



## **“PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT, 2012: A SOCIO-LEGAL STUDY”**

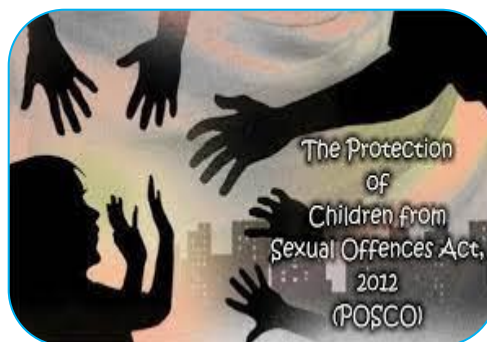
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### **ABSTRACT:**

*Children must be nurtured adequately throughout their formative years to grow up to become valuable members of society. Because children are the most vulnerable group in society, they are more susceptible to various abuses, especially sexual assault. It is a blatant violation of human rights to use children for sexual pleasure, which is the definition of child sexual abuse. The problem worsens quickly and has taken on a global nature, causing physical, emotional, and psychic harm to children when they do not disclose it to adults. The first Indian government-passed law addressing the sexual abuse and exploitation of children was the Protection of Children from Sexual Offences Act, 2012, which provided severe penalties. However, the rising numbers of cases suggest that the Act's implementation is lacking and that law enforcement agencies have no interest in acting against the perpetrators of this heinous crime, as exemplified by the recent cases of gang rape in Unnao and Kathua. The government has thus been forced to make amendments to the Act to improve its efficacy. The current study reviews the issues associated with child sexual abuse in India, from the contributing factors to the implications of the crime. It critically analyses the existing legal framework, focusing on the newly implemented amendments of the POCSO Act by exploring the effectiveness of these adjustments and suggesting additional methods to handle this despicable crime effectively. This study also covers child sexual abuse during the covid-19 period in India.*



**KEY WORDS:** Child, Sexual, POCSO, Abuse, Crime.

### **INTRODUCTION:**

One's childhood is the most critical phase of their life. They are the nation's future architects. Therefore, the well-being of such individuals necessitates the creation of a healthful and secure atmosphere to protect their rights. Unfortunately, despite children's fragility, the terrible situation is that they are easy targets for exploitation and abuse by offenders. When we use the phrase "child abuse," we refer to cases of children being neglected or mistreated. WHO claims that 40 million children between the ages of zero and fourteen are suffering from abuse or neglect, and therefore they need health or social care.

One of the types of child abuse that affects humanity as a whole is child sex abuse. It is a global scourge, and India is facing it in the face. The World Health Organization defines child sexual abuse as the exploitation of a child in a sexual act they do not entirely understand, cannot agree to, and are not developmentally prepared. It is a taboo crime that seldom gets reported because of shame or fear of

social stigma. Family members are often the perpetrators. Children's psychological, physical, mental, and emotional development is significantly impaired by it.

Despite being a landmark piece of legislation, the passage of the Prevention of Children from Sexual Offences Act, 2012 has increased the reporting of child sexual abuse cases in India. Still, the law suffers from numerous flaws that hinder its successful implementation. Due to its lack of implementation, the massive number of cases under the Act, with a relatively low conviction rate, reflects its incompetence. The extensive media coverage of two horrific child rape cases (the Kathua and Unnao rape cases) and numerous comparable occurrences had prompted an amendment to the POCSO Act. It now imposes stricter and more severe penalties, including capital punishment as a solid deterrent to criminals. However, the revised Act also has certain shortcomings since it does not address many significant problems that must be considered by the government immediately. A revised version of the legislation offers no way to speed up trials and investigations, making it impossible to execute the Act properly.

Consequently, the need now is to teach law enforcement, legal, and medical organizations about the complexities of the law's application to work together to fight the crime of child abuse.

### **CHILD SEXUAL ABUSE IN INDIA**

It is one of the most serious dangers that may affect a kid at any time before they reach maturity since child sexual abuse includes exploitation of the child by the offender for sexual pleasure. There may be any number of sexual favors like intercourse, oral sex, or touching private areas, child pornography, voyeurism, and others.

Around one-third of India's population comprises children, who account for a significant percentage of the total population. 11% of the country's children have been subjected to severe sexual abuse, while half of the country's children have been subjected to some sexual abuse. Females make up almost half of all child abuse victims, while boys make up about half of all child abuse victims. A recent report from the National Crime Records Bureau reveals that more than 24,000 instances of child abuse have been reported in India over the last six months. It is believed that such crimes are increasing in our nation and must be dealt with immediately. Maharashtra, Uttar Pradesh, and Tamil Nadu reported the most child-related offenses.

Poverty, a lack of sexual education, the presence of obscene posters, online material, and many harmful traditional practices—such as child marriage, caste-based discrimination, child labor, and Devadasi—make children susceptible to abuse. While poverty is undoubtedly a significant contributing element, it may also be seen in wealthy communities of people of many religions and cultures. A second reason for this issue is the disintegration of the united family structure in contemporary times. Child sexual abuse victims often do not report their assaults because such incidents are generally conducted in secret, and children rarely report them to their parents. When they do, they are often asked to remain silent out of fear of public humiliation and shame, especially when the perpetrator is a family member. Abnormal or seductive behavior, genital bruising or bleeding, difficulty sitting or standing, and refusing to be around children or adults are all indications of child sexual abuse. The aftereffects of child sexual abuse are wide-ranging, both physically and mentally. Common indicators of the abuse in victims include fear, despair, suicide attempts, aggressiveness, defiance, loss of self-confidence, and risky behavior. The victims are left feeling alone, scared, guilty, and concerned.

### **LEGISLATIVE & JUDICIAL RESPONSE**

India ratified the U.N. Convention on the Rights of the Child in 1989. It was the first legally binding international agreement that specifically applied to the welfare of children. The Act also compels the governments to prevent children from suffering sexual abuse and exploitation in all forms. The Indian Constitution grants certain rights and opportunities to children to ensure their survival and growth. It is essential since children represent the future of the nation.

- i. The Indian Constitution allows the state to provide particular advantages to children for their development.
- ii. The Constitution of India provides for children to be afforded chances and facilities to grow in healthy ways in terms of freedom and dignity and for children and adolescents to be safeguarded from exploitation, moral and material abandonment.
- iii. The Constitution protects the health of young children by preventing them from entering industries or entering into other dangerous jobs.
- iv. The Constitution also puts a responsibility on the state to ensure that all children under the age of fourteen receive free and obligatory education. In addition, the Indian Constitution states that the state should provide early childhood education and care available to all children until they reach the age of six.

### PRE-POCSO Laws

In India, child sexual abuse has been largely neglected, and it has never been recognized as a criminal offense until recently. Rape, prostitution, and human trafficking were among the few recognized sexual crimes against minors in India. They were all dealt with under the broad provisions of the Indian Penal Code, 1860, which made no difference between adult and child victims of the crime. Section 509 (insulting the modesty of a woman or girl); Section 354 (outraging the modesty of a woman or girl); and Section 509 (insulting the modesty of a woman or girl). Sections 361 and 363: Kidnapping a minor from the custody of a legal guardian; Section 363A: Kidnapping or maiming a minor to beg; Section 361: Kidnapping a minor from the guardianship of a legal guardian; Section 361A: Kidnapping or maiming a minor to beg; Section 361A: Kidnapping or maiming a minor for the purpose Procuration of a minor girl is covered under Section 366A. A girl from a foreign country may be brought into the country under Section 366B. Section 372: Selling a juvenile for prostitution is prohibited. The purchase of minors for prostitution is covered under Section 373. Section 375 (Raping) of the Penal Code In Section 376, various types of rape are punished differently. Sections 376 A, 376 B, 376 C, and 376 D are the distinct types of rape punished differently. SECTION 377: This section dealt with unnatural sexual activities, and it was often used in cases of sexual abuse of male minors. The Information Technology Act, 2000 prohibited the publishing and transmission of pornographic material. The Immoral Traffic (Prevention) Act, 1956, deals with the criminalization of prostitution and human trafficking in the Indian subcontinent. As a result of the lack of specific legislation addressing a range of various other forms of sexual exploitation of children such as Child Sexual Assault (not amounting to rape), Sexual Harassment, and Child Pornography, as well as growing concerns about the rising trend of sexual violence against children in India, new comprehensive legislation known as the Protection of Children Against Sexual Offences (PCASO) was enacted.

### POCSO Act, 2012; Salient Features

A gender-neutral law prevents children from sexual assault, harassment, and pornography by having severe penalties and child-friendly ways to report, record evidence, and investigate crimes while keeping the case fast and going via a special court. The law sets a cut-off at 18 years of age for a kid. It covers sexual abuse of different types, including penetrative and non-penetrative assault, sexual harassment, and pornography. It categorizes a sexual assault as "aggravated" when it is committed by a person in a position of trust or authority, if the victim is mentally ill, or if the victim is under a certain age.

Though it was banned under different laws, the exact definition of the crime of pornography was never made explicit. Sexual exploitation of children is now officially defined as any picture, video, digital, or computer-generated image that looks like a real kid, as well as an image that has been changed or altered to seem as if it were a real child. Additionally, it bans child sexual exploitation and prescribes the same penalty for aiding in the crime as for perpetrating it. The child-friendly methods of recording testimony include: conducting the interview in the child's home, banning night-time detainment of any children at the police station, and transcribing the child's testimony verbatim. The

kid needs the assistance of an interpreter or other expert. A woman doctor will do a medical checkup on a girl and in the presence of a guardian or other family member whom the kid trusts. Frequent pauses for the child were required to avoid harsh interrogation or character assassination during trial procedures. The child's identity was protected to prevent the media from revealing the child's name without the approval of the Special Court. The law also calls for obligatory reporting of offenses and failing to disclose such an offense would lead to a penalty. To minimize the time it takes to go to trial, the Act sets a 30-day limit for gathering evidence and requires trials to be finished within a year, as much as feasible.

### POCSO Act: Recent Developments

The law has been further updated to increase the severity of punishments for various crimes, including the possibility of capital punishment for sexual assault and aggravated penetrative sexual assault, to deter potential sexual predators from committing the heinous acts seen in recent tragedies like Unnao, Kathua, and Muzaffarpur Shelter Home.

The old law's penalty for penetrative sexual assault was a minimum of seven years in prison; the new Act increases that to 10 years. The amended section also has a sub-part that says if someone below the age of 16 is the victim of a sexual assault; the minimum penalty is 20 years in jail, which may be extended to life in prison and a fine.

The Revised Act adds two additional categories of severe penetrative sexual assault. Like when a child is attacked till death and when a sexual assault happens during a natural catastrophe or similar condition of violence—penalties for this offense vary from ten to twenty years in prison to the death penalty. The aggravated sexual assault definition has also been expanded to include cases where the attack was carried out during a natural disaster or where children are administered or helped to receive hormones or chemical substances to reach sexual maturity prematurely. This amendment also enhanced the penalties for the storage of pornographic material for business purposes. Also, it included two additional grounds that are not subject to destruction, deletion, or reporting of pornographic material concerning a child and the transmission, display, and distribution of such material other than for reporting purposes.

The judicial system has become aware of the increase in crime and the sexual exploitation of minors and has prioritized providing recommendations on security and rehabilitation.

The NGO Sakshi v. Union of India<sup>1</sup> established that existing criminal laws were inadequate in handling instances of child sex abuse in the first instance, through their PIL filed before the Supreme Court. Sexual penetration of a female victim was prosecuted under Sections 375 and 376(2) of the IPC, whereas sexual penetration of a male victim was prosecuted under Section 377 of the IPC. Non-penetrative sexual offenses committed against a female child were dealt with under sections 354 and 509 of the IPC, but a similar rule did not exist for a male child victim. The Supreme Court issued guidelines on conducting proper child sex abuse trials, including concealing the accused's face from the victim or witnesses, allowing victims to take breaks during the trial, and limiting unnecessary victim harassment during cross-examination. These guidelines are incorporated into the POCSO Act. In *Shankar Kisanraokhade v State of Maharashtra*<sup>2</sup> the court noted that sexual abuse might occur in many forms, including sexual molestation, assault, or exploitation child may be sexually abused by a person known to them. The Supreme Court required that the federal and state governments and voluntary organizations safeguard minors from prostitution and provide them chances for rehabilitation and a better life in *Gaurav Jain v Union of India*.<sup>3</sup>

<sup>1</sup> (AIR 2004 SC 3566)

<sup>2</sup> 5 SCC 546 (2013),

<sup>3</sup> AIR 1990 SC 292 (2004).

The Supreme Court said in *Vishal Jeet v Union of India*<sup>4</sup> that child sex abuse is a socio-economic problem and ordered state governments to guarantee that law enforcement agencies take action against this horrible crime.

As a result of their age, the Supreme Court in *Nipun Saxena & Anr v Union of India*<sup>5</sup> emphasized the need for extra care and protection for child sexual assault victims by keeping their identities and names hidden.

### Challenges Ahead

Because of increasing concerns about the escalating trend of sexual assault against minors, the POCSO (Amendment) Serve, 2019, has increased penalties to deter offenders. Unfortunately, its poor execution has meant no significant improvement or decrease in the sexual crime rate. According to the NCRB's conclusions, the present Act's conviction rate is meager, but the number of pending cases continues to grow. As following are the primary causes of weak implementation of the law:

Delays in court proceedings are caused by the shortage of judges qualified to handle criminal cases under the statute.

Law enforcement agencies' apathetic attitude is another significant issue. Another problem is the inexperience of medical, judicial, and law enforcement agencies in addressing instances of child sex abuse. Police sub-inspector, who record underage female victims' testimonies, are in short supply in different police stations. Expertise and credibility of kid witnesses in courtroom battles that are frequently prolonged.

### The Act's Vulnerabilities:

The revised legislation has severe penalties, but it is still riddled with loopholes that need urgent correction. Increased use of the death penalty may reduce the number of reported murder cases and victims murdered. Generally, the offender is someone known to the victim, discouraging the victim from filing a report. In addition, the risk of a victim being raped and murdered is much greater. In cases where the accused is in authority, the amended Act does not protect the victim and their family. Despite the increased penalty for severe sexual assault, the Unnao Rape case shows that more must be done. The revised legislation lacks a plan for compensating victims or ensuring an adequate police investigation or an efficient method for decreasing the number of cases awaiting trial. It ignores worries about young adults having consensual sex since the current legislation considers 16-18-year-olds too immature to have sex, which families frequently abuse to cover up elopement and inter-caste marriages.

### The situation during Covid-19 Pandemic:

The particular obstacles faced by the COVID-19 epidemic spread to medical, social, and financial difficulties. The most significant pain is happening in one specific manner, and children are experiencing it. Despite children being a smaller proportion of the COVID-19 population, the global pandemic has had an outsized impact on children's access to a secure and healthy learning environment. In every corner of the globe, almost one billion children have been denied access to schooling for at least three to four months, thanks to national lockdowns. This change, in turn, allows sexual predators to harm youngsters via virtual venues.

As to CHILDLINE 1098, an exceptional service that deals with emergency requests for assistance from women and children experiencing abuse and violence, the number of calls from distressed children during India's shut down in April of 2020 rose by 50 percent. The Supreme Court of India recognized the severity of the situation, taking cognizance that children in state care programs faced significant risks.

<sup>4</sup> AIR 1990 S.C. 1412(1990).

<sup>5</sup> WP (civil) 565/2012



The growing use of internet communication tools amongst children and teenagers in India has caused a new danger to their safety. The latest study from the U.S. National Center for Missing & Exploited Children (NCMEC) and the National Crime Records Bureau (NCRB) shows that from September 2019 to January 2020, at least 25,000 child sexual abuse photos were posted to Indian social media sites. After the lockdown was announced, child pornography searches spiked drastically, as the India Child Protection Fund reported. A 95 percent increase in child sexual abuse material and images was noted during the country's shutdown.

The genuine issues associated with these numbers are a cause for worry, particularly considering the changing landscape of education, which has moved entirely online, and the fact that "having continuous parental supervision is not a realistic choice in households with two working parents." Additionally, in many instances, schools urge parents to avoid hovering around their children in the class to reduce the likelihood of helicopter parenting. It may make youngsters more susceptible to internet sexual abuse.

To guarantee the Indian Constitution's Article 21 right to dignity, protecting minors from sexual assault is very necessary. Spending more time online may lead to grooming and exploitation, both online and offline. Children may be quickly forced into participating in criminal or hazardous actions. For instance, minors may be manipulated into making and sharing sexually explicit pictures of themselves, which others may exploit to harass and abuse them.

### **CONCLUDING REMARKS & SUGGESTIONS**

Child sexual abuse is a societal calamity that has ramifications for the whole human race. It is a covert crime that often goes undetected, either because it is committed by people who are familiar to the victim, or because the victim is embarrassed to report the abuse because of social shame, or for any other reason, and is left to suffer in silence and without help. The passage of the POCSO Act has resulted in a significant rise in the number of instances of child sexual abuse being reported in India. While it has attempted to stem the upward trend in sexual crimes against children, it has failed due to severe loopholes in its effective implementation. It requires dedicated and coordinated efforts from the implementing agencies and a robust multidimensional approach to ensure a speedy trial to avoid the re-victimization of those affected. After the alarming increase in sexual crimes against children and the tragic incidents of Kathua and Unnao gang rape, the POCSO Act was amended to provide more stringent punishments to act as an effective deterrent. However, this is insufficient because it lacks any practical solution to deal with the massive backlog of cases registered under the Act and fails to address many more k issues. The k issues include:

Moral and sexual education should be made mandatory in all schools and colleges to raise awareness and vigilance among youngsters about the increasing number of sexual crimes and help them comprehend the different kinds of sexual violence.

Awareness is a powerful tool in the fight against this social evil. As a result, the media and nongovernmental organizations (NGOs) should be well-equipped to educate the public about children's possible hazards and dangers. Each agency is responsible for a particular element of the issue and has primary accountability for it. As a result, a coordinated effort on all implementing agencies is needed to guarantee a speedy trial, especially in light of the large number of exceptional cases filed under the POCSO Act and the low percentage of convictions. According to the United Nations, judges, physicians, staff members, police officers, and prosecutors who have been educated to grasp the complexities of these crimes and react appropriately are in high demand today. The POCSO (Amendment) Act, 2019, is deafeningly silent on several critical issues that require the government's immediate attention and careful consideration to achieve the Act's objectives of providing children with prompt justice and ensuring a safe environment for their better survival.

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