



AMIDST PROMISE AND PRACTICE: STRICT IMPLEMENTATION OF THE POCSO ACT

Dr. Rabia Gund Advocate * and Kanwar Pahul Singh Advocate**

ABSTRACT:

The Protection of Children from Sexual Offences (POCSO) Act, 2012, stands as a landmark piece of legislation enacted to address and deter the sexual abuse and exploitation of children in India. It was framed to provide a comprehensive legal mechanism for the protection of children. POCSO aimed to streamline the child-sensitive judicial processes and ensure speedy justice. However, more than a decade has passed but it still lacks proper implementation. This article begins with the examination on the gap between the promises made and its actual implementation. It concludes with the recommendations to bridge the gap between legislation and lived realities.

“Children are our most valuable resources”

- Herbert Hoover

Introduction:

Internationally, India is a signatory to the United Nations Convention on the Rights of the Child (UNCRC), which requires member states to protect children from all forms of sexual exploitation and abuse. Constitutionally, the Act is grounded in Article 15(3), 21 and 39(e) and (f), which empower the state to make the special provisions for children and protection from exploitation. The Protection of Children from Sexual Offences Act, 2012 (POCSO) was enacted as a comprehensive and child-centric legislation to address the alarming prevalence of sexual abuse against children in India. Its progressive provisions, ranging from gender-neutral definitions and stringent punishments to child-friendly procedures and special courts, represent a legislative commitment to the constitutional and international obligation of safeguarding children's rights and dignity. However, more than a decade has been passed since its implementation, the dissonance between the law's promise and its practical realization remains stark.

Constitutional Provisions: The POCSO Act draws legitimacy and purpose from several provisions of the Constitution of India, particularly those that emphasize protection, dignity and rights of children.

Fundamental Rights:

- Article 14- Right to Equality, ensures equal protection of laws to all individuals, including children.

* B.Com LL.B, LL.M., UGC-NET, Ph.D., (Double Gold Medalist.), is an Advocate at Pb & H High Court, Chandigarh and an Assistant Professor at University Institute of Legal Studies, Panjab University, Chandigarh.

** B.A LL.B., is one of the leading advocate practicing at Pb & H High Court, Chandigarh, well known for his social work. As number of PILs has been filed by his name as well as on behalf of the People Welfare Society (Regd.), an NGO working for the upliftment of the society.

- Article 15(3) - Special Provisions for children, allows the state to make special laws for the welfare of children and women.
- Article 21- Right to Life and Personal Liberty, interpreted to include the right to live with human dignity, which includes protection from sexual abuse.
- Article 21A - Right to Education, abuse and trauma can severely impact education; the POCSO Act helps to ensure a safe environment.
- Article 19(1)(a) - Freedom of Speech and Expression, related to a child's right to speak up and be heard in cases of abuse.

Directive Principles of State Policy (Part IV):

- Article 39(e) & (f) - Mandates that, children should not be abused and should be protected from exploitation and moral/physical abandonment.
- Article 45 & 47 - Emphasize early childhood care and the duty of a state to improve the level of nutrition and standard of living, which indirectly supports protection from abuse.

Fundamental Duties (Article 51A)

- Clause (k): It is the duty of parents/guardians to provide opportunities for education to their children between the age of 6–14, which includes providing a safe environment.

Legal and Policy Framework: POCSO is also in alignment with:

- UN Convention on the Rights of the Child (UNCRC) – India ratified this convention in 1992, obligating the country to protect children from all forms of sexual exploitation and abuse.
- Juvenile Justice (Care and Protection of Children) Act, 2015 – which also emphasizes child protection.

Legislative Intent:

The enactment of 'The Protection of Children from Sexual Offences Act, 2012' (herein after referred as POCSO Act), marked a significant legislative intervention in response to increasing concerns expressed by civil society regarding sexual offences against children in India. Prior to the statute, the existing legal framework was inadequate in addressing child specific crimes, lacking in both definitional precision and tailored procedural safeguards. To mitigate the problems/ sufferings/ distress (physical or mental), mental agony/ frustration of innocent gullible 'Tiny Tots' and 'Teenagers' such as 'victims' of 'Child pornography', 'sexual harassment', 'sexual assault', and crimes against them under POCSO Act, 2012. Further, Parliament had enacted rules in the year 2020 in exercise of the powers conferred by section 45 of the act viz. 'The Protection of Children from Sexual Offences Rules, 2020'. Parliament in its wisdom enacted POCSO with a graceful preamble which is extracted herein-below:

"An act to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of special courts for trial of such offences and for matters connected therewith or incidental thereto"

The object behind the Act is clearly visible from the preamble, clearly shows the intention of the legislature behind passing the same. The POCSO Act, 2012 aimed for the protection of children from the various kinds of sexual offences and also for the establishment of the special courts for the speedy trial of the cases, so that children suffering from sexual offences get timely justice and matters must not get unnecessarily prolonged leading to the harassment of the vulnerable. Otherwise the whole idea behind the act will be tarnished by adding up more trauma to their already traumatic life by litigating for years.

Commitments under POCSO Act, 2012 and POCSO Rules, 2020:

From a legal standpoint, the statute imposes both substantive and procedural commitments on all the states, judicial institutions, law enforcement agencies and other stakeholders.

1. Substantive legal commitments:

Provision	Legal Commitment	Explanation
Section 3-13	Criminalization of sexual offences	Law defines various sexual offences (penetrative sexual assault, aggravated sexual assault, sexual harassment, use of children in pornography) and mandates punishment.
Section 7 & 11	Gender-neutral protection	Recognizes boys and third gender children as victims, ensuring equal protection under the law.
Section 14–17	Statutory penalties	Prescribes minimum and maximum penalties for offences, creating deterrence and holding offenders accountable under criminal law.
Section 29	Presumption of guilt	Upon framing of charges, the burden of proof partially shifts to the accused, creating a deviation from general criminal law to protect child victims.
Section 30	Presumption of culpable mental state	Assumes intent or knowledge in certain cases unless disproved, strengthening the prosecution's position.

2. Procedural and institutional commitments:

Provision	Legal Commitment	Explanation
Section 19	Mandatory reporting	Any person (including professionals) with knowledge of the offence must report it to the authorities. Failure to report is punishable.
Section 24-27	Child-friendly procedures	Mandates sensitive handling of victims: no police officers in uniforms are allowed, child familiar surroundings, presence of parents or support persons, and avoidance of repeated statements
Section 28 and 33	Designation and functioning of special courts	Ensures POCSO cases are handled by Special Courts with trained judges for speedy and sensitive trials.
Section 35	Timely recording of evidence	Directs courts to record evidence within 30 days of cognizance, protecting the child from prolonged trauma.
Section 38 (8)	Conclusion of trial within one year	Ensures swift disposal to minimize trauma and delay of justice.
Section 39	Appointment of support persons	State must facilitate psychological and logistical support for child victims through accredited NGOs or social workers.

3. Commitments under the POCSO Rules, 2020:

The rules are framed under section 45 of the Act, to strengthen the framework of the Act and also to clarify the institutional duties. These legal commitments include:

Rule	Legal Commitment	Explanation
Rule 3	Awareness generation and capacity building	Central and state governments must prepare and disseminate age appropriate educational material for children relating to personal safety and protection from sexual offences. Additionally it requires people interacting and working with children to ensure police verification, background check and periodical training of all the staff.

Rule 4	Duties of the police	Special Juvenile Police Unit (SJPU) or local police must inform the child and guardian about legal rights, arrange emergency medical care, and report to the Child Welfare Committee (CWC) within 24 hours.
Rule 5	Interpreters, translators and special educators	Courts and police must ensure availability of such persons when the child has special needs.
Rule 6	Legal aid	Legal Services Authorities must provide counsel to the child through empanelled lawyers.
Rule 7	Compensation to victims	Courts may order interim or final compensation for physical and psychological harm under the Victim Compensation Scheme.
Rule 9	Support persons	CWC must appoint a support person on the request of the child or guardian; such persons must assist through all stages of investigation and trial.
Rule 12	Reporting of pornographic material	Obligates service providers and media platforms to report and remove online child sexual abuse material (CSAM).
Rule 13	Monitoring by NCPCR/SCPCR	The National Commission for the Protection of Child Rights (NCPCR) and the State Commission for the Protection of Child Rights (SCPCR) must monitor the implementation of the Act and submit annual reports to the central and state governments.

Practical realities of enforcement of POCSO:

POCSO as a law has been path breaking and much needed but there have been various lapses in the implementation of the Act which led to increase in overall cases under POCSO. Now, the only question herein, arises in the minds of all the persons, who are living in society that 'Are the children safe in India', the answer is a big 'NO'. Today, not even adults are safe neither inside their house nor outside. More than hundred serious or heinous crimes are reported on daily basis in vernacular newspapers. The situation of crime against children in India is bad to nasty. Nonetheless, the position on ground zero is quite startling so far as the safety and protection of the infants, children and teenagers is concerned. This is a well established fact that crimes against the children are not being curbed by the authorities despite of having strict laws, statutes, rules and regulations, having been made by the authorities time to time.

Generally, as per the data of the National Crime Records Bureau (NCRB) "Crimes in India 2021" report, 1,49,404 cases of crimes against children were reported in the year 2021. Out of this, 53,834 cases were of POCSO, which amounted to 36.05% of the total cases. Overall there was 16.2% rise in crimes against children in India from 2020 to 2021¹.

Apart from the statistical data, the daily headlines in newspapers serve as an example of the same lapse. In 2024, it was reported that a minor girl studying in class 5th was raped in Police Station of Jalandhar Cantt. The victim's parents had alleged that a school teacher was sexually harassing their daughter and was threatening to kill her, if she revealed anything to anyone.² In another news report, a heinous crime against child was revealed, when a class 12th student of one of the reputed Chandigarh school was raped by school bus driver. In this case 26-year-old morphed 17-year-old girl's pictures to threaten her and raped her repeatedly.³

The above mentioned incidents are not only the one. As such same, are just the references of few heinous incidents occurred lately. The startling tidings are witnessing a grim picture of India as of now so far as the crimes against infants, children and teenagers are concerned. They are not safe anywhere either at home or at school. Meaning thereby such tiny tots are the persons who does not know even the facts that such things can even happen to them and they are always seen enjoying their own life regardless the place wherever they may be. However, the facts shown in above tidings are purely astonishing ones. Despite the progressive framework the practical application of the provisions revealed a gap between intent and outcomes.

¹ NCRB, "Crime in India" (2022).

² "Teacher arrested for rape of a minor girl" *The Tribune*, May 29, 2024.

³ "Chandigarh class 12 student raped by school bus driver" *Hindustan Times*, Aug. 23, 2024.

Challenges in its implementation:

1. Delays in investigations and prosecution: Despite the statutory requirements investigating timelines are violated due to lack of co-ordination between police, experts and prosecutors. In 2018, the Supreme Court in the case of *Alakh Alok Srivastava v. Union of India* specifically focused on timely disposal of cases and creation of child friendly atmosphere in special courts. The court directed high courts to form committees to monitor POCSO trials and highlighted the importance of gathering data on pending cases.⁴
2. Inadequate numbers and capacity of special courts: Several districts lack designated POCSO courts. Moreover, judges are often not adequately trained in child psychology or child-sensitive procedures. Overburdened courts often lead to multiple adjournments. In 2019, the Supreme Court took suo motu cognizance of the growing number of child rapes incidents. Again in 2025, court heard submissions and emphasized that court without appointing adequate number of judges serves no purpose. Court recognized that substantive issues like shortage of judges and inadequate training leads to ineffective execution.⁵
3. Lack of support services and rehabilitation mechanisms: POCSO rules outlines responsibility of state to provide support to the children yet it is practiced rarely and victims face difficulty in accessing compensation. In the case of *Bachpan Bachao Andolan v. Union of India* the Supreme Court highlighted the role of 'support persons' for child victims under POCSO Act. The court emphasized that support persons are essential for guiding child victims through the legal process, providing emotional and practical assistance.⁶
4. Low awareness and underreporting: Despite the mandatory reporting provision the actual reporting remains low due to fear of social stigma and lack of social awareness among children, teachers, community leaders and healthcare professionals.
5. Inadequate training and Sensitization of Stakeholders: Effective implementation requires co-ordination among multiple stakeholders- police officers, medical professionals, child welfare societies, prosecutors and judges. Unfortunately many of these actors lack adequate training or sensitization in handling child sexual abuse cases. The National Judicial Academy and other institutions have attempted to conduct training sessions but the scale and consistency remains insufficient.
6. Lack of Government Oversight: Although, section 168 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 imposes a clear duty on police officers to prevent the commission of cognizable offence, there is a glaring failure in implementing this mandate at the ground level due to the absence of pro-active measures by government authorities.
7. Non compliance with Child Protection Rules and awareness measures: There is a widespread non compliance with the obligations under the relevant rules particularly Rule 3, which requires dissemination of child safety information, development of safety materials and background checks of individuals working with children. The absence of mandatory police verification, periodic workshops, specialized training and orientation sessions, further aggravates the situation, leaving children unprotected and stakeholders unequipped to respond effectively.

Conclusion and Suggestions:

The POCSO Act must be supplemented by robust implementation mechanisms, adequate resource allocation, judicial accountability, and multi-sectoral coordination. Training, sensitization, and periodical review must become institutionalized practices, not exceptions. The statistical data and news reports reflect both positive and concerning trends. On the one hand, the consistent rise in reported cases signals greater legal awareness and the breaking of silence around child sexual abuse. On the other hand, low conviction rates, prolonged trials, and inadequate victim support structures expose the systemic shortcomings in the law's enforcement. The procedural delays, untrained police officers, under-equipped special courts, and poor inter-agency coordination continue to compromise the child's right to speedy and sensitive justice. The analysis of ground realities, stakeholder challenges, and institutional deficits suggests that law alone cannot transform entrenched social apathy or administrative inertia. In light of numerous challenges hindering implementations, it is imperative to ensure that

⁴ AIR 2018 SC 2440.

⁵ In Re: Alarming rise in the number of reported Child Rape Incidents, SMW (CrL.) 1/2019.

⁶ WP (C) No.1156/2021.

law fulfills its intended purpose. Therefore, the following suggestions aim to strengthen the implementation of the Act:

1. Strengthening the capacity and functioning of special courts: Special court in every district with exclusive jurisdiction should be established to avoid the overburdened and full time judges trained in child rights law and child psychology should be appointed.
2. Mandatory training and sensitization of officers: Regular training of police, prosecutors, judges, medical professionals and support persons should be conducted. This training should include modules on child psychology and laws relating to sexual offence.
3. Improving investigation and forensic support: Timely and uniform investigations must be ensured along with establishment of more forensic science laboratories in order to avoid delays in evidence processing. Digital evidence management systems should also be introduced.
4. Enhancing, reporting mechanisms and awareness: Nationwide awareness campaigns should be launched targeting parents, schools etc. about child sexual abuse, the POCSO act and reporting obligations. Recently, in 2025, the Hon'ble Punjab and Haryana High Court has issued the notice in the PIL, titled as, *Kanwar Pahul Singh v. Union of India*. This PIL has highlighted the issue of increasing crimes against children, lack of awareness among the society and implementation of the Rule 3 of POCSO Rules, 2020 in their strict sense.⁷

At the end, it can be said that, the true measure of the success of the POCSO Act lies not in the number of cases registered, but in the dignity restored, the trauma healed, and the justice meaningfully delivered to children. Bridging the gap between promise and practice is not merely a legal necessity but a moral imperative that India must fulfill to uphold the best interests of its children.

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⁷ CWP-PIL-174 of 2025.