place of their choosing. The police officer conducting the investigation has to take special care to ensure that, at no point during the examination, does the child come into contact with the accused in any way. Section 26 of the Act also guarantees that the Magistrate or police officer responsible for recording the child's statement will do so in the presence of the child's parents or another trusted individual will do so in the presence of the child's parents or another trusted individual.

**MAGNITUDE OF PROBLEM: -**

Heinous crimes like penetrative sexual assault, aggravated penetrative sexual assault, using child for pornographic purposes etc. against children are sprouting. Offenders somehow is Acquainted individual as well as Anonymous person to the Sufferer.

The NCRB (national crime records bureau) data 2019, shows offender relation to child victim of POCSO Act, -



The no. of cases in which offender is known to Sufferer was 24,672,

The no. of cases in which offender was from Sufferer’s own family or a family member was 2,153.

The no. of cases in which offender was from family friends/ neighbors/ other known persons was 12,834.

The no. of cases in which offender was from friends/ on-line friends on pretext of marriage was 9,685 and,

The no. of cases in which the offender was from unknown or not identified was 1,520.

### **NEED OF POCSO ACT FOR THE PROTECTION OF CHILDREN: -**

The Government of India formally accepted the Convention on the Rights of the Child, established by the United Nations General Assembly on December 11, 1992<sup>2</sup>. This convention outlines a set of guidelines that all member States, including India, are required to adhere to uphold the well-being of children.

Prior to the enactment of the Act, cases involving sexual offenses were addressed under the Indian Penal Code under sections 375, 354, and 377. One significant limitation of these sections was their failure to provide adequate protection for male children against sexual abuse and to safeguard their dignity, particularly in cases of unnatural offenses.

The reasoning for implementing the Act was to tackle the following critical aspects for the protection of Children:

- 1.- Preventing the manipulation or coercion of children into participating in illegal sexual activities.
- 2.- Combating the illicit utilization of children in prostitution or other unlawful sexual activities
- 3 Reducing the abusive participation of children in pornographic acts and content.

### **OFFENCES AND THEIR PUNISHMENTS UNDER POCSO ACT: -**

The POCSO Act, 2012 relates some of the following sexual offences and their punishments

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<sup>2</sup> The Protection of Children from Sexual Offences Act, 2012

against children:

- 1- **Penetrative sexual assault-** penetrative sexual assault is covered under section 3 of POCSO Act. The Act defines “penetrative sexual assault” when any person penetrates his penis and puts it into any child’s vagina, mouth, urethra or anus, or coerce the child to engage in such activities with him or someone else.
- 2- The punishment for penetrative sexual assault under section 4 of the Act is, if a person commits the offence of penetrative sexual, person shall be liable to punishment with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine. • In the case of *Nawabuddin VS. State of Uttarakhand*<sup>3</sup>, accused proved to have penetrated his finger in the vagina and because of that the victim girl aged merely 4 yrs. felt pain and irritation in urination as well as pain on her body and doctor found redness and swelling around the vagina. Thus, it was held that the case fell under S.3 (b) as penetrative sexual assault. It was reported that the accused is aged 70-75 years of age and it is also reported that he is suffering from tuberculosis (TB). Therefore, considering such mitigating circumstances, life sentence was converted to fifteen years.
- 3- **Aggravated penetrative sexual assault-** aggravated penetrative sexual assault is covered under section 5 of the Act, 2012. According to section 5 (u) aggravated penetrative sexual assault means when a person makes a child to strip or parade naked in public.

The punishment for aggravated penetrative sexual assault - section 6 says that when a person commits aggravated penetrative sexual assault, then the person shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine. • In the case of *State of Uttar Pradesh Vs. Sonu Kushwaha*, as per prosecution, accused came to complainant’s house and took his son aged 10 yrs. to certain temple and gave him Rs 20 by asking him to suck his penis. Thereafter, the appellant put his penis into the mouth of the victim and he came to the house having those Rs 20. High court concluded that the act committed by the accused was of penetrative sexual assault punishment under

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<sup>3</sup> Nawabuddin vs. state of Uttarakhand, criminal appeal no. 144 of 2022.

S.4 and not under S.6. but the same order of High Court was challenged by the State in the special court and the special court consider the offence as aggravated penetrative sexual assault under section 6 thus, the special court sentenced him to undergo rigorous imprisonment for ten years with a fine of Rs. 5000/.

- 4- **Sexual assault:** According to section 7 of the Act, a person said to have committed sexual assault when a person with having sexual intention touches the vagina, penis, anus or breast of the child or do any physical contact with a child without penetration.

The punishment for sexual assault: - The punishment for sexual assault is given in section 8 of the Act which gives punishment of imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

4. **Use of child for pornographic purposes:** -If a child is used by any person for the purposes of sexual gratification which includes representation of the sexual organs of a child, usage of a child engaged in real or simulated sexual acts and the indecent or obscene representation of a child, then the person is liable for the offence of using a child for pornographic purposes under section 13.

Punishment for using child for pornographic purposes: -the person, liable for the offence of using child for pornographic purposes under section 14 shall be punished with imprisonment of either description which may extend to five years and shall also be liable to fine and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also be liable to fine.

## **CONCLUSION: -**

Children are considered as our valuable assets, and while there are numerous measures and provisions as our most valuable assets, and while there are numerous measures and provisions in place to safeguard them from sexual offences, it is equally important to raise children in a manner that enables them to differentiate between right and wrong actions involving them One effective approach is to educate children about the concept of appropriate and inappropriate touches, empowering them to recognize and seek assistance when necessary. Additionally,



raising awareness about the laws and remedies outlined in the POCSO Act among both children and the general public can contribute to more proactive efforts to secure justice for children and reduce instances of sexual offenses against them.

Safeguarding children from violence is of utmost importance, and it requires a multi-faceted approach. Here are some key measures to effectively combat violence against children:

1. **Education and awareness:** Promote widespread education about child rights, the consequences of violence, and the importance of reporting incidents. Raise awareness in schools, communities, and through media campaigns.
2. **Empower Children:** Teach children about their rights and encourage open communication. Equip them with the knowledge and confidence to identify and report abusive situations, including the “good touch and bad touch” concept.
3. **Strengthen Legal Frameworks:** Ensure that legal frameworks, like the Protection of Children from Sexual Offences (POCSO) Act, are robust and effectively enforced. Stricter penalties for offenders can act as a deterrent.
4. **Support Systems:** Develop and expand support systems for children who have experienced violence, including counselling, therapy, and safe spaces where they can seek help and guidance
5. **Community Involvement:** Encourage community involvement in child protection. Promote the active engagement of parents, teachers, and neighbours in recognizing and reporting instances of abuse.
6. **Comprehensive Sex Education:** Implement age-appropriate, comprehensive sex education in schools to help children understand their bodies, boundaries, and consent.
7. **Technology Safeguards:** Promote online safety for children by educating them about the risks of the digital world and providing tools for parents and guardians to monitor online activities.
8. **Early Intervention:** Identify signs of abuse early and intervene promptly to prevent

further harm. This involves training professionals and educators to recognize warning signs.

9. **Advocacy and Policy:** Support organizations and initiatives advocating for child protection policies and reforms. Work towards creating a culture that prioritizes the safety and well-being of children.
10. **Research and Data Collection:** Invest in research and data collection to better understand the prevalence and causes of child violence. This information can guide policy and prevention efforts

By implementing these measures and fostering a collective commitment to protecting children from violence, we can create a safer and more nurturing environment for the youngest members of our society. It is our collective responsibility to ensure that every child grows up free from violence and with the opportunity to thrive.