
IS THE POCSO ACT ENOUGH? A SOCIO-LEGAL ANALYSIS OF GAPS IN CHILD PROTECTION

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ABSTRACT

The Protection of Children from Sexual Offences (POCSO) Act, 2012 is a pivotal legislative measure aimed to prevent child sexual abuse in India. It provides a comprehensive legal framework with child-friendly procedures and has an emphasis on the “best interests of the child”. Among other things, the Act provides for special courts; child friendly procedure for taking evidence; prohibits the accused from cross-examining the victim directly; requires gender neutrality; requires mandatory reporting; and gives primary importance for rehabilitation of victims and disposal of case as quickly as possible. However, for all the noble intentions, the POCSO Act is faced with numerous extraordinary challenges in its implementation, some being its persistently low conviction rate, vexingly long trial processes, lack of infrastructure and insufficient establishment of Special Courts. The issue of victim and witness protection should be viewed as a serious issue as well as the criminalization of consensual relations between young persons due to a uniform age of consent. A lack of public knowledge about the provisions in the Act, along with persistent stigma attached to sexual abuse, impacts the effectiveness of the Act.

Introduction

Child sexual abuse is a prevalent evil, with significant and chronic consequences for young victims. India is rife with people and faces a serious challenge to protect children from this evil. The rate of child sexual abuse should cause alarm and have us create strong enough laws and proactive societal mechanisms to respond to the frequency with which children are being abused. India has recognized this need through the enactment of law: The Protection of Children from Sexual Offences (POCSO) Act, 2012. The POCSO Act was enacted for the purpose of providing a fuller legal response for the protection of children from sexual abuse and exploitation. The Act has sought to eliminate concerns about having child-friendly reporting, investigation, and trial procedures for investigating and disposing of sexual abuse and exploitation cases. Since the introduction of the POCSO Act and its subsequent amendments, especially in the year 2019, it has been lauded as a progressive step toward the need for child protection, often characterized as extremist and a legitimate shift to a more child-centred form of justice.

But, is the POCSO Act currently the solution to take when considering contemporary socio-legal implementation and the question of prospective child protection? This paper will engage in addressing this question.

The POCSO Act: An Overview of its Legal Framework

The POCSO Act, 2012 (hereinafter referred to as "The Act") represents a fundamental piece of child protective legislation in India. It provides a comprehensive legal framework to address sexual offences against children, providing an approach to justice for child victims that is more sensitive, and by nature, less traumatic and compartmentalized.

At the outset, the Act has a clear definition of a "child"¹ being any person who is below the age of eighteen years. The uniformity of the age threshold does remove complexity in the legal process and eliminates opacity. Moreover, the Act contains careful definitions of the various sexual offences. These include "penetrative sexual assault,"², which means crossing the threshold of penetration with the intention of sexual intent; "aggravated penetrative sexual

¹ Section 2(1)(d), POCSO Act, 2012

² Section 3, POCSO Act, 2012

assault,"³ which is when the perpetrator occupies a position of authority or where there are certain aggravating conditions; and "sexual harassment," given in Section 11⁴ which includes unwelcome sexual comments, conduct, or the showing of pornography. The Act also specifically criminalises the making, news dissemination, and possession of "pornography," involving children due to the extreme harm associated with it.

One of the prominent strengths of the POCSO Act is its "child friendly procedures."⁵ These include protective provisions so that child victims endure less trauma while involved in the legal process. The Act requires that special courts be established to hear POCSO cases, and also mandates child-friendly procedures establishing an approach to better suit the sensitivity of the issues involved. The law has specified procedures regarding the "recording of evidence," which often give the options of using video conferencing or allowing the presence of a known trusted adult during the assessment.⁶ Perhaps one of the most significant safeguards it provides, is when the Act states that it prohibits "direct cross-examination," in other words, the accused will ask the court or the designated person to ask questions of the child, thus removing the child from this future trauma.⁷

Strengths of the Act include its approach to define strategies as prioritizing the "best interests of the child," taking a "child-centred approach and the rights-based framework" wherein a child is considered a victim. The Act ensures "privacy" and "dignity," and recognizes "right to express views" along the judicial process in retaining the child's best interests. The Act is also "gender-neutral." This means the Act applies equally to male and female victims and to male and female offenders, breaking with the traditional gender-based assumptions and classifications surrounding sexual offenses. Other strengths include "mandatory reporting obligations" for the POCSO, which requires certain professionals (doctors, teachers, police officers) who have encountered child sexual abuse to report it. This creates a necessary safety-net. While the Act's focus on the "rehabilitation and reintegration" of child victims can seem aspirational in execution, it does at least set out to provide them. The Act also has a particular focus on "fast-tracking of cases," which is meant to achieve timely justice for victims.

³ Section 5, POCSO Act, 2012

⁴ Section 11, POCSO Act, 2012

⁵ Section 19, POCSO Act, 2012

⁶ Chapter 6, Sections 24-26, POCSO Act, 2012

⁷ Section 33 (2), POCSO Act, 2012

Associated with how urgent it is to take timely legal action in such cases; it is critical that justice is not delayed.

While the purpose of the Act is commendable, the implementation over the last ten years has been riddled with many demerits, challenges, and a number of serious obstacles that detract from it being effective. These hurdles include procedural issues, infrastructural gaps, community mentality, and a lack of resources.

One of the most blatant deficiencies is the very low conviction rate under the Act. There are many reported cases, but most of them are acquitted. This indicates serious failures in the investigation and prosecution. Quite often, the police investigation lacks sensitivity and training, as well as competency to collect proper evidence for the case.

The other issue is the delay associated with the trial. The Act says that the trial should be completed in one year from the time the incident is reported.⁸ However, cases are still being heard in courts for a number of years, which causes an enormous amount of psychological and emotional turmoil for the child, as well as their family. This usually leads to a situation where witnesses become hostile, or where exhibits are lost. In *Alakh Alok Srivastava V. Union of India*,⁹ the Supreme Court addressed the urgent need for expediting trials under the Act, it also issued detailed guidelines and directions to streamline the investigation and trial process.

The absence of necessary infrastructure and trained personnel is a major barrier. The Act provides for Special Courts to adjudicate cases under POCSO.¹⁰ However, many states have failed to establish the minimum number of Special Courts, thus over burdening the existing Courts. Likewise, there is a serious shortage of trained public prosecutors, judges, and support persons who have the ability to engage with these sensitive types of cases with the necessary level of compassion and professionalism.

Protection for victims and witnesses is another serious area of concern. The Act has provisions for both maintaining the anonymity of the child, and for ensuring that during the trial it is as non-intimidatory as possible.¹¹ This is not fully realised in practice. Victims and their families

⁸ Section 35, POCSO Act, 2012

⁹ (2018) 5 SCC 651

¹⁰ Section 28, POCSO Act, 2012

¹¹ Section 23 and Section 33 (7), POCSO Act, 2012

are routinely intimidated by the accused (or their family members), and in many circumstances, this intimidation leads to victims withdrawing their complaint.

A crucial source of disputation and dysfunctionality of the Act is the criminalization of consensual love between adolescents. The Act defines age of consent as 18, and does provide any immunity for consensual acts between older adolescents. Many cases fall into a gap, whereby the law is used by disapproving family members to prosecute consensual relationships. This creates confusion between benevolent protection and convicting prosecution, and clogs the court system with cases that do not strictly amount to sexual exploitation as defined by law.

Another impediment is lack of awareness of the provisions of the Act amongst the general population and amongst some of the implementing agencies. Many children and the child's family are unaware of their rights and remedies under the law. As well, societal stigma and a cultural opprobrium regarding sexual abuse makes it more difficult for cases to be recognized as legitimate. In *State of Gujrat V. Anirudhsing & Anr.*,¹² the Supreme Court had observed that it is the duty of every citizen to aid and cooperate with the investigating agencies and give information regarding the commission of a cognizable offence. In *Shankar Kisanrao Khade V. State of Maharashtra*,¹³ the Supreme Court laid down guidelines for reporting of the offences especially in the case when the child is intellectually disabled.

Socio-Legal Analysis: Implementation and Challenges

Despite its crucial objective of safeguarding children from sexual abuse, the POCSO Act's implementation faces significant judicial, legal, law enforcement, investigative, social, and systemic obstacle. Trials are frequently delayed due to a high volume of cases, overwhelming judicial infrastructure, investigative delays (especially in complex cases), frequent adjournments, and a shortage of dedicated judicial officers and staff for POCSO courts. This denies victims timely justice and prolongs their trauma. In *State of Punjab v. Saurabh Bakshi*¹⁴ the supreme court places emphasis on speedy justice. While this case predates the comprehensive implementation challenges seen today, judgments related to expeditious trials and speedy justice are consistently emphasized. This case, though not directly on POCSO,

¹² (1997) 6 SCC 514

¹³ (2013) 5 SCC 546

¹⁴ (2015) 5 SCC 726

reinforces the need for swift justice, which is a key principle enshrined in POCSO (e.g., fast-track courts).

The conviction rates result remain very low due to various factors, including witness intimidation, poor investigation (improper evidence collection, forensic lapses), lack of confirmative evidence, and pressure on victims and their families to compromise or withdraw complaints. Inconsistent judicial interpretations, particularly regarding concepts like "good touch/bad touch" and age determination, complicate trials. A lack of uniform understanding of child psychology and trauma-informed approaches often leads to an automatic rather than victim-centric application of the law.

Police training and sensitization also continues to be an issue as many police officers lack specialized training and sensitivity in handling child victims, often exhibiting insensitivity or victim-blaming attitudes, which can re-traumatize children and discourage reporting.¹⁵ Investigations are frequently inadequate, marked by poor evidence collection, delayed or insufficient forensic analysis, and weak witness protection mechanisms, leaving victims and their families vulnerable.

Challenges in reporting stem from fear of perpetrators, social stigma, lack of awareness about the Act, and limited accessibility to reporting mechanisms, especially in rural areas. Societal attitudes, often rooted in patriarchal norms, lead to victim-blaming and ostracization, deterring reporting and justice. Low public awareness about the POCSO Act, particularly among children, parents, and marginalized communities, leaves many unaware of their rights and how to seek help. A study done this year¹⁶ found that over 66% of the recorded audience was aware about the POCSO Act, this indicates widespread awareness about the legislation but not thorough knowledge.

Inadequate psycho-social support, medical aid, and long-term rehabilitation services are critical gaps. Victims often lack access to comprehensive care, and their reintegration into society is poorly addressed. The Child Welfare Committees (CWCs) and Juvenile Justice Boards (JJBs) often face issues of understaffing, lack of resources, and insufficient training. Uneven

¹⁵ Section 39, POCSO Act, 2012

¹⁶ KG Siva Raja Sreethar and R Thilagaraj; Impact of crimes committed under POCSO Act; International Journal of Law, Justice and Jurisprudence 2025; 5(1): 287-294

coordination between these bodies, police, and the judiciary leads to inefficiencies in the child protection system.

Gaps exist in implementing child protection policies within schools, including a lack of clear reporting guidelines, untrained staff, and mechanisms for ensuring safe environments. Schools may also suppress complaints to avoid reputational damage. While the POCSO Act is a vital legal framework, new challenges are constantly emerging, requiring a dynamic and adaptive response.

The internet has fueled a surge in Child Sexual Abuse Material (CSAM)¹⁷ that is use of child for pornographic purposes. Challenges include identifying, prosecuting, and removing online content due to internet secrecy, cross-jurisdictional issues, and the sheer volume of material. Law enforcement often lacks the specialized technical expertise and resources for effective investigation. Prosecuting online grooming and cyberstalking is complex due to perpetrators' sophisticated methods, difficulty in establishing intent, challenges in evidence gathering, and the transient nature of online interactions. Legal frameworks are still evolving to address these new forms of abuse

The Act primarily focuses on sexual offenses and does not sufficiently cover the broader, intricate networks of child trafficking for sexual exploitation. Better coordination with anti-trafficking laws and a holistic approach integrating investigative and rehabilitative efforts are critically needed. Abuse within institutions like orphanages, care homes, and religious institutions is a grave concern. Children in these settings are vulnerable, and accountability mechanisms for institutional failures are often weak. Robust oversight, regular audits, and stringent background checks for personnel are essential.

The current system lacks sufficient emphasis on preventing recidivism among offenders. There are inadequate provisions for psychological assessment, rehabilitation, and monitoring of convicted offenders, increasing the risk of repeat offenses. A comprehensive approach encompassing both victim support and offender management is necessary. The age of consent (18 years) under POCSO has been debated, particularly in cases of consensual relationships between adolescents close in age. These discussions aim to balance child protection with evolving societal norms and adolescent autonomy, while ensuring the core protective intent of

¹⁷ Section 13-15, POCSO Act, 2012

the Act is not diluted. In *Independent Thought v. Union of India*¹⁸ the Supreme Court judgment clarified the interpretation of Section 375 of the Indian Penal Code (IPC)¹⁹ and its interplay with the POCSO Act regarding the age of consent in cases involving child marriage. The implications of this case significantly impact the application of the Act where a minor is involved in a sexual act, particularly concerning the age of consent debates.²⁰ Section 42 of the Act provides it an overriding effect, it establishes the supremacy of the POCSO Act over other laws where there is a conflict.

Recommendations for Strengthening Child Protection

The prevalence of child abuse is alarming, and particularly the concern of child sexual abuse mandates a multifaceted and an all-encompassing approach to enhance the child protection frameworks in India. While the POCSO Act of 2012 is a significant legal establishment, an effective implementation and a broader child protection ecosystem is mandated for substantial strengthening. An effective child protection system strives on smooth and child friendly judicial procedures. If these are majorly focused on, and fast track courts are included in the procedure alongside the adoption of special procedures under the POCSO Act, the child protection framework could be enhanced.

Moreover, protection of witnesses is also essential to be thought over. Strengthening the witness program schemes is vital to make certain that the victims and their families can testify without any fear of intimidation or retaliation. A key scheme by the government,²¹ although is a step taken towards the right destination, but it needs strong and effective implementation specifically for the child witnesses, there needs to be provisions for anonymity, in-camera proceedings, and safe environments. As the digital landscape has evolved over the years, the necessity arises for continuous review and updating of provisions for online abuse, that include child pornography and online grooming. This covers better regulations for internet intermediaries and enhanced cyber forensic capabilities to trace and prosecute offenders.

If effective child protection is desired to be implemented, we require a robust institutional framework. This involves mandatory and uninterrupted training programs for police officers,

¹⁸ (2017) 10 SCC 800

¹⁹ Section 375, Indian Penal Code, 1860

²⁰ Section 42, POCSO Act, 2012

²¹ The Witness Protection Scheme, 2018

judiciary members, and Child Welfare Committees (CWCs). This program needs to be all-encompassing on the issues related to child development, trauma-aware interviewing skills, the POCSO Act, and the child friendly legal procedures. It is also necessary to strengthen the Child Protection Units (CPUs) at the district levels, by providing them satisfactory human and financial resources, and building a skilled approach to protection of children through their investigation procedures.

Crucially, the coordination and cooperation between the stakeholders- police, judiciary, CWCs, Non-Governmental-Organisations (NGOs), health sector and education sector is also fundamental. If there exists a fragmented approach, the risk of delays, re-victimization and gaps in support may arise. In *Vishal Jeet v. Union of India*,²² the apex court shed light on the long-lasting issues in child care organisations and the urgency for a better oversight and coordination among several child protection agencies.

Without support and efforts at the societal level, are the institutional and legislative reforms enough? Mass awareness programs on sexual abuse, its traumatising consequences either physical or mental, and the provisions of the POCSO Act, are vital to break the silence and stigma surrounding these crimes. These campaigns should equip a larger portion of the diverse range of media that could reach both urban and rural areas. The community level sensitization programs, engaging parents, teachers, and community leaders, can teach them to recognise signs of such abuse and report.

Developing accessible and enhanced rehabilitation services for victims is significant. This includes psychological counselling, medical support, legal aid, educational continuity, and vocational training to ensure their holistic reintegration into society. The Apex Court in the *Bachpan Bachao Andolan v. Union of India*²³ has significantly emphasised the state's responsibility to encourage rehabilitation services and provide compensatory justice to child victims of trafficking and sexual abuse. Child safety education should be encouraged both at schools and homes, so that every child is aware about safe and unsafe touch and the necessity to report abuse so that the vulnerability could be reduced.

Increased data collection on reported cases, convictions and the socio-economic impact of the abuse on children is an essential requisite for evidence-based policy formation. In the current

²² AIR 1990 SC 1412

²³ (2014) 16 SCC 616

scenario the information or data remains inconsistent and divided, affecting a clear understanding of the problem's severity and efficiency of interventions. A centralised data management framework that covers details from reporting to rehabilitation could provide significant insights. Research is essential to comprehend the root causes of sexual abuse against children, the socio-economic profiles of victims and perpetrators, and the long-term impact of abuse on the children for targeted prevention strategies and allocation of resources. This helps in better evaluation of the already existing policies and the formation of new and more efficient interventions.

Encouragement of Judicial Discretion and the "Best Interest of the Child" Principle: Especially in cases involving older adolescents (aged 16 to 18), the judiciary should be expressly empowered and encouraged to exercise more discretion even in the absence of a formal legislative amendment—in situations where the relationship seems to be totally consensual, free from coercion, exploitation, or a major power imbalance. Courts should give the concept of the "best interest of the child" top priority, taking the long-term welfare and future of the adolescents involved into consideration, instead of applying harsh penalties that could lead to excessive criminalization. Alternative solutions like counselling, restorative justice approaches, or even conditional release may need to be considered in situations where the complaint is driven by critical family members rather than genuine abuse. Many High Courts have recently acknowledged this problem; the Madras High Court in *Vijayalakshmi v. State Rep*²⁴ noted, for example, that POCSO's goal was not to penalise teenage males in consensual relationships.

Conclusion

While there has been great progress in protecting children in India, the POCSO Act of 2012, is not enough right now by itself. Its benefits are clear: It has a strong legal framework, clarifies several types of child sexual abuse, creates child-friendly court procedures, and demands severe penalties for offenders. The Act has started a crucial shift in society's perspective on child sexual abuse by greatly raising awareness, promoting reporting, and providing victims and their families a sense of security. Though its provisions are laudable, there are nevertheless major socioeconomic-legal gaps.

²⁴ CrI.O.P.No.232 of 2021 and CrI.M.P.No.109 of 2021 delivered on January 27, 2021

Often inhibiting the effectiveness of the Act are systemic issues including inadequate reporting techniques in rural and impoverished areas, prosecution and investigation delays, and a lack of enough victim support services, such as long-term psychological and rehabilitation therapy. Furthermore, social stigma, fear of vengeance, and a lack of understanding of the Act's contents among police officers and the general public present obstacles to justice. Though legally thorough, the Act operates in a complex social context where deeply rooted patriarchal beliefs, financial weaknesses, and pervasive culture of silence frequently impede its full execution. The issue addresses the underlying grounds and social situations enabling child sexual abuse in addition to legal deterrence.

India's future thorough child protection depends on a multiform approach extending well past legal borders. Future schemes should focus on improving the whole child protection structure. This requires investment in thorough public awareness initiatives to educate children, parents, and communities about their rights and responsibilities under POCSO, particularly in local languages and distant areas. There is an urgent need to increase the capacity of law enforcement agencies, the courts, and child protection personnel by means of specialized training courses highlighting child-sensitive investigation, trauma-informed therapy, and accelerated legal procedures. Furthermore, it is vital to boost and adequately back victim support services with counselling, medical attention, safe housing, and free legal aid. Priority should be given to preventive efforts including sex education in schools, encouraging honest conversation among family members, and challenging harmful gender stereotypes. Creating protective surroundings and encouraging early reporting require community-based efforts using local leaders and institutions.

In the end, each and every person is responsible for helping to safeguard India's children. It calls for the government to give resource allocation top priority and update execution processes. It calls for active participation of civil society groups in order to effect change, give direct assistance, and hold stakeholders responsible. Detecting and reporting abuse calls for community awareness and the development of an environment where children feel free to speak out. Finally, it encourages people to own their role in creating a society where every youngster is cherished, empathized with, and protected.