

An Analytical Study Of Legal Enactments For Protection And Prevention Of Child Sexual Abuse In India.

Netra V. Dawda¹, Dr. Snehal S.Fadnavis²

¹Research Scholar ,PGTD OF LAW , Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur C-12 MIDC, Higna Road , Nagpur , Maharashtra 440016. Netradawdaphd2022@gmail.com .

²Principal, Govindrao Wanjari College of law, CD-2 New Nandanvan, Near water tank, Nagpur.

Abstract

Child sexual abuse (CSA) is an epidemic with deeply ingrained roots in the Indian society that persists even after being vaccinated with legislation and reforms. The objective of this study is to provide a thorough analysis of the causes and effects of CSA for victims and their families. Wide-ranging effects of CSA include damage to victims' physical, mental, psychological, and emotional health as well as those of their families and society at large. The underreporting of CSA in India for a variety of reasons makes victims vulnerable and contributes to the ongoing disturbing situation and is one of the obstacles in combating CSA in India. Victims often face the harrowing journey of seeking justice and are left to their own devices, creating a vicious cycle of re-victimization. The article aims to study the laws that have been enacted in the past and at present to protect and prevent child sexual abuse. It examines their efficacy and execution in detail, flagging out any shortcomings or areas in need of improvement. This analytical study seeks to throw light on the persistent issue of child sexual abuse (CSA) in India, understand its complex origins and varied impacts, and evaluate the legislation that has been put in place to deal with it. By doing this, we can help to strengthen the country's protections and efforts to prevent child sexual abuse, as well as contribute to a more informed conversation and advocate for reforms.

Keywords Child Sexual Abuse, prevention, protection, sexual abuse.

INTRODUCTION AND HISTORICAL BACKGROUND

Child Sexual Abuse is a deeply concerning and pervasive social evil that leaves everlasting scars on its innocent victims. It entails engaging in sexual activities with a minor, causing them severe physical, mental, and psychological harm. The impact that CSA has on its victims is profound, leading to long term trauma, compromised health conditions and damaged social relationships. Victims often suffer in silence and the consequences of this heinous act persist all their lives. There is an ardent need to fully understand the gravity and far-reaching consequences of child sexual abuse for developing effective prevention and support mechanisms for survivors.

CSA has deep historical roots in India, dating back centuries to ancient India. Children have been subjected to sexual abuse throughout history, often hidden behind loose doors or never discussed believing it to be a taboo topic. There are several ancient societal practices and traditions that have contributed to this concerning issue making it crucial to explore the historical background and the need for a comprehensive and all-encompassing legal framework to help us combat the evil of child sexual abuse. There are several ancient practices, customs and traditions that serve as the historical backdrop of child sexual abuse in India and have profoundly impacted the lives of children in the past and continue to impact them in the present. One such practice is the Devadasi system dating back centuries which involved the dedication of young girls to temples which was meant to be a religious practice but these young girls were exploited for sexual purposes all their lives.¹ They were known as Devdasis and were thrust into the lives of sexual exploitation, abuse, and servitude under the guise of religious and spiritual devotion. Child marriage is another custom deeply ingrained in the Indian society that exposed young children to sexual abuse within their own homes.² Early marriages often resulted in the child brides becoming victims of sexual abuse within their own marital homes.³ What is even more shocking is that child marriage is not a thing of the past, it is still prevalent in many parts of the country and has

perpetuated the cycle of child sexual abuse. These systems serve as glaring examples of how social customs and traditions have not only normalised but also facilitated the sexual exploitation of children and made them more vulnerable. These practices have contributed to an environment of vulnerability that surrounds our children emphasizing the urgency and need of addressing child sexual abuse through a proper legal framework. The Devadasi system and the practice of child marriage throw light on the grave consequences of deeply ingrained customary practices that need to be addressed through a comprehensive legal framework to help combat child sexual abuse.

Because of these issues, the need for a dedicated and comprehensive legal framework for the protection and Prevention of child sexual abuse has become increasingly apparent. The legal provisions that have been enacted in the past primarily focused on generic offenses covering child sexual abuse under unnatural offenses, rape, or outraging the modesty of women. These provisions found in the Indian Penal Code and a few other laws were inadequate in addressing the heinous nature of child sexual abuse, were also not child-centric and failed to comprehensively safeguard minors from sexual exploitation. There was a lack of specific provisions addressing child sexual abuse and the laws did not include the male child within the legal protection.

The historical backdrop of legal provisions that were enacted have revealed themselves as being insufficient in their scope, practicality and application which necessitated a specific and dedicated law to address the issue comprehensively. The enactments largely focused on crimes against the girl child without addressing vulnerability of the male child or other challenges that were faced by children.

The legal framework for child sexual abuse in India saw a significant turning point with the enactment of the **Protection of Children from Sexual Offences Act 2012**. This significant milestone recognized child sexual abuse as a distinct and pervasive problem that required specialized legal attention. The act extended protection to all children under the age of 18 from sexual exploitation in the form of sexual assault, harassment, and pornography, irrespective of their gender as before its enactment, the male child was not covered under the existing laws which left them helpless and vulnerable to abuse. The previous enactments such as section 375 (rape), section 354, (outraging the modesty of a woman), section 377 (unnatural offenses), and section 509, all under the Indian Penal Code were not enough to comprehensively address the grave issue of child sexual abuse. These sections while addressing different forms of sexual abuse lacked a child-centric approach and left many offenses beyond their scope as they were primarily enacted for focusing on adults. The Historical backdrop of child sexual abuse laws in India shows a transition from a broad but insufficient legal system to a more child centric and comprehensive legal framework. The enactment of the POCSO Act marked a very significant step towards protecting children from sexual abuse and addressed the various historical and legal challenges and shortcomings in India's legal framework surrounding CSA. This act comprehensively offered protection against sexual offenses to children of all genders and provided protection from both touch and non-touch sexual offenses covering various forms of sexual abuse against children. This legislation offered child centric processes and procedures for reporting, recording evidence, and conducting trials. Additionally, it explicitly included the male child within its protective ambit thus rectifying a major historical oversight in the legal provisions preceding it. It also prohibited the media from disclosing the names of victims of child sexual abuse protecting their privacy and safety. It imposed the burden of proof on the accused making it more robust in the pursuit of justice. However, the issues and challenges related to child sexual abuse continue to present very complex challenges although the POCSO Act marked a very significant step towards protecting our children, various legal enactments in the past combined with the historical context surrounding child sexual abuse have still presented persisting challenges which has necessitated further exploration despite the progress that we have achieved with the POCSO Act. Child sexual abuse is most often perpetrated by people known and trusted by the child or their families which makes it very difficult for the innocent child victim to come forward offenders manipulate and threaten the children with different tactics which lead to emotional trauma and feelings of guilt or shame. This emotional turmoil has lasting effects on the child's well-being self-esteem and health which could lead to withdrawal from sexual social activities and a decline in academic performance. There is an urgent need to provide a comprehensive legislative framework to protect our children as they are the future of our country.

POCSO Act- an Overview

The 2012 Protection of Children from Sexual Offences (POCSO) Act is a noteworthy piece of legislation aimed at tackling the growing epidemic of child sexual abuse in India. This legislation is a critical step in the right direction toward protecting children from sexual abuse including harassment, assault, and pornography. As we examine the provisions of the POCSO Act more closely, we see that its many facets including distinctive features, and general significance in the context of child protection in India are essential elements of an all-encompassing piece of legislation.

The alarmingly high rate of child sexual abuse in India is the primary reason for the urgent need for the POCSO Act. The disturbing truth of several cases surfacing highlights how urgently this serious problem needs to be addressed. A lost childhood is the foundation of a deformed future⁴, and therefore the innumerable instances of these appalling offenses called for a special legal system designed with children's protection in mind. A thorough analysis of the POCSO Act reveals a number of unique characteristics that set it apart from other laws enacted in the past. Its gender neutrality, which offers protection to all children regardless of gender, is one of its most noteworthy features. Because of its inclusivity, the act's scope extends beyond the Indian Penal Code, guaranteeing that each child is given equal protection. Another important component is mandatory reporting, which makes it a legal obligation for anybody to report any abusive conduct against a child. A safer environment for children is fostered by this duty of care, which encourages a more proactive approach to recognizing and resolving child sexual abuse. A key component of the act is its emphasis on victim rehabilitation, which recognizes that justice ought to consider the child's rehabilitation and well-being into account. To guarantee that cases are handled sensitively and that the child's rehabilitation is a top priority, special courts have been formed. The 2019 POCSO Amendment act strengthens the penalties already prescribed by the statute, which classifies different types of sexual abuse and imposes severe punishments on them. These broad categories include sexual assault, penetrative sexual assault, and sexual harassment, as well as its aggravated variants, perpetrated by those who are in charge of the child's safety, including police officers or hospital personnel. With the protection of their identity offered by in-camera proceedings, such children can testify openly in the presence of trained interpreters, special educators, or trusted adults. The legislation requires that cases involving child sexual abuse must be decided within a year of the date of reporting. This emphasizes the expeditious resolution of cases. This prevents children from experiencing protracted court hearings, which might further traumatize them. The legislation also gives special courts the authority to decide how much compensation should be given to a child who has experienced sexual abuse. The money awarded may be used for the child's rehabilitation and medical care, which will assist in their recovery. Important case laws that have influenced the POCSO Act's interpretation and implementation additionally reinforce the legislation. The 2013 landmark case **Asif Mujawar vs. State of Maharashtra** is one example, in which the Bombay High Court stressed the necessity for severe penalties for those who commit sexual offenses against minors. The court ruled that the act should be implemented effectively in order to prevent and cope with child sexual abuse, making it clear that there would be no tolerance for these types of crimes. **Subramanian Swamy vs. Raju**⁵ is another noteworthy case in which the Indian Supreme Court tackled the problem of child pornography and stressed the significance of strictly enforcing the POCSO Act. The court emphasized the importance of the act's appropriate implementation by highlighting how important it is to protect minors from pornography.

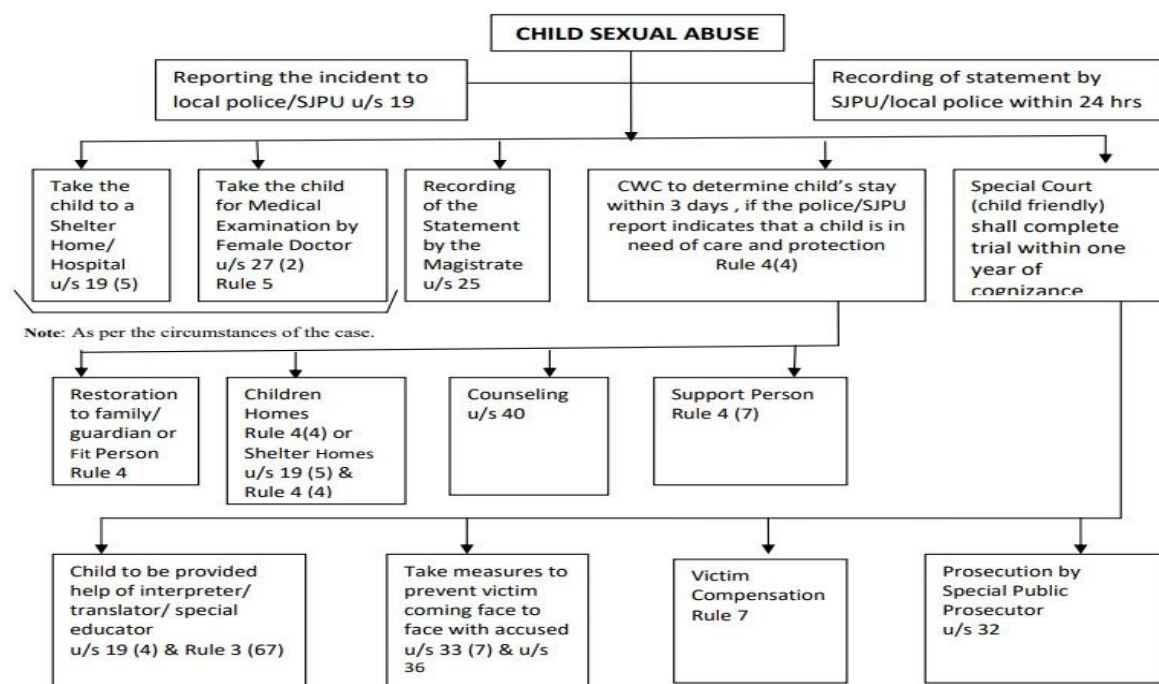


Figure 1- Processes under the POCSO Act⁶

The POCSO Act's importance in the context of child protection in India cannot be overstated. It serves as a crucial legal framework that grants child victims an extensive array of rights, including access to counselling, medical treatment, and legal support, in addition to criminal prosecution of the perpetrators. With the aim to safeguard children and prevent child sexual abuse in India, the Protection of Children from Sexual Offences (POCSO) Act is a crucial piece of legislation.

Implementation and Effects

The POCSO Act is a vital tool in the battle against child sexual abuse because of its many facets, including its need, unique characteristics, crucial components, significant case laws, and general significance in the context of child protection in India. For the first time POCSO Act, defined the different types of Child Sexual Abuse (CSA) and laid out guidelines to manage a child victim. Reporting of either a definite or a suspected case to the police is made mandatory. The onus of reporting a case is on every Indian citizen. As per the NCRB statistics for 2015, the legislative framework in India- The POCSO Act, 2012 has resulted in increased reporting of CSA.

However, the issues related to mandatory reporting of the CSA incidents, lack of clarity of legislation among professionals (medical officer and police), and general lack of professional support for victims of CSA create potential problems for implementation in the Indian context. The socio- cultural beliefs and practices in India, often do not acknowledge that children are individuals with their own rights and often neglect the sexual and other forms of abuse that the child may report. The underreporting of CSA in India can be attributed to the fear of indignity, guilt, denial from the community, associated socio-cultural stigma (especially if the abuse is in the context of the family), not being able to trust government bodies, and a gap in communication between parents and children about this issue. Another major concern in India is lack of good monitoring of various juvenile residential institutes. In addition, majority of the healthcare professionals do not have the abilities and are not trained to examine and manage cases of CSA. Hence the few cases that reach these institutions also often go unreported.

Some prominent loopholes in the POCSO Act are-

-Sec 4(2) added by the amendment of 2019 increases the punishment for offenders committing **penetrative sexual assault** on children below 16 years of age from 7 years of imprisonment to minimum 10 years of imprisonment, but is this really helpful? If a person commits the same offence on children of

16-18 years, does it make it a less serious offence? An Act of sexual offence is equally painful to the child of 12 years as that to 17 years old.

- Interpretation of the term “**physical contact**” in section 7 of the act in the recent case of **Satish Ragade versus state of Maharashtra, 2021 aka the “skin to skin”** judgment. - How does touching a minor’s breast from above the cover of a cloth different from direct touching? Does the touch from the cloth covering makes it less traumatic?

- The term “**Sexual intent**” in section 7 is more saddening, where in the sexual assault cases will be judged on the touchstone of sexual intent which causes delays in appropriate decisions. Where the offenders of such crimes are to be put immediately behind bars as soon as possible. The burden of proving intention behind the commission of crime delays the judgment. Does proving absence of sexual intent decrease the gravity of offence or trauma of victim?

- **Awareness among the officers** involved in the process of imparting justice and implementation of the act is equally important, as of the passing of a child centric act. Medical officer, policemen, legal officers, Judges, teachers, and parents are required to be trained and educated about the provisions of POCSO Act, about reporting of offence, registering of offence, questioning, medical examination, interpretation of provisions and pronouncements of judgments. So, the very purpose of the act is fulfilled and re-victimization of child victim can be prevented.

- **Rise in internet usage due to covid-19 pandemic** has given rise to occurrence of cybercrime tremendously. Sexual offences like pornography, sending unacceptable adult mobile text messages or emails to the child are committed by the virtual mode i.e., through social media.

Effect of CSA

CSA has profound consequences for the child. It is known to interfere with growth and development. CSA has also been linked to numerous maladaptive health behaviors, and poor social, mental, and physical health outcomes throughout the lifespan. In accordance with that, there is evidence that CSA can affect neuro-biological systems.⁷ Other common sequelae for adult survivors of CSA may include relational challenges (e.g., increased risk for domestic violence), violent behaviors, and increased risk of perpetration of CSA as adults.⁸



Figure 2- Synthesis of qualitative findings guided by social-ecological framework, Child sexual abuse in India: A systematic review

Even with the commendable measures made possible by India's Protection of Children from Sexual Offences (POCSO) Act, there are still a number of challenges and shortcomings in the way that child sexual abuse is effectively addressed. One significant concern is the underreporting of cases because of the stigma attached to CSA, which makes it challenging to assess the overall scope of the issue. In addition, victims may experience recurrent trauma during the legal process due to delays in court processes and a lack of child-friendly procedures. Another difficulty is that the legislation has to be better implemented and more broadly understood, particularly in rural areas. Furthermore, survivors are left vulnerable due to a lack of comprehensive rehabilitation and support services. These difficulties serve as a reminder of the continuous work needed to guarantee children's overall safety and wellbeing in the face of CSA.

CONCLUSION AND SUGGESTIONS

The fight against women safety was already long overdue, let alone innocent children facing the trauma of fighting for the right to live their childhood. CSA is a dark reality that is highly prevalent in India and adversely impacts health and wellbeing of the child and society as a whole. Although the journey from IPC to POCSO, so far as protection of children against sexual offences is concerned, has seen improvement in safeguarding provisions, the number of crimes against children has not seen any decline per se. There are gaps in the current understanding of CSA in some populations in India. Most importantly there is lack of awareness among the people and officers involved in the process. It is statistically evident that young boys in India have similar and sometimes higher prevalence of CSA as girls. However, patriarchal society and existing social norms around masculinity and focus on young girls as primary targets for CSA programs, leave vulnerabilities of young boys largely unexplored. The few qualitative studies among trafficked girls for commercial sex work, suggest early childhood sexual abuse experiences that often reflect power differences between the child and the perpetrator are pathways that lead the victims into commercial sex work. In addition, there is increased risks of CSA among certain populations that include children of commercial sex workers, young girls with mental health issues, and adolescent boys and girls out of schools and in labour force (like domestic laborers etc.) Year 2020 witnessed 28,000 rape cases as per the report submitted by Statistical Research Department. At least 5 rape cases were reported each day in Delhi in the year 2021. Report by NGO CRY, sexual offence is committed against a child in India every 15 minutes and over a period of 10 years, the number of crimes against minors have increased by 500%.⁹Based on research, sexual offenders against children can be distinguished into two groups. The first group account for about 60% of officially known offenders and show no sexual preference disorder, but who, for different reasons, sexually abuse children (e.g., sexually inexperienced adolescents seeking a surrogate; persons with poor mental health, or those with antisocial personality disorders, or from traumatizing family constellations). The other groups are those showing a sexual preference disorder, namely paedophilia (means sexual feelings directed towards children). There is the need for the development of a standardized definition of CSA and a validated tool for accurate measurement of CSA across India. Moreover, additional in-depth studies of CSA among the general and specific populations like commercial sex workers and MSMs are needed to develop effective ecological models for prevention and treatment of CSA that are sensitive to the diversity of vulnerabilities of children and adolescents in the Indian context. Furthermore, there is definitely a great need for more research concerning the perpetrators of child sexual abuse, including gathering more knowledge about paedophilia in India, in order to enhance primary preventive strategies.

The bigger question is - Why is POCSO not enough? Even after 11 years of its enforcement, the provisions of POCSO are not put to use to their full potential. We, as a society, have failed time and again to build an environment safe enough for our children. The real hurdle after framing any statute is to cover the distance between its enforcement and its efficient implementation.

Donlang Nongsteng versus State of Meghalaya and Others¹⁰ where the delay in filing FIR by 8 months, is considered to be delayed reporting and accused released from the custody, as there was uncertainty related to the date of occurrence of the offence. This case is an example of lack of sympathy towards victim as the child sometimes is hesitant in opening up or not in position to understand that something wrong

has happened to them. In **Aparna Bhat and Others versus State of Madhya Pradesh and Another**¹¹, where Supreme Court ordered the minor victim of sexual harassment to tie Rakhi on the hands of the accused, is prime example of the mockery this offence has become. What are we concluding through these judicial pronouncements? That converting the relationship between victim and accused in cases of sexual harassment, to that of a brother and a sister, will reduce the pain of victim? Or will it make the offender any less responsible for inflicting a repugnant scar on victim's life? So, when asked how far along are we on this tedious journey between formation and implementation of POCSO, we would say, we still have a long way to go.

Enactment of a law is not only solution to the eradication of CSA from the society but lot of awareness is required to be spread among the people involved in the process of imparting justice. Effective interpretation and implementation of the provisions of the Act is the key to the door of justice.

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