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# **GENDER NEUTRALITY IN PRACTICE: PROTECTION OF MALE CHILD VICTIMS OF RAPE UNDER THE POCSO ACT, 2012**

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## **ABSTRACT**

Child sexual abuse remains a critical issue in India, yet male victims have historically been marginalized in both law and social discourse. The Protection of Children from Sexual Offences Act, 2012 (POCSO), establishes a gender-neutral legal framework that recognizes all children as potential victims, addressing gaps in Section 375 of the Indian Penal Code and the proposed Bharatiya Nyaya Sanhita. POCSO's inclusive definition of penetrative sexual assault and the absence of marital or gender-based exceptions make it uniquely capable of protecting male child victims. Judicial pronouncements demonstrate that convictions under POCSO for male victims are achievable, but empirical data reveal persistent challenges: boys constitute a small fraction of reported cases, and sex-disaggregated outcomes for investigation, prosecution, and conviction are largely unavailable. Social and institutional barriers, including patriarchal notions of masculinity, victim-blaming, and dismissive attitudes, further inhibit reporting and access to justice. This study integrates doctrinal analysis, empirical evidence, and policy critique to examine the efficacy of POCSO in safeguarding male children. It argues that statutory gender neutrality must be complemented by enhanced data collection, institutional sensitization, child-friendly reporting mechanisms, and public awareness initiatives to ensure meaningful protection and equitable justice for all child victims.

## 1. Introduction: The Paradox of Gender-Neutral Protection in a Gender-Specific Penal Law

Sexual violence against children constitutes one of the gravest forms of human rights violation, cutting across gender, class, and social boundaries. Yet, within the Indian criminal justice system, protection against sexual offences has historically been structured through a profoundly gendered lens. The traditional definition of rape under Section 375 of the Indian Penal Code, 1860 which now substantially retained under Section 63 of the Bharatiya Nyaya Sanhita, 2023, recognises only women as victims and only men as perpetrators. This statutory framework, while intended to address the overwhelmingly gendered nature of sexual violence, simultaneously renders male victims of rape legally invisible within the core offence of rape. This exclusion becomes especially troubling in the context of child sexual abuse, where vulnerability is determined not by gender but by age, dependence, and power asymmetries.

The enactment of the Protection of Children from Sexual Offences Act, 2012 (POCSO) marked a decisive shift in India's legislative response to child sexual abuse. For the first time, Parliament adopted a **fully gender-neutral framework**, recognising children as rights-bearing subjects independent of their sex. POCSO criminalises penetrative and non-penetrative sexual assault against all children below eighteen years and establishes a child-friendly procedural architecture for investigation and trial. In doing so, it fills the substantive vacuum left by the adult-centric and gender-specific rape provisions of the IPC/BNS, particularly for **male child victims**, who otherwise lack recognition under the principal offence of rape.

Despite this progressive statutory design, the experiential reality of male child victims under POCSO remains deeply affected with systemic challenges. Cultural constructions of masculinity, social stigma surrounding same-sex abuse, institutional bias during investigation, and gaps in victim-support mechanisms often result in underreporting, misclassification of offences, and secondary victimisation. Further, while POCSO ensures sentencing parity with rape in aggravated forms, the symbolic exclusion of boys from the legal category of "rape" continues to raise questions about substantive equality, expressive justice, and constitutional consistency.

Against this backdrop, this paper critically examines **gender neutrality in practice** through the specific lens of male child victims under the POCSO Act, 2012. It analyses the gender-neutral architecture of POCSO, its doctrinal interface with Section 375 IPC/Section 63 BNS,

and the extent to which it effectively bridges the legal gap for male victims of penetrative sexual abuse. The study further evaluates judicial approaches, empirical trends in reporting and conviction, and the persistent implementation deficits that undermine POCSO's transformative promise.

Methodologically, this research adopts a **doctrinal and socio-legal approach**, relying on statutory analysis, judicial decisions, National Crime Records Bureau (NCRB) data, and secondary literature. By situating POCSO as India's only operational model of gender-neutral sexual offence law, the paper also assesses whether its normative framework can inform future reforms toward **gender-neutral adult rape legislation**.

## 2. Gender-Neutral Architecture of the POCSO Act: Legislative Intent and Statutory Design

The Protection of Children from Sexual Offences Act, 2012 (POCSO) represents a decisive legislative departure from the gender-specific logic traditionally embedded in Indian criminal law. Enacted to address widespread and under-reported child sexual abuse, the Act was expressly designed to be **gender-neutral, child-centric, and rights-based** in both its substantive and procedural architecture. The Statement of Objects and Reasons to POCSO recognises that existing penal provisions under the Indian Penal Code, 1860 were inadequate to deal with sexual offences against children in a comprehensive manner and failed to address the vulnerability of children irrespective of sex.<sup>1</sup>

At the core of POCSO's gender-neutral framework lies its **age-based definition of "child."** Section 2(1)(d) defines a child as "any person below the age of eighteen years," deliberately eschewing any reference to sex, gender identity, or marital status.<sup>2</sup> This marks a critical conceptual shift from the adult rape framework under Section 375 IPC, which is explicitly gendered in its victim-perpetrator formulation. Equally significant is the consistent use of neutral statutory language such as "whoever," "any person," and "child" throughout the Act, ensuring that both victims and offenders are treated without gender classification.

The substantive offences created under POCSO further reinforce this neutrality. Section 3 defines "**penetrative sexual assault**" in broad physiological terms, including penetration of the

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<sup>1</sup> The Protection of Children from Sexual Offences Act, No. 32 of 2012, Statement of Objects and Reasons (India).

<sup>2</sup> Protection of Children from Sexual Offences Act, No. 32 of 2012, § 2(1)(d) (India).

penis into the vagina, mouth, urethra, or anus of a child, or the insertion of any object or manipulation causing penetration.<sup>3</sup> The provision neither restricts the victim to a particular sex nor limits the offender's gender. Sections 5 and 6 create aggravated forms of penetrative sexual assault with enhanced punishment, ensuring sentencing parity with the gravest categories of rape under the IPC. Similarly, Sections 7 and 9 define **sexual assault and aggravated sexual assault** without any gendered distinctions.<sup>4</sup> Through this design, POCSO effectively criminalises conduct that would amount to "rape" in substance even when the victim is a boy, a protection that the IPC/BNS framework fails to provide.

Beyond substantive offences, POCSO introduces a comprehensive **victim-centric procedural regime** that applies equally to male and female children. The Act mandates child-friendly reporting mechanisms, in-camera trials, protection from hostile questioning, and the presence of support persons during investigation and trial.<sup>5</sup> Special Courts established under Section 28 are empowered to ensure speedy trials and sensitive adjudication. Importantly, Sections 29 and 30 introduce statutory presumptions of guilt and culpable mental state against the accused once foundational facts are proved, significantly reducing the evidentiary burden on child victims regardless of gender.<sup>6</sup>

Legislative debates and subsequent policy documents indicate that Parliament consciously adopted this gender-neutral structure in response to empirical evidence that **boys constitute a significant proportion of child sexual abuse survivors**, yet remain socially invisible due to stigma and masculinity norms.<sup>7</sup> International child rights instruments, particularly the UN Convention on the Rights of the Child, also informed this rights-based framework by affirming equal protection to all children from sexual exploitation and abuse.<sup>8</sup>

However, while POCSO succeeds in creating a formally gender-neutral statutory architecture, its effectiveness as a tool of **substantive equality** depends on implementation and social reception. The Act's neutrality in text does not automatically translate into neutrality in practice, especially for male child victims who continue to face disbelief, under-reporting, and institutional bias. Nevertheless, as a legislative model, POCSO remains India's **most advanced**

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<sup>3</sup> Id. § 3.

<sup>4</sup> Id. §§ 7, 9.

<sup>5</sup> Id. §§ 24–27 (child-friendly reporting and trial procedures).

<sup>6</sup> Id. §§ 29–30 (statutory presumptions).

<sup>7</sup> Vikas Choudhry et al., Child Sexual Abuse in India: A Systematic Review, 13 PLOS ONE e0205086 (2018).

<sup>8</sup> Convention on the Rights of the Child, art. 19, Nov. 20, 1989, 1577 U.N.T.S. 3.

articulation of gender-neutral sexual offence law, offering critical doctrinal lessons for future reforms of adult rape legislation.

### 3. “Rape” vs “Penetrative Sexual Assault”: Doctrinal Interface with IPC/BNS

The doctrinal disjunction between the offence of “rape” under the general penal law and “penetrative sexual assault” under the POCSO Act reveals the fundamentally gendered architecture of Indian rape jurisprudence. Section 375 of the Indian Penal Code, 1860—substantially retained under Section 63 of the Bharatiya Nyaya Sanhita, 2023—defines rape exclusively in terms of **a man committing sexual acts upon a woman without consent**, thereby excluding male and transgender persons from the legal category of rape.<sup>9</sup> In contrast, Sections 3–4 and 5–6 of the Protection of Children from Sexual Offences Act, 2012 adopt a **physiologically descriptive and gender-neutral definition** of penetrative sexual assault applicable to “any child,” irrespective of sex.<sup>10</sup>

From a doctrinal standpoint, the meaning of “penetration” under POCSO is significantly broader than under Section 375 IPC. While rape under the IPC traditionally prioritized penile–vaginal penetration (with later judicial expansion), POCSO criminalises **penetration of any object or body-part into the vagina, mouth, urethra, or anus of a child**, or any manipulation causing penetration.<sup>11</sup> This inclusive formulation ensures that invasive sexual violations against male children — including sodomy and oral penetration — fall squarely within the statutory offence. Moreover, unlike the IPC/BNS framework, POCSO renders **consent legally irrelevant** where the victim is below eighteen years, reflecting the settled principle that a child is legally incapable of giving valid sexual consent.<sup>12</sup>

A critical doctrinal departure lies in the **complete absence of any gender classification or marital exception under POCSO**. While the IPC historically preserved spousal immunity through the marital rape exception, POCSO contains **no spousal exemption, no gender restriction, and no relational limitation**.<sup>13</sup> This reflects a decisive shift from patriarchal compromise to **absolute child sexual autonomy**, affirming the primacy of child rights over

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<sup>9</sup> Indian Penal Code, 1860, § 375 (India); Bharatiya Nyaya Sanhita, 2023, § 63 (India).

<sup>10</sup> Protection of Children from Sexual Offences Act, No. 32 of 2012, §§ 3–6 (India).

<sup>11</sup> Id. § 3(a)–(d).

<sup>12</sup> *State of H.P. v. Sanjay Kumar*, (2017) 2 SCC 51.

<sup>13</sup> Protection of Children from Sexual Offences Act, 2012 (no spousal exception); contrast with Indian Penal Code, 1860, § 375 Exception 2.

marital or social status.

POCSO thus performs a crucial **gap-filling function** for male child victims who remain excluded from the offence of rape under Section 375 IPC and Section 63 BNS. Judicial practice demonstrates that where a boy is subjected to penetrative sexual abuse, prosecution is necessarily routed through Sections 3–6 of POCSO because the offence cannot be legally labelled as “rape” under the general penal law.

News-reported cases further illustrate the operational reality of this legal vacuum. In **Delhi (2024)**, a sessions court sentenced an accused to **twenty years’ rigorous imprisonment for sodomy of a minor boy** under the POCSO framework.<sup>14</sup> In another **Noida case (2019)**, a POCSO court imposed **twenty years’ imprisonment** for aggravated penetrative sexual assault on a boy child.<sup>15</sup> These cases confirm that while substantive punishment parity with rape exists, the offence continues to be legally classified only as “sexual assault.”

This generates a significant **doctrinal and symbolic tension**. Although aggravated penetrative sexual assault under Sections 5–6 of POCSO attracts punishment equal to or even harsher than aggravated rape under the IPC/BNS, the offence continues to be linguistically classified as “sexual assault” rather than “rape.”<sup>16</sup> Scholars have argued that this **semantic segregation weakens the expressive function of criminal law**, by denying male victims the same normative recognition attached to the crime of rape.<sup>17</sup> From the standpoint of **constitutional equality under Article 14**, similarly situated victims of penetrative sexual violence receive unequal symbolic recognition solely on the basis of gender.<sup>18</sup> Thus, while POCSO secures **formal equality in protection and punishment**, it falls short of ensuring **substantive equality in expressive justice** for male child victims.

#### 4. Emerging Legal Responses Male Child Victims under POCSO

The Protection of Children from Sexual Offences Act, 2012 (POCSO) is textually explicit in its gender-neutral orientation, employing the ungendered category of “child” and extending

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<sup>14</sup> Delhi Court Sentences Man to 20-Yr Rigorous Imprisonment for Sodomy of Minor, THE PRINT (Sept. 2024).

<sup>15</sup> 2019 Sodomy Case: POCSO Court Awards Man 20 Years’ RI, TIMES OF INDIA (Noida ed., 2024).

<sup>16</sup> Protection of Children from Sexual Offences Act, 2012, §§ 5–6; Indian Penal Code, 1860, § 376; Bharatiya Nyaya Sanhita, 2023, §§ 64–66.

<sup>17</sup> Dan M. Kahan, What Do Alternative Sanctions Mean?, 63 U. CHI. L. REV. 591 (1996) — how legal labels communicate social meaning

<sup>18</sup> Protection of Children from Sexual Offences Act, 2012, §§ 5–6; Indian Penal Code, 1860, § 376; Bharatiya Nyaya Sanhita, 2023, §§ 64–66.

criminal liability to “any person” who commits sexual offences against minors. Yet the lived juridical visibility of male child victims within reported case-law and publicly accessible judicial records remains limited. Unlike female-victim POCSO litigation, which has generated a substantial body of published High Court and Supreme Court jurisprudence, male-victim adjudication is largely traceable only through isolated trial-court outcomes reported in the press, rather than through reasoned appellate judgments.<sup>19</sup> This structural invisibility within formal legal reporting itself constitutes an important empirical and doctrinal finding about how gender operates within child-protection adjudication.

Notwithstanding this limitation, verified newspaper reporting does confirm that courts are, in practice, applying POCSO to cases involving male child victims when such cases reach trial. A POCSO Special Court in Thiruvananthapuram, for instance, sentenced a hostel warden to six years’ rigorous imprisonment for sexually assaulting an 11-year-old boy with hearing and speech impairment, relying primarily on the credibility of the child’s testimony and medical corroboration.<sup>20</sup> In another verified case from Kerala, a clinical psychologist was sentenced to seven years’ rigorous imprisonment for sexually abusing a minor boy who had approached him for counselling.<sup>21</sup> These cases, though available only through media accounts rather than published judgments, demonstrate that at the level of trial courts, POCSO is being operationalised in a manner consistent with its gender-neutral design, and that boy-victims are not being excluded from the protective ambit of the statute in principle.

At the same time, there is a marked absence of reported High Court or Supreme Court jurisprudence that explicitly theorises, interprets, or elaborates upon male child victimisation under POCSO.<sup>22</sup> Unlike female-victim cases, where appellate courts have repeatedly clarified issues of consent, delay in FIR, medical evidence, and sentencing, male-victim cases rarely appear in published law reports. This absence is not merely accidental; it reflects deeper patterns of under-reporting, social stigma, and the lower likelihood of such cases progressing through the appellate system.<sup>23</sup> The limited availability of reasoned judicial discourse on male child sexual abuse consequently restricts the development of a coherent doctrinal framework

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<sup>19</sup>Aparna Chandra & William Hubbard, *Gender Neutrality and the Indian Rape Law*, 7 NUJS L. Rev. 1, 29–31 (2014).

<sup>20</sup>*State v. Jeen Jackson Selvanos*, Fast Track Special Court (POCSO).

<sup>21</sup>*State v. Dr. Gireesh K.*, SC No. 927/2019, Fast Track Special Court (POCSO).

<sup>22</sup>National Judicial Data Grid, *POCSO Case Pending Reports* (2024), <https://njdg.ecourts.gov.in>.

<sup>23</sup>Subramaniyan et al., *Silence of Male Child Sexual Abuse in India*, 59 Ind. J. Psychiatry 202 (2017), <https://pmc.ncbi.nlm.nih.gov/articles/PMC5540014/>.

specific to male victimisation under POCSO.

This demonstrable jurisprudential scarcity has important implications for both legal scholarship and policy reform. While trial-court convictions reported in the press confirm that male children are not excluded from protection in practice, the lack of appellate-level engagement means that questions concerning evidentiary appreciation, trauma-informed adjudication, sentencing consistency, and long-term victim rehabilitation for boys remain under-theorised within Indian criminal jurisprudence.<sup>24</sup> The result is a regime where gender neutrality exists robustly at the level of statutory text, partially at the level of trial-court enforcement, but weakly at the level of doctrinal consolidation through precedent.

In sum, the legal response to male child sexual violence under POCSO is best characterised as formally inclusive yet jurisprudentially under-developed. While isolated convictions affirm that boys are recognised as legitimate victims under the Act, the paucity of published male-victim judgments limits the development of sustained judicial reasoning on this dimension of child sexual abuse.<sup>25</sup> This gap underscores the continuing marginality of male victimhood within the public, legal, and institutional imagination, even within a formally gender-neutral statutory regime.

## 5. Empirical Realities and Implementation Challenges for Boy Victims

Despite the formal gender-neutrality of the Protection of Children from Sexual Offences Act, 2012 (POCSO), empirical evidence demonstrates that male child victims face persistent barriers in reporting, investigation, and access to justice. National Crime Records Bureau (NCRB) data indicate that boys constitute only a small fraction of registered POCSO victims. In 2022, out of 38,444 victims registered under Sections 4 and 6 of POCSO, 38,030 were girls and only 414 were boys. At the national level, the total number of POCSO-registered victims in 2022 was 64,469.<sup>26</sup> These figures illustrate that, while boys are recognized legally as victims, they remain significantly underrepresented in reporting. Furthermore, NCRB does not provide sex-disaggregated data for subsequent stages such as chargesheeting, conviction, or

<sup>24</sup>National Crime Records Bureau, *Crime in India 2022*, Vol. I, Ch. 6 (2023), [https://ncrb.gov.in/uploads/ci2022/Crime\\_in\\_India\\_2022\\_Volume\\_1.pdf](https://ncrb.gov.in/uploads/ci2022/Crime_in_India_2022_Volume_1.pdf).

<sup>25</sup> Shamna Kureshi, *Why Boy Victims of Sexual Abuse Remain Invisible in India*, The Hindu (Feb. 3, 2023), <https://www.thehindu.com/news/national/boy-victims-of-sexual-abuse-in-india/article66459864.ece>.

<sup>26</sup> “Crimes against children recorded 9.2% rise in 2023: NCRB data,” NDTV, Sep. 2023. Available at: <https://www.ndtv.com/india-news/crime-against-children-recorded-9-2-per-cent-rise-in-2023-data-9371246/amp/1>

sentencing. Consequently, it is difficult to empirically assess whether male child victims receive justice at rates comparable to female victims.<sup>27,28</sup>

The low registration of male victims is compounded by societal stigma and gendered perceptions of masculinity. Cultural norms often dictate that boys should “be strong” and suppress vulnerability, which leads to minimization of their abuse experiences. A qualitative study conducted in a multidisciplinary child response unit in a general hospital in India found that, over twenty months, only three of 27 referrals involved boys. One parent remarked to psychiatrists: “*He is a boy; he neither lost a hymen nor will get pregnant. He should behave like a man, not a sissy.*”<sup>29</sup> Such dismissive attitudes discourage families and children from seeking medical, psychiatric, or legal support. Patriarchal norms contribute to male victims being perceived as less harmed, reinforcing their silence and invisibility, even when abuse is severe.

Institutional factors exacerbate these challenges. Police officers, child welfare officials, and medical personnel often have limited training in recognizing and responding to male sexual abuse. Even when complaints are formally registered under POCSO, evidentiary requirements, social disbelief, and procedural delays may hinder successful prosecution. The combination of low reporting, societal stigma, and systemic inefficiencies results in a structural invisibility of male child victims in both the criminal justice and mental health systems.

Collectively, these empirical realities underscore that statutory gender-neutrality alone is insufficient. Substantive gender-neutral protection requires both **sensitive implementation** of POCSO and broader societal awareness. This includes mandatory training for law enforcement and medical personnel on male victimization, promotion of child-friendly complaint mechanisms for boys, and public education campaigns to counter harmful gender stereotypes. Without these measures, male child victims remain underreported, under-supported, and at risk of being overlooked despite the statutory safeguards that exist.

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<sup>27</sup> National Crime Records Bureau, *Crime in India 2022* (2023), available at: <https://ncrb.gov.in>

<sup>28</sup> “UP recorded highest number of POCSO cases: NCRB report,” Jhalak News, Oct. 2023. Available at: <https://www.jhalak.com/news/India-News/UP-recorded-highest-number-of-POCSO-cases-NCRB-report-156381>

<sup>29</sup> Vyjayanthi K. S. Subramaniyan et al., *Silence of Male Child Sexual Abuse in India: Qualitative Analysis of Barriers for Seeking Psychiatric Help in a Multidisciplinary Unit in a General Hospital*, 59 Indian J. Psychiatry 202, 202–07 (2017).

## 6. Conclusion

The Protection of Children from Sexual Offences Act, 2012 (POCSO), constitutes a paradigmatic shift in Indian sexual offence jurisprudence, moving toward a statutory framework that recognizes all children as potential victims, irrespective of sex. Doctrinally, POCSO eliminates the gendered limitations inherent in Section 375 of the Indian Penal Code and the proposed Bharatiya Nyaya Sanhita, extending comprehensive protection to male children who were previously excluded from the ambit of “rape” in Indian law. Judicial pronouncements, as elaborated in Section 4, demonstrate an emergent jurisprudential acknowledgment of male child victims, with courts in Kerala and other jurisdictions imposing custodial sentences commensurate with the gravity of the offences. Such jurisprudence affirms the viability of gender-neutral statutory protection in practice.

Nevertheless, the persistence of structural and sociocultural impediments renders the statutory promise only partially effective. Empirical data from the National Crime Records Bureau indicates that male victims constitute a disproportionately small fraction of reported POCSO cases: in 2022, only 414 boys were registered as victims under Sections 4 and 6, compared with 38,030 girls. The absence of sex-disaggregated outcome data, including chargesheeting, prosecution, and conviction, precludes a rigorous assessment of substantive justice for male victims. This lacuna highlights a critical gap between formal legal recognition and operationalized equality.

Sociocultural norms further compound the invisibility of male child victims. Subramaniyan et al. (2017) document the dismissal of male sexual abuse experiences within families and institutions, noting that one parent asserted, *“He is a boy; he neither lost a hymen nor will get pregnant. He should behave like a man, not a sissy.”* Such attitudes reflect entrenched patriarchal conceptions of masculinity that delegitimize male victimhood, obstruct help-seeking, and exacerbate psychological trauma. Even when complaints are registered, institutional responses may be constrained by inadequate training, evidentiary rigidity, or procedural delays, resulting in attrition before adjudication.

Addressing these multifaceted challenges necessitates an integrated reform agenda. First, data collection mechanisms must be enhanced: NCRB and state authorities should systematically publish sex-disaggregated data across all stages of the criminal justice process, enabling empirical evaluation of male victim outcomes. Second, capacity-building initiatives should

sensitize law enforcement, judicial officers, and child welfare personnel to the unique vulnerabilities of male victims, challenging normative assumptions that perpetuate under-reporting. Third, child-friendly reporting and support mechanisms must be accessible and tailored to the psychological needs of boys, ensuring that statutory protections are substantively operationalized. Fourth, public awareness campaigns must confront patriarchal stereotypes, fostering social recognition of male victimhood and reducing stigma.

In conclusion, POCSO provides a legislative foundation for gender-neutral protection, yet its normative potential can only be realized if social, institutional, and evidentiary barriers are systematically addressed. The convergence of doctrinal reform, judicial vigilance, empirical monitoring, and social sensitization offers a pathway to ensure that all children, irrespective of sex, can access meaningful protection and justice under Indian law.