



Child Sexual Abuse Prevention and Response in India: Exploring the Role of POCSO Act

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Abstract:

The Protection of Children from Sexual Offences (POCSO) Act was enacted in India in 2012 to provide legal protection to children against sexual abuse. However, despite the enactment of the Act, there are several challenges in its implementation and effectiveness. This research paper aims to conduct a doctrinal analysis of the POCSO Act in India to understand its scope, challenges and effectiveness.

This research paper is based on the review of the POCSO Act, relevant case laws, and academic literature. The analysis focuses on the scope of the Act, including the definition of sexual offences, the age of the victim, and the jurisdiction of the courts. The challenges in the implementation of the Act are also analysed, including the inadequate training of law enforcement officials, delays in legal proceedings, and the lack of awareness among stakeholders. The effectiveness of the Act in preventing and punishing child sexual abuse is also examined through the analysis of relevant case laws and academic literature.

The findings of this paper reveal that the POCSO Act has a wide scope in terms of its definition of sexual offences, and its application to both males and females under the age of 18 years. However, there are several challenges in its implementation, including a lack of awareness and training for stakeholders, and the delay in legal proceedings. The analysis of case laws and academic literature also reveals that the effectiveness of the Act in preventing and punishing child sexual abuse is hindered by these challenges.

Overall, this paper provides valuable insights into the scope, challenges, and effectiveness of the POCSO Act in India and highlights the need for continued efforts to address the issue of child sexual abuse in the country.



Introduction:

India is home to the largest number of children in the world, significantly larger than the number in China.¹ Child sexual abuse is a significant problem in India, with millions of children being subjected to various forms of sexual violence each year. The National Crime Records Bureau (NCRB) reported 109000 cases of crimes against children in India in 2019, including rape, molestation, and sexual assault.² However, many cases of child sexual abuse go unreported, making it difficult to accurately estimate the actual prevalence of the problem.

There are several factors that contribute to the high rates of child sexual abuse in India. These include poverty, illiteracy, gender inequality, social stigma, and inadequate child protection measures. Children from marginalized communities, such as those living in poverty or belonging to lower castes, are particularly vulnerable to sexual abuse.

According to Ms. Jyoti Mathur, Director of 'Kailash Satyarthi Children's Foundation', "*a victim of sexual abuse is not a victim of one abuse but multiple abuses - physical abuse, emotional abuse, mental abuse, stigma, neglect and overall deprivation of the right to live with dignity*".³ The situation is further complicated by the fact that child sexual abuse often occurs within families or in close relationships, making it difficult for victims to report the abuse. In many cases, victims are pressured into remaining silent, either through threats or coercion, or due to fear of social stigma.

To protect children from sexual offenses the Convention on the Rights of the Child was adopted by the United Nations General Assembly. India signed this Convention on December 11, 1992, and as a member state, it is required to implement all necessary measures at the bilateral, national, and multilateral levels. The Convention establishes certain standards that all member states must comply with to safeguard the rights and welfare of children. These standards include various measures that member states must adhere to, such as-

- (i) Every State should ensure that no child is induced or coerced into any form of sexual activity.
- (ii) Every State should ensure that no child is sexually exploited by pushing the child into prostitution.

¹ According to the World Population Prospects: 2008 Revision population database, the child population in the age-group 0-4 for India in 2010 is estimated to be (medium variant) 126 million against 88 million in China. The population of children in the age group 0-14 for the same year for India is estimated as 374 million as compared to 269 million in China. Available at:

https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/files/documents/2020/Jan/un_2008_world_population_prospects-2008_revision_volume-ii.pdf (Last visited on 20.02.2023).

² NCRB Report-2019, available at <https://ncrb.gov.in/en/crime-india-2019-0> (Last visited on 20.02.2023)

³ *Hanumantha Mogaveera vs State of Karnataka by Women Police Station*, 2021 SCC OnLineKar 12300.



- (iii) (iii) Every State should ensure that no child is used in pornographic material or performance.

In 1989, world leaders made a historic commitment to the world's children by adopting the United Nations Convention on the Rights of the Child – an international agreement on childhood. It's become the most widely ratified human rights treaty in history and has helped transform children's lives around the world.

The Indian government has taken several measures to address the problem of child sexual abuse, including the passing of The Protection of Children from Sexual Offences (POCSO) Act, 2012 and the establishment of special courts to handle cases of child sexual abuse. However, more needs to be done to raise awareness about the issue, provide support for victims, and ensure that perpetrators are brought to justice. It is a complex and multifaceted issue that requires a comprehensive approach involving various stakeholders, including the government, civil society organizations, and the general public.⁴ **United Nations Convention on the Right of the Child (UNCRC)**⁵ states how the governments and the adults have to work in consonance to ensure that above rights of the children and protected. All rights are available to children without any discrimination irrespective of their gender, sex, language, colour, ethnicity, religion or abilities etc.

Situation before POCSO

Although the Convention on the Rights of the Child was adopted by the United Nations in 1989, crimes against children in India were not regulated by law until 2012. Before the enactment of POCSO, child sexual abuse was addressed under various provisions of the Indian Penal Code (IPC) and the Juvenile Justice Act. However, there was no comprehensive law that specifically dealt with the issue of child sexual abuse.

During this period, there were several high-profile cases of child sexual abuse in India, including the 2008 Nithari killings, which involved the rape and murder of over 20 children. These cases helped to bring public attention to the issue of child sexual abuse and put pressure on the government to take action. The Indian Penal Code 1860, which is the main criminal law in India, contains provisions related to sexual offenses against children, such as 'Molestation' (Section 354), 'Rape' (Section 376), 'Unnatural offences' (Section 377), 'Word, gesture or act intended to insult the modesty' (Section 509).

⁴<https://www.unicef.org/child-rights-convention#:~:text=In%201989%2C%20world%20leaders%20made,children's%20lives%20around%20the%20world>. (Last visited on 20.02.2023).

⁵United Nations Convention on the Right of the Child (UNCRC) Available at: <https://www.unicef.org.uk/what-we-do/un-convention-child-rights/> (Last visited on 10.02.2023).



However, these provisions did not adequately take into account the vulnerability of children and the trauma they experience as a result of sexual abuse. The Juvenile Justice Act, which was first enacted in 1986, provided some protection for children against sexual abuse by defining a child as any person below the age of 18 and providing for the establishment of juvenile courts to handle cases involving children. However, the act did not specifically address the issue of child sexual abuse and provided for relatively lenient punishments for offenders.

In addition, the laws in force before the enactment of POCSO did not provide for the establishment of special courts to handle cases of child sexual abuse. As a result, these cases were often dealt with by regular courts, which did not have the necessary expertise or sensitivity to handle such cases. The lack of a comprehensive legal framework to address child sexual abuse in India was a major gap in the country's legal system. The enactment of the POCSO Act was a significant step towards addressing this gap and providing greater protection to children from sexual offenses.

A Public Interest Litigation was filed by the non-governmental organization *BachpanBachaoAndolan*⁶ seeking directions to address the increasing problem of child sexual abuse in India. The judgment of Supreme Court in this case, has been widely recognized as an important milestone in the legal framework for the protection of children from sexual abuse in India.

One of the key contributions of the judgment was its recognition of the gravity of the problem of child sexual abuse in India and the need for urgent action to address the issue. The Court emphasized that child sexual abuse was a serious violation of the rights of children and had a long-lasting impact on their physical and mental well-being. The judgment directed the government to take a series of measures to address the issue, including setting up of a national database on missing children, establishment of a toll-free helpline for reporting cases of child sexual abuse.

However, while the judgment provided important guidance for the government and other stakeholders on the steps that need to be taken to protect children from sexual abuse one of the criticisms of the judgment is that it did not go far enough in addressing the root causes of child sexual abuse in India, such as poverty, lack of education, and social inequality. The judgment focused primarily on legal and procedural measures to address the issue, but did not address the underlying structural and social factors that contribute to the problem.

Finally, in 2012, the POCSO Act was enacted, with the aim of providing a comprehensive legal framework to protect children from sexual offenses. The act defines various types of sexual

⁶*BachpanBachaoAndolan v. Union of India*, (2011) 5 SCC 1.



offenses against children and provides for stringent punishment for offenders. It also mandates the establishment of special courts to handle cases of child sexual abuse, with the aim of ensuring speedy justice for victims.

As far as determination of age of victimis concerned, the Supreme Court of India commented on the procedure, as outlined in the Juvenile Justice (Care and Protection of Children) Rules, 2007. The court held that this procedure can also be applied in cases falling under the Protection of Children from Sexual Offences (POCSO) Act, 2012. In this case⁷, the Court applied Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, which provides guidelines for determining the age of children in conflict with the law, to determine the age of the child victim. On the basis of this rule, the court convicted accused Jarnail Singh.

Passing of POCSO Act

The Protection of Children from Sexual Offences (POCSO) Act was enacted in India in 2012 to provide comprehensive protection to children against sexual offenses. The act was introduced in response to the growing incidence of child sexual abuse in India and the need for a comprehensive legal framework to address the issue.

The 172nd Report of the Law Commission of India, titled "Review of the Rape Laws", was published in 2000 and made several recommendations for the legal framework regarding sexual offenses against children. The report was one of the earliest attempts to address the issue of child sexual abuse in India and played a significant role in the eventual enactment of the POCSO Act.

The report highlighted several shortcomings in the existing legal framework, including the inadequate definition of sexual offenses, the lack of specific provisions for child victims, and the absence of special courts to handle cases of child sexual abuse.

The report recommended several measures to address these gaps in the legal framework, including the establishment of a new law to specifically deal with child sexual abuse, the definition of new offenses related to child sexual abuse, and the provision of stringent punishment for offenders.

The report also recommended the establishment of special courts to handle cases of child sexual abuse, with the aim of ensuring speedy justice for victims. The report called for the creation of a child-friendly environment in these courts, where children could testify without fear or intimidation.

⁷Jarnail Singh v. State of Haryana (2013) 7 SCC 263.



Overall, the 172nd Law Commission Report⁸ played an important role in highlighting the issue of child sexual abuse in India and recommending measures to address the gaps in the legal framework. The report was a precursor to the eventual enactment of the POCSO Act, which provided comprehensive protection for children against sexual offenses. The report was submitted to the government in 2000, but it took over a decade for the POCSO Act to be enacted.

Scope and Key features of POCSO Act

Child sexual abuse is a growing concern in India and therefore, the government introduced The Protection of Children from Sexual Offences (POCSO) Act, 2012, to address instances of child sexual abuse. The act was enacted on 19 June 2012 and came into force on 14 November 2012.

Article 15(3) of the Constitution of India, which allows the state to make special provisions for children, is a source of constitutional authority for POCSO. POCSO is an acronym for 'Protection of Children against Sexual Offences Act' of 2012 and with its passage, India now has one of the most comprehensive laws that not only provides justice to child victims of sexual offences but also takes into account the welfare and interests of the child.

The POCSO Act, 2012, is not the only legislation dealing with child sexual abuse cases. The POCSO Act. The provisions of the Code of Criminal Procedure, 1973, the Indian Penal Code, 1860, the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Information Technology Act, 2000 overlap and set out the procedure and offences.

Incorporating child-friendly mechanisms for reporting, recording evidence, investigating, and speedy trial of offences through designated Special Courts, the POCSO Act is an extensive statute that provides for the protection of children from the offences of sexual assault, sexual harassment, and pornographic content while safeguarding the best interests of the child at all stages of the judicial process.

One of the key features of the POCSO Act is that it recognizes various forms of sexual abuse, including physical contact and non-contact abuse. It also recognizes various forms of exploitation, including trafficking and pornography.

The Act provides for stringent punishment for the offenders, including imprisonment for a minimum of ten years and a maximum of life imprisonment, as well as a fine. The Act also mandates the establishment of special courts for the speedy trial of cases related to sexual offences against children. These courts are expected to complete the trial within one year from

⁸Available at: <https://criminallawreforms.in/reports/lci-reports/172nd%20Report%20of%20Law%20Commission%20on%20Review%20of%20Rape%20Laws.pdf> (Last visited on 10.04.2023)



the date of filing of the charge sheet. One of the features of this Act is The Act is child-friendly procedure for the reporting, recording, and trial of cases. The Act requires that the statements of the child should be recorded in a child-friendly manner and in the presence of a counsellor or a social worker.

In a case where accused raped 8 year old victim, the Court noted the gravity of sexual violence and observed that, “sexual violence apart from being a dehumanizing act, is an unlawful intrusion of the right to privacy and sanctity of a female.” It further noted that it was important for courts to deal sternly and severely with sexual violence to deter further commission⁹. It must be understood that the objective of the POCSO Act was to protect children from sexual abuse and exploitation and to provide a child-friendly system for the investigation and trial of such offenses. The Act was enacted to provide a comprehensive legal framework for the protection of children from sexual abuse and exploitation.

The Act also provides for the protection of the identity of the child victim. However, the implementation of the Act has been slow and there are several challenges that need to be addressed in order to effectively protect children from sexual abuse and exploitation.

The scope of the POCSO Act is to provide a protective framework for children against sexual offenses and to ensure that perpetrators are held accountable for their actions. It aims to create a safe and secure environment for children to grow and develop, free from the fear of sexual abuse and exploitation.

Analyzing the Classification of Child Sexual Offenses under POCSO

The Act has several provisions that deal with different aspects of the offenses covered under it.

Penetrative sexual assault

Penetrative sexual assault is one of the most serious offences under the Act. Section 3 of the Act defines ‘penetrative sexual assault’. The definition of penetrative sexual assault is comprehensive and includes any sexual act with a child involving penetration. The definition covers a wide range of acts that can be considered sexual offences against children. This offence refers to sexual acts that involve penetration of any body part or object into the vagina, anus, urethra or mouth of a child. The Act recognizes that penetration can take different forms, including the use of objects or fingers, and that it can cause physical and psychological harm to the child. The offence of penetrative sexual assault under Section 3 of the Act requires proof of penetration beyond a reasonable doubt and the prosecution has to establish the foundational fact, the *actus*

⁹*State of Karnataka v. Krishnappa*, (2000) 4 SCC 75.



reus, that the appellant had sexually assaulted the victim within the meaning of Section 3 of the POCSO Act.¹⁰

Supreme Court dealt with the question that whether sexual intercourse between a man and his wife, who is a girl between the ages of 15 and 18, constitutes rape. As stated in Exception 2 of Section 375 of the IPC, it is not rape if a man engages in sexual activity with his wife who is older than 15 but younger than 18 years old with or without her knowledge or consent. This provision of IPC contradicts Section 3 of POCSO Act read with Section 5(n).

The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially antisocial behaviour. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority, etc.).¹¹

In a landmark judgement, *Independent Thought vs. Union of India*¹² the Supreme Court struck down the exception in Section 375 of the Indian Penal Code (IPC), which allowed sexual intercourse with a minor wife aged between 15-18 years. In this case, the Supreme Court narrowed the scope of the exception and resolved the inconsistency between the Indian Penal Code, 1860 (IPC) and the POSCO Act by raising the age of consent for 'marital' sexual intercourse to 18 years to uphold and protect the human rights of a married girl. Justice Madan Lokuropined that, if the husband of a girl child engages in sexual activity with her and conducts a penetrative sexual assault, he is guilty of an offence under the POCSO Act. Exception 2 of Section 375 IPC, which is not rape as specified under this exception, is contained in this system of pro-child legislation. It is a crime of aggravated penetrative sexual assault under Section 5(n) of the POCSO Act and is penalised under Section 6 of the POCSO Act.

Sexual assault

Section 7 of the POCSO Act defines sexual assault of a child. This section plays a significant role in the legal framework for protecting children from sexual offences in India.

¹⁰*Bhupen Kalita vs. State of Assam*, 2020 SCC OnLine Gau 2230.

¹¹United Nations Minimum Rules for the Administration of Juvenile Justice: The "Beijing Rules" (1985), pg. 3, Available at: <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/beijingrules.pdf> (Last visited on 10.04.2023).

¹²(2017) 10 SCC 800.



According to section 7, “Sexual assault” means –

- (i) intentionally touching the vagina, penis, anus or breast of the child or making the child touch the vagina, penis, anus or breast of the person or any other person, or;
- (ii) attempting to penetrate the vagina, anus, urethra or any part of the body of the child, with a penis, or any other object or;
- (iii) any other act with sexual intent that involves physical contact without penetration;
- (iv) any other act or conduct that may be considered as sexual assault under any law for the time being in force or under any custom or usage.

The definition of sexual assault under Section 7 is focused on acts committed with sexual intent that involve physical contact with the child. This definition includes acts like touching or attempting to penetrate a child's body without their consent. It also acknowledges that any other act that involves physical contact with sexual intent may be considered sexual assault. This broad definition covers a wide range of sexual offences that can be committed against a child.

Section 7 also takes into account the issue of consent, stating that any sexual assault is considered an offence even if the child appears to have given consent but is obtained through force, coercion, deception, or abuse of power or authority.

Section 7 is a crucial part of the legal framework for protecting children from sexual offences in India. The definition of sexual assault provided by this section is comprehensive and includes a wide range of acts that can be considered as sexual assault. It also acknowledges the importance of consent in sexual offences against children.

Section 7 and Skin to skin contact

Supreme Court in a judgement¹³ discarded the erroneous interpretation of Section 7 wherein Bombay High Court had ruled that the actions of the accused-appellant did not meet the criteria for "sexual harassment" under section 7 of the POCSO Act due to the fact that the groping occurred over the minor's clothing and did not involve direct skin-to-skin contact. As a result, the appellant would not be subject to punishment under the POCSO Act but would instead be charged under section 354 of the IPC for “outraging women's modesty.” Furthermore, the High Court also reduced the appellant's sentence.

¹³*Attorney General for India v. Satish and another*, 2022 (1) ABR (CRI) 1, Criminal Appeal No. – 1410 of 2021, decided on 18/11/2021.



The Supreme Court ruled that the High Court erred in its decision. With regards to Section 7 of the Act, the court explained that the first part of the section defines a specific class of sexual assault using specific words. The second part, on the other hand, refers to a more general class of sexual assault that goes beyond the specific words used in the first part. Essentially, anyone who touches a child's vagina, penis, anus, or breast with sexual intent, or who causes a child to touch the vagina, penis, anus, or breast of themselves or another person, would be committing an offense of "sexual assault" under Section 7 of the Act. Further, court held that, anyone who performs any other act involving physical contact with sexual intent, but without penetration, would also be guilty of "sexual assault" under Section 7 of the POCSO Act.

Section 11 of the Act defines 'sexual harassment' of a child.

“Sexual harassment” means –

(i) engaging in any unwelcome conduct of sexual nature, such as physical contact and advances, a demand or request for sexual favours, making sexually coloured remarks, or showing pornography, if such conduct interferes with the child's rights or is humiliating, offensive or creates a hostile and intimidating environment for the child; or

(ii) any other conduct of a sexual nature that may be considered sexual harassment under any law for the time being in force.

The definition of sexual harassment is comprehensive and covers a wide range of behaviours that can be considered as sexual harassment. The section recognizes that sexual harassment can occur through physical contact, verbal communication, and non-verbal gestures such as showing pornography. It also highlights that the unwelcome conduct of a sexual nature can create a hostile and intimidating environment for the child.

The section takes into account the issue of consent, stating that even if the child appears to have given consent, any conduct of a sexual nature that interferes with their rights or is humiliating, offensive or creates a hostile and intimidating environment is considered sexual harassment.

Section 11 of the POCSO Act also acknowledges that any other conduct of a sexual nature that may be considered sexual harassment under any law for the time being in force can be considered as sexual harassment under this section. This provision ensures that any conduct that falls within the definition of sexual harassment, regardless of its form, is punishable under the POCSO Act.



Child pornography

By pornography we generally mean the depiction of any content, whether in print or visual form, which contains an overt depiction, demonstration or display of sexual activity, sex organs or other obscene material with the intent to arouse the sexual excitement of the viewer. We call it child pornography when children are involved in said activities. Although only a prefix has been added to the term 'pornography' in this case, this small prefix horrifically increases the gravity of this term.

The United Nations Special Rapporteur on the sale of children, child prostitution and child pornography estimates that the criminal child sexual abuse material-market generates between US\$ 3 billion and 20 billion annually.¹⁴

Section 13 of the Act deals with the offence of child pornography. This provision is aimed at protecting children from being sexually exploited through the production, distribution, and consumption of pornographic content.

The definition of child pornography under Section 13 of the Act includes any visual depiction of a child engaged in sexually explicit conduct, or any visual depiction that appears to be of a child engaged in such conduct. The section also covers any audio representation of a child engaged in sexually explicit conduct or any audio representation that appears to be of a child engaged in such conduct.

Indian courts have taken a strict approach towards the offence of child pornography under Section 13 of the POCSO Act. The provision has been used effectively to punish those involved in the production and distribution of child pornography and to protect children from being sexually exploited through pornographic content.

The Supreme Court of India ordered the central and state governments to take urgent steps to prevent the online sexual exploitation of children. The court observed that the easy availability of technology and the internet had made it easier for individuals to produce and distribute child pornography, and that it was necessary to take preventive measures to protect children from such exploitation. The Supreme Court also directed the central and state governments to take urgent steps to prevent the circulation of child pornography on the internet. The Court ordered the establishment of a nodal agency to receive and investigate complaints related to such

¹⁴ A/HRC/12/23, Paragraph 44 *available at*:

<https://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A.HRC.12.23.pdf> (Last visited on 17.02.2023)



content.¹⁵The Act provides for strict punishment for those involved in the production, distribution, and possession of child pornography.

The offence of child pornography under Section 13 is punishable with imprisonment of up to 5 years and a fine. If the offence involves a child below the age of 12 years, the punishment can be extended up to 7 years and a higher fine. In addition to the punishment for the offence, the court may also order the deletion or destruction of the pornographic material and may also direct the internet service provider to block access to the material.

The provision of Section 13 of the POCSO Act has been used to punish several individuals involved in the production and distribution of child pornography.

Failing to report offence under the Act

Section 19 of the Protection of Children from Sexual Offences (POCSO) Act deals with the mandatory reporting of sexual offenses against children. This section imposes a legal duty on any person who has knowledge or reason to believe that an offense under the POCSO Act has been committed to report the same to the concerned authorities. The section also provides protection to whistleblowers who report offenses in good faith. The identity of the person reporting the offense is kept confidential, and they cannot be subjected to any legal action or harassment for providing such information.

The Section highlights the importance of authorities' role in receiving and acting on reports of sexual offenses against children. The authorities must receive and act on such reports in a timely and efficient manner to ensure the safety and well-being of the child.

Section 20 and 21 imposes a legal obligation on certain persons to report sexual offenses committed against children. These persons include public servants, medical practitioners, and educational institutions. Failure to report such offenses is punishable under the Act. It highlights the responsibility of public servants, such as police officers and district collectors, to ensure that sexual offenses against children are reported and recorded. Public servants who fail to report or record such offenses can be punished under the Act. Medical practitioners who examine a child who they suspect has been sexually assaulted are required to report the offense to the concerned authorities. They are also required to maintain a record of the examination and provide it to the authorities when requested. Failure to do so can result in punishment under the Act.

¹⁵In Re: Prajwala letter dated 18.2.2015 videos of sexual violence and recommendations, Suo Moto Writ Petition (CrI) No(S). 3/2015.



The Act is gender neutral

The Act is a gender-neutral law, which means that it applies to both male and female offenders as well as male and female victims. This is evident in the specific provisions of the Act that do not discriminate on the basis of gender, and some of these provisions are:

1. Definition of 'Offender': The POCSO Act defines an offender as any person who commits an offense under this Act. This definition does not distinguish between male and female offenders.
2. Definition of 'Sexual Assault': The Act defines sexual assault as any sexual act or conduct with a child, including penetration, touching, and exposure. The definition does not specify that only male offenders can commit sexual assault.
3. Punishment for Sexual Offenses: The Act prescribes stringent punishments for sexual offenses committed against children. These punishments are applicable to both male and female offenders. For instance, the punishment for penetrative sexual assault can range from a minimum of 10 years to life imprisonment, regardless of the gender of the offender.
4. Protection of Child Witnesses: The Act provides for the protection of child witnesses during the trial of sexual offenses. This includes measures such as conducting the trial in-camera and protecting the identity of the child. These protections are gender-neutral and apply to both male and female victims and witnesses.
5. Special Courts: The Act mandates the establishment of special courts for the speedy trial of sexual offenses against children. These courts are gender-neutral and provide a safe space for victims of sexual offenses, regardless of their gender.

Challenges in the implementation

Michael Freeman, the founding editor of the International Journal of Children's Rights, claims that “the underlying problem of child abuse are bias towards children, particularly the belief that human rights don't really equally apply to adults and children.” He opined in the book that, “The roots of child abuse lie not in parental psychopathology or socio-environmental pressure (though their influences cannot be discounted), but in a sick culture that denigrates and depersonalises children, reducing them to property, to sex objects, so that they become legit targets of both adult violence and lust.”¹⁶

¹⁶ Freeman, Michael (1997). “Beyond conventions—towards empowerment”. *The Moral Status of Children: Essays on the Rights of the Child*. Netherlands: MartinusNijhoff Publishers. p. 76. ISBN 978-9041103772.



Lack of awareness: One of the key challenges is the lack of awareness about the provisions and implications of the POCSO Act among the general public, including parents, teachers, and even law enforcement agencies. This can lead to underreporting of cases and inadequate support for victims.

Inadequate infrastructure and resources: The effective implementation of the POCSO Act requires appropriate infrastructure and resources, such as child-friendly police stations, trained personnel, forensic laboratories, and counseling services. However, many regions in India lack these essential resources, making it difficult to effectively implement the provisions of the act.

Slow judicial process: Delays in the judicial process can be a significant challenge in implementing the POCSO Act. Lengthy trials, adjournments, and backlog of cases often result in prolonged trauma for the victims and may discourage them from pursuing legal recourse. In the case of *Alakh Alok Srivastava v. Union of India and Others*¹⁷ the Supreme Court established a set of instructions for Special Courts presiding over cases under the POCSO Act, 2012. These guidelines aim to ensure compliance of Section 35¹⁸, that the trial is to be concluded within a timeframe of one year from the date when the court acknowledges the offense.

Victim sensitivity and support: Providing sensitive and supportive treatment to child victims is crucial for their well-being and successful prosecution of offenders. However, there is a need for specialized training for police officers, prosecutors, and judges to handle child victims with care and empathy.

Social stigma and victim intimidation: Societal stigma associated with reporting cases of child sexual abuse can act as a deterrent for victims and their families. Fear of retaliation, victim blaming, and social exclusion often prevent victims from coming forward, leading to a significant underreporting of cases.

Coordination among stakeholders: Effective implementation of the POCSO Act requires collaboration and coordination among various stakeholders, including law enforcement agencies, child welfare committees, medical professionals, and NGOs. Lack of coordination and communication among these entities can hamper the successful implementation of the act.

Cybercrime challenges: With the rise of digital technology, child sexual abuse has increasingly moved to online platforms. The investigation and prosecution of such cases pose unique challenges due to the complexity of digital evidence and the transnational nature of cybercrime.

¹⁷(2018) 17 SCC 291.

¹⁸Section 35(2)-The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.



Conclusion:

Child abuse and neglect often cause a permanent scar on a child that is difficult to erase from the mind and body. It can have a profound effect on how a child maintains relationships during adolescence and robs him of his self-confidence. Children may not be able to work normally at school, college or work as adults. There is no language or logic that makes a child feel like he or she has been sexually abused. As a result, the mind begins on a voyage of imaginary masks and fences in order to give the theatre a more ‘acceptable’ appearance, leading to the most complicated problems of adolescence, such as correcting shame, embarrassment, and, most importantly, silence.¹⁹

The Protection of Children from Sexual Offenses (POCSO) Act in India plays a vital role in preventing and responding to child sexual abuse. This paper has examined the implementation of the Act and identified various challenges that hinder its effectiveness.

The challenges include a lack of awareness about the act, inadequate infrastructure and resources, slow judicial processes, the need for victim sensitivity and support, social stigma and victim intimidation, and coordination issues among stakeholders. These challenges underscore the importance of addressing systemic gaps and improving the implementation of the act.

Efforts must be made to raise awareness about the provisions and implications of the POCSO Act among the general public, including parents, teachers, and law enforcement agencies. Adequate infrastructure, such as child-friendly police stations, trained personnel, forensic laboratories, and counselling services, should be provided to support the implementation of the act effectively.

The judicial process needs to be expedited, ensuring timely trials and reducing the backlog of cases. Specialized training programs should be conducted for police officers, prosecutors, and judges to handle child victims with sensitivity and empathy.

Combatting social stigma associated with reporting child sexual abuse is crucial. Society must work towards creating a safe and supportive environment for victims and their families, encouraging them to come forward and seek justice.

Furthermore, enhanced coordination and collaboration among stakeholders, including law enforcement agencies, child welfare committees, medical professionals, and NGOs, are essential for the successful implementation of the act. A comprehensive and coordinated approach is necessary to address the multifaceted challenges of child sexual abuse prevention and response.

¹⁹Ganesh Indira Maya, “when sexuality is Violence”, *Voices for Change: A Journal on Communication Development*, Vol. 3 (1), April 1999. p. 50-52.



While the POCSO Act is a significant step forward in protecting children from sexual offenses, there is a continuous need for evaluation, refinement, and adaptation to address emerging issues, such as the rise of cybercrime. By addressing the challenges identified in this paper, India can strengthen its efforts to protect children, provide justice to victims, and create a safer society for future generations.
