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## **A STUDY ON POSCO ACT, 2012**

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### **ABSTRACT**

Many of us experience total and utter exhaustion when we are confronted with a case of child abuse while working in a busy outpatient clinic. Even though the "Protection of children from sexual offenses act, 2012" is presently in effect, it is difficult to put into reality due to its many shortcomings, despite the fact that it is currently in force. Despite the many positive aspects of the act, this post offers commentary on the moral and legal challenges that we face on a daily basis.

**KEYWORDS:** child sexual abuse, POCSO, challenges

### **INTRODUCTION**

The Protection of Children from Sexual Offenses (POCSO) Act, which was approved by the government in 2012, was enacted in order to combat the problem of sexual assaults committed against children. The Act as well as the Rules that accompanied it have been in force ever since the 14th of November, 2012. The Protection of Children from Sexual Offenses Act of 2012 was passed with the intention of simplifying the process by which parents may safeguard their offspring from being subjected to sexual exploitation or abuse. A new legislation that specifically addresses crimes committed against children and teenagers has been enacted into law for the very first time.

In order to be deemed a child and so eligible for protection under the POCSO Act of 2012, an individual must be under the age of 18 in order for the law to apply to them. The legal definitions of these offenses have never before been articulated in such a way that is both obvious and precise. Sanctions are given a rating that corresponds to their appropriateness given the gravity of the offense. There is a vast variety of possible penalties, ranging from minor fines to extended periods of incarceration. The Court has the authority to impose a fee as a sanction of last resort.



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## **LITERATURE REVIEW**

**HITABHILASH MOHANTY (2021)**The POCSO Act is a comprehensive law in the Philippines that protects children from sexual assault, sexual harassment, and pornography by providing child-friendly mechanisms for reporting, recording evidence, investigating, and speedily trying cases involving minors in specially designated Special Courts.

**MICHAEL REUBEN, FAUZIA MOHAMED, FELICIAN MUTASA (2021)**Community-based child protection mechanisms were shown to be effective in the study's goal of reducing sexual abuse of children. The interventions have led to a number of positive outcomes, including increased reporting of sexual violence against children to the police and improved case handling by law enforcement and social service agencies, as well as improved reporting of sexual violence cases to law enforcement and social service agencies, as well as to community-based child protection mechanisms. The approaches have improved case management and boosted collaboration amongst stakeholders in Rambo District. Interventions via community-based child protection mechanisms are hampered in Rombo District due to a lack of resources and expertise. Researchers agree that the best way to stop sexual abuse of children is to actively participate in community child protection systems, such as giving financial resources and training for community members.

**CHILWALO, M. (2020)**The Girl Power Program in Zambia, run by Plan International, is used to illustrate the need of community-based child safety measures in tackling gender-based violence in the classroom. Community-based child protection mechanisms are one of the most essential strategies to address a variety of community challenges in many African nations, including Zambia, while receiving little attention and appreciation. Communities have access to local level structures, members trust such structures because they are grounded in locally established norms and practices, and those structures undeniably endure long after the individuals who aided in their development or establishment are gone. Many different arguments for and against the value of these buildings are presented in this page.

**MAYANK TIWARI (2020)**On November 14, 2012, the Protection of Children from Sexual Offenses Act (POCSO) went into effect, making it illegal to sexually abuse a child or engage in child pornography. The Act adds 46 new articles to the Indian Penal Code (IPC) to account for crimes committed by minors that were previously unrecorded. The definition of criminally punishable severe penetrating sexual assault was expanded to encompass abuse committed by a public servant or law enforcement official.

**RENU RENU, GEETA CHOPRA (2019)**Child sexual abuse (CSA), the most heinous crime against minors, is often committed in secret. It's the kind of crime that often doesn't get reported.



The effects of CSA are long-lasting and difficult to overcome. It is now understood that a child's mental health may be severely compromised by exposure to toxic stress. This paper focuses on CSA research conducted in India. The POCSO Act (Protecting Children from Sexual Offenses) was passed into law in 2012. There are several obstacles to overcome while putting POCSO into practice. The article also discusses POCSO research, including mandatory reporting, consensual sex, physicians' preparedness to deal with CSA victims, and the status of special courts under POCSO

## **.EVOLUTION OF THE POCSO ACT, 2012**

In 2007, the MWCD performed a poll that found that 53% of all children were mistreated. At the end of the survey, 99.6 percent of participants said they supported passing laws to safeguard children from abuse. The POCSO Act became law on May 23, 2012, the day after it was proposed and approved by Congress and the House of Representatives. As a result, the POCSO Act, 2012 was passed to shield minors from sexual offenses and guarantee their rights throughout the judicial process.

## **INTRODUCTION OF THE POCSO ACT, 2012**

The Protection of Children from Sexual Offenses Act, 2012 was pushed through by the Ministry of Women and Child Development as a means of dealing with heinous sexual offenses committed against children. All persons under the age of eighteen are considered children for the purposes of the Act, which recognizes the paramount significance of a child's healthy physical, emotional, intellectual, and social development at all ages.

Sexual assault is considered "aggravated" and punishable by up to 10 years in jail when the victim is mentally ill or when the abuser is a person in a position of trust or authority over the victim, such as a family member or a police officer. Those who participate in or aid in the sexual exploitation of children are also subject to prosecution under the law's abetment clause.

According to Section 44 of the POCSO Act of 2012, the NCPCR and SCPCR have the authority to enact legislation. In order to fulfill its mandate, the NCPCR has taken up the issue in the following domains:-

- Courts having exceptional jurisdiction are designated;
- Public prosecutors appointed as "special";
- Provision of guidance to various stakeholders within the authority granted by Section 39 of the POCSO Act;
- Design and implementation of courses for various stakeholders' training;
- measures to educate the public about the POCSO Act's provisions;



- The creation of Child Welfare Committees, District Child Protection Units, and Special Juvenile Police Units;

It is crucial to keep track of the number of First Information Reports (FIRs) filed, charge sheets submitted, victims reimbursed, defendants found guilty or not guilty, hostile witnesses, appeals filed, etc., under the Act.

Sexual abuse charges have been pending before a special or session's court for over a year.

How many compensation claims have been pending for more than 30 days after being received by the district legal services authority?

## **PROTECTION OF FEMALE CHILD FROM SEXUAL OFFENCES**

The POCSO Act, the Indian Penal Code, the Indian Criminal Procedure Code, the Indian Evidence Act, and the Vishakha Guidelines are just a few of the laws that contain protections for girls and young women. There are protections for women even in the Constitution of India, the supreme law of our land. The present legal framework is discussed below.

### **Constitution of India**

Article 45 mandates that the state must take all necessary measures to ensure that all children under the age of fourteen have access to appropriate early childhood care and education. All types of education up to and including the 14th year are covered by this Directive Principle. Article 45 supplements Article 24 by requiring children under 14 to be enrolled in school if they are prohibited from working. It is recommended that clauses (e) and (f) of Article 39 be strengthened in Article 24 to promote educational fairness for all children. Article 45 essentially affirms the worth of every child and mandates that all children under the age of 14 must be provided with a free and compulsory education.

However, in Vishal Jeetv.Union of India, this Court issued a number of orders to the State and Central Governments in an effort to eradicate child prostitution and to provide adequate rehabilitation facilities, qualified senior staff, and medical and mental health professionals.

### **Indian Penal Code 1860:**

Nothing is worse than a court system that treats a child sexual abuse victim as if they were an innocent bystander, or police action that compounds the victim's feelings of powerlessness. She argues that the present legal framework and investigative and cross-examination practices need to be revised to better aid the rehabilitation of abused children. Many laws against sexual assault



may be found in India's Penal Code from 1860. These statutes show that this problem was still being addressed in the 1860s.

The Protection of Children from Sexual Offences (POCSO) Act, 2012 regulates sexual offenses committed against kids under the age of 18. The Act includes a definition for "penetrative sexual assault," a new word. An offense is more severe when committed by a police officer, public official, member of a remand home, protective home, prison, hospital, educational institution, or member of the armed or security forces.

The Act and its stipulations went into force on November 14, 2012. The Act is a comprehensive law meant to protect children from crimes of sexual assault and harassment as well as pornography, including child-friendly mechanisms for reporting, recording evidence, investigating, and speedy trial of offenses through appointment of Special Public Prosecutors and designated Special Courts. The Act includes processes for reporting, recording, investigation, and trial that are more child-friendly. The Act permits severe punishments that increase with the gravity of the crime.

As required by Section 39 of the POCSO Act, state governments must create guidelines for the employment of non-governmental organizations (NGOs), professionals, and experts throughout the pre-trial and trial phases of a child's case. In September 2013, in response to requests from many state governments, the Ministry of Women and Child Development produced Model Guidelines that may be utilized as-is or modified by state governments and UT administrations to better execute the aforementioned Act. The National Commission for the Protection of Child Rights (NCPCR) reports that seven States/Union Territories (excluding Uttarakhand) have acknowledged the formulation/acceptance of guidelines for different stakeholders.

The Protection of Children from Sexual Offenses Act of 2012 allows for two state commissions to monitor the law's provisions in a method that may be mandatory, with the goal of ensuring that children are protected from sexual offenses. As part of its mandate, the NCPCR has taken on the following tasks related to POCSO Act implementation:-

1. Designation of Special Courts;
2. Appointment of Special Public Prosecutors;
3. Formulation of Guidelines u/s 39 of POCSO Act for various stakeholders;
4. Modules for educating diverse stakeholders are designed and implemented in this step;
5. Steps made to raise awareness of the POCSO Act's provisions;
6. Children's Committees, District Child Protective Units (DCPUs), and Special Juvenile Patrol Units (SJPSU) were established (SJPSUs);
7. Under the Act there have been a number of FIRs, instances in which charges have been brought against a person or persons and compensation has been paid to victims, as well as



cases in which the accused has been convicted or acquitted and situations in which witnesses have been hostile.

8. There have been more than a year's worth of sexual abuse cases awaiting trial in Special/Session Court;
9. Instances in which District Legal Services Authority has received compensation claims, the Special Court has awarded compensation, and situations in which compensation has been awarded but not yet received has been outstanding for more than 30 days, for example.

### **IMPORTANT PROVISIONS OF THE ACT**

- An 18-year-old is defined by the POCSO Act as a kid,
- Under the POCSO Act, there are five sorts of sexual offences against minors. sexual harassment and sexual assault are all forms of aggravated penetrative sex assault, as are the other four,
- Additionally, the Act punishes anyone who aids or assists in the commission of an offence or an attempt to commit one,
- Under the POCSO Act, using a kid for pornographic purposes, such as depicting a child's genital organs, using a child engaging in actual or simulated sexual actions, or depicting a child in an indecent or obscene manner, constitutes an offence,
- The POCSO Act provides for the establishment of a Special Court to expedite trials and conduct trials in an environment that is child-friendly.
- Trial must be completed within a year of the Special Court's taking notice of the offence.

### **CONCLUSION**

Most people are unaware of the POCSO Act of 2012, which was approved by Parliament to protect minors from sexual assault. It would be unfair to the author to suggest that the people charged with putting this law into effect find it unintelligible. The horrible rape case in Delhi did not have POCSO clauses included in the first FIR till the 17th of April 2013, the Delhi Police said.

The administrative level of this law, even if it is already in force, is inadequate. Workshops conducted by professional groups should focus on ethical, legal, and clinical issues. It is crucial to spread awareness of children's rights and protection among policymakers, educators, parents, and kids.





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