

PROTECTION OF CHILDREN FROM SEXUAL ABUSE WITH REFERENCE TO POCSO ACT 2012, AND OTHER LAWS

Sonia¹, Dr. Somlata Sharma²

¹Research Scholar, Mdu-Cpas Gurugram, soniabhatthi1998@gmail.com

²Associate Professor, Mdu-Cpas, Gurugram, sharma.shamli@gmail.com

Abstract

Children are among the purest creations of God. Before the enactment of the Protection of Children from Sexual Offences (POCSO) Act, 2012, there was no specific legislation exclusively addressing the protection of children from sexual abuse. Following the UN Convention on the Rights of the Child in 1989, the legislature enacted the Protection of Children from Sexual Offences Act, 2012. This comprehensive law safeguards minors against sexual assault, harassment, and child pornography, while also protecting their interests throughout investigation and trial stages. The Act recognizes that both victims and offenders can be male, female, or of the third gender, making it gender-neutral. It brought hope for reform in the criminal justice system by establishing special courts, allowing female officers to record statements from girl child victims, granting legal protections, and mandating decisions within a year. This paper attempts to explore the implementation, challenges, and issues of the POCSO Act of 2012 alongside other penal provisions addressing offences against children. The definition of 'child' is also discussed in the context of this legislation.

Keywords: POCSO Act 2012, Sexual Abuse, Sexual Assault, Pornography, Imprisonment.

INTRODUCTION

"God is Child and Child is God"

In India, children are treated like a god because children are the purest and innocent creations of God, and these are unaffected by all forms of social evil, materialistic manipulation, and transgressions. The Constitution of India under Directive Principles of State Policy vide Article 39 (f) "mandates state to formulate policies to ensure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and the childhood and youth are protected against exploitation and against moral and material abandonment". Our Constitution also protects the children from exploitation, forced labour, and child labour and punishes the person who violates the fundamental rights of the children¹. Despite the safeguards provided by the Constitution, children remain a vulnerable populace in our country and are victims of several crimes committed against them². Crimes against children, especially the crimes of sexual nature have adverse effect on the children and leave them with a lifelong trauma. Historical Background of Panel law in India dealing with Child Sexual Abuse. In each year, crimes against children are increased day by day and until 2012, we did not have a law which specially dealt with crime against the children, especially sexual offences. The laws which dealt with offenses against children before 2012 were the "Goa Children's Act, 2003 and Rules, 2004 and sections 354, 375, 376AB, 376DA, 376DB and 377 of the Indian Penal Code, 1860". Although the United Nations adopted the Convention on the Rights of Child in 1989, yet in India there was no special law to deal with the crimes against the children until the enactment of the POCSO Act, 2012. There are many loopholes in these laws and rules like male child are not protected, many words like modesty or unnatural offences are not defined and these are also gender bias. In order to tackle the increasing number of child sexual abuse cases in our nation, the POCSO Act was passed in 2012 and came into effect on November 14, 2012.

Protection of Children from Sexual Offences (POCSO) Act, 2012

Art 15(3) of Indian Constitution, empowers "the State to make special provisions for the Children". In order to safeguard minors from sexual abuses, offences and exploitation, the legislature passed the POCSO Act of 2012. The Act was enacted to safeguard the children against sexual offenses and exploitation. Child sexual abuse includes all types of sexual offences of children like-penetrative or non-penetrative sexual intercourse, child pornography, sexual harassment, sexual assault, commercial sexual exploitation, sex tourism and online exploitation³ etc. The POCSO Act was enacted by the legislature to give children more protection and care against a range of sexual offenses. It is a gender neutral statute. According to the definition of child under this act 'CHILD' means "any person below the age of 18 whether it is male or female".

¹ Art. 23 & 24, J.N. Pandey, "Constitution law of India", Central Law Agency

² J.N. Pandey, "Constitutional Law of India", central law agency

³ Ashok kumar, "Digest on Rape & POCSO Cases" 3rd Edition 2024-LRC Publication

According to World Health Organisation, 1 billion children globally are victimized to sexual violence⁴. In India child sexual abuse cases, are increasing day by day. According to National Crime Record Bureau, In 2022, approximately 162,000 complaints of child sexual offences has been filed in police station, which are more than 8.7% in comparison to 2021. A study of Child Rights and You (CRY) found that sexual violence against children increased by 96% between 2016 and 2022, and kidnapping and abduction accounted for 46% of all crimes against children in India. In 2022, total no. of 38,911 incidents of child rape and penetrative assault were reported⁵

Nature of Offences:-

The POCSO Act is a comprehensive law with nine chapters that address offenses, penalties, and procedures. The POCSO Act divides sexual offenses into three major categories:

Sexual Assault –

Penetrative Sexual Assault (Sec 3 & 4)

Aggravated Penetrative Sexual Assault (Sec 5& 6)

Sexual Harassment (Sec 11 & 12)

Using Child Pornography (Sec 13)

Penetrative Sexual Assault –

Sec 3 of POCSO Act 2012 deals with the Penetrative Sexual Assault and it says that , “ A person is said to commit penetrative sexual assault, if he penetrates his penis to any extent into the vagina, mouth, urethra, or anus of a child or if he insert , to any extent any object or a part of the body not being the penis into the vagina, or if he manipulate any part of the body of the child so as to cause to penetration into the vagina, urethra, anus or any part of the body or applies his mouth to the penis, vagina, anus, urethra or makes the child to do so with him or any other person. Here Person includes the Man and Woman both and even child also. Sec 4 provide the punishment i.e., -

Imprisonment of not less than 10 years or Life imprisonment and with or without fine

Whoever commits such offence on a child, below sixteen years of age shall be punished with imprisonment of not less than 20 years or life imprisonment till the remaining of natural life and with or without fine⁶

Aggravated Penetrative Sexual Assault –

Sec 5 deals with the penetrative sexual assault and it says that if a police officer, armed officer, public servant, Management or staff of jail, hospital, education institution, observation home, religious home and it also deal with the gang rape of a child, aggravated penetrative sexual assault with the mentally or physical disabled child, or penetrative sexual assault commit by any relatives or in fiduciary relation etc.

Sec 6 provide the punishment i.e.,

“Rigorous imprisonment, which shall not less than 20 years, but which may extend to life imprisonment or death”.⁷

Sexual Assault-

Sec 7 of this act deal with the Sexual Assault and said that “Whoever with the sexual intent touches the –

Vagina

Penis

Anus

Breast

Any other act with sexual intent which involve physical contact with penetration.”

Here skin to skin physical contact is not necessary but act done with the sexual intention is sufficient for the commission of sexual assault offence. Section 8 provide the punishment of the sexual assault i.e., “imprisonment of either description for a term which shall not be less than three years, but which may extend to five years and fine”. In the case *Ramji Lal Bairwa*, SC 2024, the SC held that ‘sexual assault’ under section 7, cannot be a private offence and it cannot be compromise out of the court.⁸

Section 9 deals with the aggravated sexual assault. In this section offence has been committed by the authority like police officer, jailor, doctor, relatives, public servant, armed officer or offence committed with the mental or physical disable child, a pregnant child, during communal violence, committed sexual assault and attempt to murder and include gang rape etc. Section 10 said that “whoever commit that offence shall be punished with imprisonment which shall not be less than five years, but which may extend to seven years and also fine”.

⁴ <https://www.who.int> (visited 21 January 2025)

⁵ [Timesofindia.indiatimes.com](https://timesofindia.indiatimes.com) (visited 21 January, 2025)

⁶ <https://www.indiacode.nic.in>

⁷ <https://indiakanoon.org>

⁸ *Ramji Lal Bairwa v. State of Rajasthan* SC 2024, <https://indiakanoon.org>

Sexual Harassment –

Section 11 of POCSO Act 2012, deals with the sexual harassment of children and said that –

Whoever utters any words or makes any sound, or makes any gesture or exhibits any object or part of body with intent that such word or sound shall be heard or such gesture or object shall be seen by any child.

Shows any object to a child for the pornographic purpose

Repeatedly or constantly follow or watches or contact a child either directly or by any electronic form

Threatens to use any real or fabricated depiction in which any part of the body of the child or involvement in a sexual act has been seen in any film or digital or any other mode

Induce or force a child to exhibit hid body or any part of his body so as it is seen by such person or any other person.

Section 12, deals with the punishment of sexual harassment i.e. , “imprisonment of either description for a term which may extend to three years and shall also be liable to fine”.⁹

Using Child Pornography –

Chapter III of this act deals with the using, storing child and disseminating child pornography and punishment. Section 13, 14 and 15 deal with the child pornography and Section 13 of POCSO Act states that “anyone who uses a child for pornographic purposes either by representing the sexual organs of the child or using a child in reel or simulated sexual acts or representing a child indecently or obscenely in programmes or advertisements on television or on internet, commits the offence under this section and is liable in accordance with Sections 14 and 15 of the POCSO Act”. Sec 14 of POCSO Act 2012, provide the punishment i.e., imprisonment for a term which may not less than 5 years and fine on first conviction and on subsequent conviction imprisonment of either description for a term which may extend to 7 years and fine¹⁰. Section 15 provides the punishment for persons “who store or possess the pornographic material involving children; it is a fine of not less than five thousand rupees, and in case of a second or subsequent offense, a fine shall not be less than ten thousand rupees. Punishment for storing or possessing pornographic material in any form involving a child for transmitting or propagating or displaying or distributing in any manner at any time except for the purpose of reporting is imprisonment for a period which may extend up to 3 years or with fine or with both. Punishment for storing or possessing pornographic material in any form involving a child for commercial purpose shall be punished on the first conviction with. imprisonment of either description which shall not be less than 3 years which may extend to 5 years, or with fine, or with both and in the event of second or subsequent conviction, with imprisonment of either description which shall not be less than 5 years which may extend to 7 years and shall also be liable to fine”.

In this act, abetment and attempt to commit any offence also punishable under sec 17 and 18. Sec 16 deals with “the abetment of an offence which include that if anyone instigate any person to do that offence or engages with one or more person in any conspiracy for doing any offence and any act or omission has been done in furtherance of that offence or intentionally aids by any act or omission shall be punished with the punishment provided for that offence”. Sec 18 said that “if anyone attempt to commit any such offence shall be punished with imprisonment which may extend to one half of the imprisonment for life or one half of the longest term of imprisonment provided for that offence or with fine or both”.

Others Features of the POCSO Act 2012 –

It is the duty of an individual (including children) who has apprehension or knowledge that an offence under this act has been committed to register a complaint at the police station.

According to Section 20 of this act, media outlets, studios, hospitals, and photography facilities are required to notify the Special Juvenile Police Unit or any police officer of any material or item pertaining to sexual exploitation.

Media shall not disclose identity of a victim child. If anyone disclose identity of child shall be liable to punishment of imprisonment which shall not be less than six months, but which may extend to one year or fine or both.

Only woman police officer i.e., not below the rank of sub-inspector shall recorded the statement of the child and such police officer shall be casual uniform.

State Govt. shall after consultation with the Chief Justice of High Court shall establish a special court.

Court shall presume that any person who commit or attempt to commit any offence, has committed the offence.

The statement of the child shall be recorded within thirty days by the special court and the trial shall be completed within one year from the date of taking cognizance of offence.

During trial child shall not see the accused and at the same time court shall ensure the accused right of defence i.e., right to take part in trial shall not be violated.

⁹ <https://bba.org.in>

¹⁰ <https://www.indiacode.nic.in>

Trial shall be conducted in camera and child also have the right to seek legal counsel.

The Central and State Govt. shall make provisions for the publicity of the provision of this act in the public and also made guidelines for the protection of children from the sexual abuse.

Child Sexual Abuse with reference to other laws –

There are many laws in India other than POCSO ACT, 2012, which protect the children from the sexual abuse like IPC (BNS), Juvenile Justice (Care and Protection of Children) Act, 2015, Information Technology Act, 2000, Hindu Marriage Act 1955, The Indian Evidence Act, 1872. The provisions of this act which deals with the child sexual abuse are given under below –

Bharatiya Nyaya Sanhita, 2023 (IPC, 1860)

Bharatiya Nyaya Sanhita, 2023 (hereinafter BNS, 2023) (IPC, 1860) is a thorough code designed to address all significant facts of criminal law. In view of the increasing crimes against women and children a new chapter i.e. Chapter V has been introduced in BNS,2023 i.e., “Offences Against Women and Child” .Apart from this chapter there are many sections which deals with the sexual offenses against minors, and these are define under below:-

Sec 74: Outraging the Modesty of a Women – Modesty means decency in behaviour, in manner, or in conduct. Hon’ble Supreme Court held that “a baby girl born with a modesty”. It is a virtue attached to a woman owing to her sex. According to sec 74, “whoever (also include women) assaults or uses criminal force with the intention or knowledge that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year, but which may extend to five years and also liable for fine”. In the case Raja Pandurang vs. State of Maharashtra (2004)¹¹, the Supreme Court held that the modesty of a women is essential her sex and the virtue that can be attributed to a women due to her sex. Section 137: Kidnapping and Abduction from Lawful Guardian –Section 137 and 138 deals with the kidnapping and abduction. Kidnapping deals with the minor and it means taking away the minor against his will by force, threat or deceit. Abduction is not an offence, it is inchoate offence in which a person is compelled or induce by force to go from any place. According to sec 137, “If any person takes or entices any minor or an unsound mind person from the custody of the lawful guardian without the consent of his lawful guardian, it is said that he committed the offence of kidnapping. Sec 138 provide the punishment i.e., imprisonment of either description which may extend to 7 years and fine¹².” Section 87: Kidnapping, Abducting or Inducing Woman to Compel Her Marriage - The offence of child marriage may also be covered under this section as it can be committed against girl child, which further results in sexual offence against her. According to this section, if anyone abduct or kidnap any women with the intention that she may be compelled or knowing that she is likely to be compelled to marriage with anyone against her will and without her consent or she may be induced or seduced her to make illicit intercourse, shall be punished with imprisonment if either description which may extend to 10 years and fine. Section 96: Procurement of Child - This section also protects the child whether male or female from sexual exploitation. In most of the female child trafficking cases, the child is trafficked for the purpose of commercial prostitution and this section prohibits such offence. Under this section, “Whoever (whether male or female) by any means induces any child to go from any place or to do any act, with the intention or knowledge that such child will be forced or seduced to do any illicit intercourse with any person shall be punishable with imprisonment which may extend to ten years, and will likewise be responsible to fine”. The punishment for the offence is 10 Years and Fine and it is a non-bailable offence which is triable by session court. Section 141: “Importation of Girl or Boy from Foreign Country - Under this section importation of girl under the age of 21 or any boy under the age of 18 shall be made with the intention or knowledge that he will be forced or seduced to make illicit intercourse with any person. “The offence is punishable with imprisonment of 10 years and fine and it is non-bailable offence, triable by court of Session. Section 98: Selling Minor for Purposes of Prostitution, etc.- This provision addresses the sale, hiring, or other disposal of any child whether male or female under the age of eighteen with the knowledge or intent that the minor would be used for prostitution, illegal sexual relations, or any other immoral or illegal purpose. This section's explanation, however, protects the perpetrator of child marriage, which is another type of child sexual offense, since it is acknowledged by their own laws or the customs of the communities they belong to, or, in the case of two different communities, both of them, as creating a quasi-marital relationship between them. Any person who is found guilty under this section shall be punished with imprisonment of either description for a term which may extend to ten years and fine. Sec 99 also deal with the Buying minor for purpose of prostitution and other immoral purpose. Sec 98 and 99 shall be punished with imprisonment of either description which may extend to 10 years and fine. Sec 63: Rape - The term rape is derivative from the Latin term ‘rapio’ which means to seize. Therefore, literal meaning of rape a forcible seizure. The

¹¹ Raju Pandurang v. State of Maharashtra, SC 2004, 11 February 2004

¹² Indian Penal Code, author S.N Mishra

Indian Penal Code's Section 375 makes it illegal for a man to have intercourse with a woman against her will or without her consent. In a famous case popularly known *Mathura rape case*¹³, amendments were carried out in the year 1983 have overhauled the law relating to rape and said that if no mark of injury were found on the woman body or woman did not resist, it does not mean that woman give the consent or woman have will to do that act. In result of the Supreme Court guidelines, Legislature amend the Indian Evidence act and Indian Panel Act and inserted the many provisions which widened the definition of Rape and apart of the Various sections e.g., Section 376A to 376D (now Sec (66 – 70) BNS) were added to The Indian Penal Code and Sec. 114A (now Sec 120, BSA) now was introduced in the Evidence Act. In the Indian Penal Code, Sec. 228A (now sec 72 BNS) was also added which makes it punishable “to disclose the identity of the victim of certain offences including rape”. According to sec 63, the definition of rape is very wide and it said that, “A man is said to commit rape, if he penetrates his penis to any extent into the vagina, mouth, urethra, or anus of a woman or if he insert, to any extent any object or a part of the body not being the penis into the vagina, or if he manipulate any part of the body of the woman so as to cause to penetration into the vagina, urethra, anus or any part of the body or applies his mouth to the penis, vagina, anus, urethra or makes the makes to do so with him or any other person”.

Section 79 Word, gesture or act intended to insult the modesty of a woman -Under this section also the intention of the perpetrator is important. As we all know that under BNS, Sec 2 (35), the woman can be of any age, therefore, even the girl child below the age of eighteen years will get protection under this act. According to section 79, insulting the modesty of any women also an offence and according to this section “if anyone have intention to insult the modesty of any women, so speak any word, makes any sound or gestures or exhibits any object with the intention that such sound, shall be heard or such gestures or object shall be seen by such women or intrudes upon the privacy of such women, shall be punished with imprisonment for a term which may extend to three years and also fine”¹⁴.

Bharatiya Sakshya Adhiniyam, 2023 (The Indian Evidence Act, 1872)

Bharatiya Sakshya Adhiniyam, 2023 is a procedural law which deals with the relevancy of fact, burden of proof, presumption, witnesses etc. Therefore, the Act also help in prevention of certain crime committed against the children by presumption of some facts by the court, which are not rebuttable.

Section-119 of Bharatiya Sakshya Adhiniyam, 2023, gives the power to court for presumption of existence of certain facts and human conduct which the court may presume may have happen during the course of natural events.

Under section Section 120 - Bharatiya Sakshya Adhiniyam, “the court may presume that there was no consent or absence of consent during the trial of rape cases”. So, according to this section, the burden of proof lies on the accused that sexual intercourse has taken place with the consent of the woman.¹⁵

The Hindu Marriage Act, 1955 –

The practice of child marriage has a long history in India. Child marriage was widespread in India even before the State's colonialism. Compared to those married after the age of 18, females who are married before the age of 15 are over 50% more likely to have been victims of physical or sexual abuse by an intimate partner worldwide. The provisions of Hindu Marriage Act, 1955, also protects children from sexual offences and also make the child marriage as a punishable offence. Under Section 5 (iii) of Hindu Marriage Act, 1955, it is a condition of a valid marriage that the parties to the marriage must of above the age of eighteen years(bride) and the groom must be above the age of twenty-one years. If this condition is not fulfilled, the marriage between the parties is not a valid marriage under “The Child Marriage Restraint Act, 1929” and it can be challenged and declared void in the court and even persons who perform, conduct or direct any child marriage are punished under this act.

Under Section 13(2)(iv) of Hindu Marriage Act (HMA), the wife can also claim divorce from her husband. Section 18(a) of Hindu Marriage Act (HMA),1955, if “a child marriage is performed by any person, then that person shall be punished with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees, or with both”. Hence, The Hindu Marriage Act, 1955, also protects the children from sexual abuse¹⁶.

The Information Technology Act, 2000

Cyber-crimes are therefore the darker side of internet world. Cybercrime against children has increased day by day. In 2022, cybercrime against children increased 32% in comparison to 2021. Cybercrime has contained numerous offenses, like cyber pornography, the distribution of pornographic content involving minors, cyberstalking, exploitation, and similar practices, etc.¹⁷ In cyber-crimes computer is either a tool or a target for a crime. Information Technology Act, 2000 deals

¹³ Tuka Ram and Anr v. State of Maharashtra SC 1979 AIR 185

¹⁴ SN Mishra, Indian Panel Code

¹⁵ Principles of The Law of Evidence, author Dr. Avtar Singh

¹⁶ Paras Diwan, “Modern Hindu Law” Allahabad Law Agency

¹⁷ Timesofindia.indiatimes.com

with the Cyber laws, electronic records, cyber offences and other electronic means. Specifically, Section 67 of The Information Technology (IT) Act, 2000 deals with “the punishment for publishing or transmitting obscene material in electronic form”. Section 67 A to 67 C of these sections deals with the publishing or transmitting material in electronic form containing sexually explicit act e.g., “any material of child pornography and obligation of intermediary to preserve and retain such information as may be specified by central government”. Sec 67A of the IT Act 2000, said that “whoever published or transmitted or cause to be published or transmitted any material which contains sexually explicit act or conduct shall be punished with imprisonment of either description for a term which may extend to five year and with fine and in the subsequent conviction shall be punished with imprisonment of seven year and fine which may extend to ten lakh rupees”. Sec 67B of this act said that, “if anyone publish, transmitted or cause to be published or transmitted material in any electronic form in which children engaged in sexually explicit act, conduct or Creates text, digital images, collects browse, downloads, advertise, promotes, exchange or distributes materials in which children involve in obscene or indecent sexually explicit manner or who facilitates abusing children online or cultivates, entices or induce children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource, shall be punished on first conviction with the imprisonment of either description for a term which extend to five year and fine which may extend to ten lakh and in the event if subsequent conviction with imprisonment of either description for a term which may extend to seven years and fine which may extend to ten lakh”.¹⁸

The Juvenile Justice (Care and Protection of Children) Act, 2015

The Act “Juvenile Justice (Care & Protection of Children) Act, 2000” has been replaced and came up with the “Juvenile Justice (Care & Protection of Children) Act, 2015” which came into force on 15 January, 2016. The term “Juvenile” means a person who is under the age of 18 years. Hence, the term ‘juvenile’ will include “any child who has committed an offence but has not completed 18 years of age on the date when the offence took place. The Juvenile Justice (Care & Protection of Children) Act, 2015, protect the interest of the children conflict with law, and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided in this act, and institutions and bodies established, i.e Juvenile Bodies, Children Court, Place of safety, Observation home, Child Care Institution and etc¹⁹. The Juvenile Justice (Care & Protection of Children) Act 2015 states the principles of care and protection of children: the child's best interests, principle of privacy and confidentiality rights, presumption of innocence principle, principles of equality and non-discrimination institutionalization principle, principle of family responsibility, principles of natural justice, principle of dignity and worth, principle of non-stigmatizing Semantics, principle of repatriation and restoration, principle of fresh start.²⁰

Judicial Pronouncement:-

TARA CHAND V. STATE OF HARYANA AND OTHERS²¹, The accused was found guilty for the offence of raping a 16 years old girl under sections 342, 363, 366(A), 376(1) IPC and section 6 of Protection of Children from Sexual Offences Act 2012 at Hisar. The accused was convicted under sections 376(2) IPC and section 4 of POCSO Act and was sentenced to 10 years imprisonment.

JARNAIL SINGH V. STATE OF HARYANA, 2013 SC, it was observed in this case that, even though rule 12, of JJ Rule 2007 (now Sec 94 of JJ, Act 2015) is strictly appealable only to determine the age of child in conflict with law. The Court held that aforesaid provision should be basis of determining the age even for child who is victim of crime.

SKIN-TO-SKIN TOUCH JUDGEMENT BY NAGPUR HIGH COURT²² The verdict said that groping a minor's breast without “skin-to-skin contact” cannot be termed as sexual assault as defined under the POCSO Act. It said that since the man “groped the child without removing her clothes” the offence cannot be termed as sexual assault, but it does constitute the offence of outraging a woman's modesty under Section 354 of the Indian Penal Code. The high court had modified the order of a session's court, which had sentenced the accused under POCSO Act and the IPC, to three years of imprisonment, for sexually assaulting a 12 year-old girl. It held that mere groping will not fall under the definition of “sexual assault”. After the judgment of Bombay High Court, the Attorney General of India, The National Commission For Women and the State of Maharashtra file an appeal in the Supreme Court and Supreme Court set aside the order of the Bombay High Court and convicted the accused and said that the most important ingredient of sec of 7 of POCSO Act 2012 is the sexual intent and not the “skin to skin” contact with the child. The Hon'ble Supreme Court observe that

¹⁸ <https://indiakanoon.org>

¹⁹ <https://www.indiacode.nic.in> (visited on 24 January, 2025, 03.40pm)

²⁰ Parul Chaturvedi, Introduction and Overview of the JJ Act 2105, <https://blog.ipleaders.in> (visited on 24 January, 2025, 04.00 pm)

²¹ Tara Chand v. State of Haryana and others, AIR 1971 SC 1891, <https://indiakanoon.org>

²² Attorney General for India v. Satish and another, AIR SC 2021

sec 7 cover both direct and indirect touch, so there is no need of skin to skin contact if there are sexual intent then offence under sec 7 is complete.

The Hon'ble High Court of Calcutta in *Bijoy @ Guddu Das vs. State of West Bengal*²³ reported in (2017) 2 Cal LJ 22415 while dealing with award of compensation under POCSO Act held that "Compensation envisaged under the aforesaid provision of law may be awarded by the Special Court at the interim stage also for immediate relief and rehabilitation of a child victim in light of the parameters laid down under Sub Rule (3) of Rule 7 of the aforesaid Rules. Such compensation payable by the State is independent of the compensation which may be directed to be paid by the convict upon conviction in terms of Section 357(2) and (3) of the Code. The philosophy of awarding compensation by the State is in the nature of a reparation to the victim of crime on its failure to discharge its sovereign duty to protect and preserve sanctity and safety of the individual from the ravages of such crime". The court also made reference to Victim Compensation Fund notified by State Government under Section 357-A Cr.P.C. prescribing the minimum amount of compensation that may be awarded for various offences/injuries in the schedule.

Just Rights for Children's Alliance v. Harish, SC 2024²⁴, In this case Justice J.B. Pardiwala clarified that section 15 outline three separate offences i.e. (i) the failure to delete, destroy or report child sexual abuse material in possession of the accused, (ii) actual transmission or propagation and (iii) storage or possession with commercial intent. So an individual user who intentionally downloads and watches child sexual abuse material within the private space would also be charged under POCSO under sec 15(1). The Court also noted that sec 67B of IT Act 2000 penalise both electronic dissemination and possession and consummation of child sexual abuse material.²⁵

IN RE: Right to Privacy of Adolescents, in this case Calcutta High Court acquit the accused of POCSO, 2012 and made suggestion to amend the POCSO Act to decriminalize consensual sex among older adolescents. In this case Hon'ble Supreme Court highly criticize the judgment of Calcutta High Court and restore the conviction of the accused under Sections 376(2)(n) and 376(3) of the IPC and Section 6 of the POCSO Act, 2012 and emphasizing that a sexual act against a 14-year-old cannot be termed "non-exploitative" regardless of the current circumstances. The Court directed all States and Union Territories to strictly implement the provisions Section 19(6) of the POCSO Act and Juvenile Justice Act to ensure proper care and protection of child victims. It also mandated the creation of an expert committee to assist the victim and review support measures.²⁶

Drawbacks and Limitation of POCSO Act, 2012:

Section 22 of the POCSO Act provides for the punishment to the persons who file a false complaint in order to humiliate, extort, threaten or defame another person. However, a child is exempted from any such punishment which is a loophole as many people take advantage of this exemption and misuse this provision

Consent: If the child/adolescent refuses to undergo medical examination but the family member or investigating officer is insisting for the medical examination, the POCSO Act is silent and does not give clear direction. There is an urgent need to clarify the issue of consent in such cases. However, it would be prudent to take informed consent from parent when the survivor is a child (below 12 yr) and consent from both parent and the victim, if the survivor is an adolescent (age group from 12 -18 yr). However, emergency treatment needs to be initiated without getting into this consent issues or legality to protect the life of the child.

Medical examination: The POCSO Act, Section 27(2) mandates that in case of a female child/adolescent victim, the medical examination should be done by a female doctor. However, the law mandates the available medical officer to provide emergency medical care. On the other hand, the Criminal Law amendment Act, Section 166A of Indian Penal Code mandates the Government medical officer on duty to examine the rape victim without fail. This conflicting legal position arises when female doctor is not available

Consented sexual intimacy: Sexual contact between two adolescents or between an adolescent and an adult are considered illegal under the POCSO Act 2012, because no exception has been granted in the Act under which an act of sexual encounter with a person under 18 is an offence irrespective of consent or the gender or marriage or age of the victim/the accused. However, it is proposed that any consensual sexual act that may constitute penetrative sexual assault should not be an offence when it is between two consenting adolescents, otherwise both the adolescents will be charged under the POCSO Act, 2012. On the other hand, the latest amendment of the Indian Penal Code concerning rape laws in 2013 clearly reports that the age of consent for sex has been fixed to 18 yr, hence, anyone who has consensual sex with a child

²³ *Bijoy @Guddu Das v. State of West Bengal* Calcutta High Court, 2017

²⁴ AIR 2024 SC 129

²⁵ *Just Right For Children's Alliance v. S Harish* SC 2024, scobsever.in/cdn.ampproject.org

²⁶ [Dristijudiciary.com/current-affairs/In-re-right-to-privacy-of-adolescents](https://dristijudiciary.com/current-affairs/In-re-right-to-privacy-of-adolescents), Criminal appeal no. 1451/2024, decision on 23 May, 2025,(visited on 17 June, 2025, 01.41 pm)

below 18 yr can be charged with rape, which may increase the number of rape cases. One more serious repercussion is that obstetric and gynaecologists need to report all the MTP (medical termination of pregnancy) cases performed on children (below 18 years)

Child marriage: Child marriage and consummation of child marriage are considered illegal under the POCSO Act, 2012. In India even though child marriage is prohibited under secular law, it enjoys sanction under certain Personal Law thus complicating matters. These issues need to be addressed when the law is open for amendment.

Training: There is an urgent need to train the medical, teachers, judicial, advocates and law enforcing agencies in the POCSO Act, 2012. Research, information, monitoring and sensitizing the public are the biggest challenges. Training all the stakeholders is one of the important variables in providing comprehensive care and justice. There is also an urgent need to train all the medical undergraduates and primary health care doctors in providing child friendly interview, structured assessment, collecting evidence, prophylaxis for sexually transmitted diseases and HIV, family counselling and regular follow up.

Role of mental health professional: The definitive signs of genital trauma are seldom seen in cases of child sexual abuse. Hence, the evaluation of child sexual abuse victim requires special skills and techniques in history taking, forensic interviewing and medical examination. The role of mental health professional is crucial in interviewing the child in the court of law. Child sexual abuse can result in both short-term and long-term harmful mental health impact. Mental health professionals need to be involved in follow up care of the victim with regard to emergence of psychiatric disorders, by providing individual counselling, family therapy and rehabilitation

Reporting: It is well known that the cases of child sexual abuse are usually not reported. Further, knowing and reporting child sexual offence is highly difficult and highly personal decision for many family members and also for survivors. Both survivors and family members feel embarrassed and ashamed bearing the guilt, anger, frustration and emotional turmoil of the act. The fear of re-victimization because of medical examination, criminal justice system and poorly informed society members keeps them silent and undergo torture for long duration.

SUGGESTION:-

Children are the future of our India, hence it is very important for their mental and physical health to be good. Sexual offence not only affect the body of children but also adversely affect their Mental health. So accused of POCSO Act, 2012 should be strictly punished. There are some suggestions that will help prevent sexual crimes against children and these are given under below:-

A child's family is their whole world, where they learn to be unique and fit in the society. The family atmosphere must be good for children to thrive. If the family of the child is progressive, then the child easily tells his parents without any hesitation about any harassment that he suffers at any time.

The conviction rate in the cases against child sexual abuse is very low and one of the reasons behind this low conviction rate is that the police is unable to represent the case in a proper manner e.g., lack of evidence, non-availability of victim's statement or medical examination. Therefore, a trained and skilled staff is necessary, who are specially trained to deal with the cases of children sensitively.

Sex education is a taboo in India. But considering the increasing rate of offenses against the children, it becomes important and compulsory to tell their children about sex education and good touch/bad touch.

Creating child friendly atmosphere during the whole process.

The legislature must remove all the loopholes in laws concerning the child.

The government should start the sex education program and public awareness regarding the POCSO Act, 2012, and JJ Act, 2015, in the schools, newspapers, and also through social media.

CONCLUSION :-

Childhood is a phase when the human being is most vulnerable to crime or exploitation, as they have not yet developed fully, both physically and mentally. Therefore, children require proper care, attention and protection during their childhood. For the protection of children an effective law, procedure, policies are needed, in furtherance of this legislature enact the POCSO ACT 2012 and also amend the other laws which deals with the child protection law. In India, around 472 million children are citizens, which is around 39% of the total population. Hence, the children hold the future of India and their protection is of prime importance. It is also the duty of the government to look after them and to ensure the holistic development of their personality, so that they can achieve their goals in their life. POCSO Act being a gender neutral legislation aims to provide safety to children and punish the offenders based on gravity of offences committed against children and addresses all aspects of child sexual abuse. The Act was amended in the year 2019 making

punishments under the Act more stringent. Sensitization of public regarding child sexual abuse and POCSO Act is very essential in view of low rate of reporting of crimes under the Act. Child sexual abuse is a multidimensional problem with medical, social, psychological and legal implications. Child sexual abuse cases seldom present with definite symptoms of genital trauma. As a result, evaluating a victim of child sexual abuse involves specialized knowledge and methods in history collection, forensic interrogation, and medical examination. Involvement of a mental health expert is necessary during investigation and trial stage to mitigate and address the adverse effects of child sexual abuse on victim children's mental health.

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