



# Protection Of Human Rights Of Children Under The Prevention Of Children From Sexual Offences Act In India: Issues And Challenges

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## Abstract:

The POCSO Act, 2012 is a landmark and comprehensive law provides protection of children from sexual assault, sexual harassment and pornography. This Act provides special protection to the children and tries to protect various human rights and fundamental rights. Every stage of proceeding child friendly mechanisms has been provided under this Act. Therefore the researcher has tries to discuss human rights of children under the prevention of children from sexual offences in India, issues and challenges before the society. Under this Act special court is constituted to decide and deliver cases and to provide speedy justice to the victim. This Act is amended in 2019 and made stringent provisions of punishment and its better application and implementation. Still there are some issues and challenges before society because the ratios of these offences are increasing in India. Therefore it is need at present time to tackle this problem of better implementation of this act then it will helpful to the victims in the matters of protection and prevention of sexual harassment of children

**Key words: Protection, human rights, sexual offences, sexual exploitation, pornography and sexual assault.**

## Introduction:

The POCSO Act is enacted in India for the purpose of protecting children from sexual harassment, sexual assault, and offences relating to pornography. This Act tries to protect child's various human rights, fundamental rights and best interest at each and every stage of the proceeding and processing under this Act. Today the offences against children are increasing in the society, there was no special law relating to tackle this problem in India till 2012. In Oder to effectively address and prevent sexual abuse, sexual assault, sexual harassment and pornography, the Ministry of Women and Child Development introduced this Act. Under this

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Act special protection is provided to the children at the time of process of reporting, recording of evidence and investigation. This Act also state about speedy trial and provisions of the special courts for speedy disposal of cases. This Act is also amended in 2019 and made certain amendments relating to strengthen provisions of punishments for various offences under this Act.

This Act is nothing but of the landmark amendment in India regarding protection of various rights of the children form sexual abuse. Therefore, in this article the researcher has tried to discuss about protection of human rights of children under the prevention of child from sexual offence Act in India.

### **Protection of Human Rights of Children under the POCSO Act:**

Following are some important rights have been protected under the POCSO Act as under-

- **Definition of Child:** Under this Act, child means any person below the age of 18 years of age. Therefore various interests and rights of the children have been protected under this Act.
- **It is a gender-neutral law**

The framework of this Act is gender neutral one and its applicability available to those children who are sexually abused. It means that child of any gender abused on above ground, remedies and protecting is provided under this Act. This Act does not make any discrimination on the ground of gender.

- **Reporting of cases under this Act is mandatory:**

Under the POXSO Act, it is mandatory obligation imposed on the person who has knowledge of an offence has been committed against the child has to be reported to the local police station to Special Juvenile Police Unit. This Act not only providing punishment to the person who has committed sexual abuse against child but also to the person who failed to report the offence. The punishment is either imprisonment or fine or both<sup>2</sup>.

Again if the person in charge of company or institution who fails to report of the commission of sexual offence of any subordinate under his control will liable imprisonment and fine under this Act<sup>3</sup>.

- **Prohibition of Trafficking of children for sexual purpose :**

Under this Act, trafficking of children for sexual purpose has been punishable and prohibited. This Act provides maximum punishment as rigorous imprisonment for life for trafficking of children for above purpose. Abettor is also liable for such offence.

- **Different types of sexual abuse and punishment for it:**

This Act defines about different types of offences such as sexual abuse, sexual harassment or exploitation, child pornography and circumstances where the offence has been committed by the person who is family member, trust authority like teacher, police officer, doctor against mentally ill person is punishable under this Act.

<sup>2</sup> Section 19 of the POCSO Act, 2019.

<sup>3</sup> Section 21 of the POCSO Act, 2012

- **Child Pornography and punishments:**

This Act defines child pornography as child pornography is any kind of visual display of overt sexual activity that engages a child. Such content may be an image, a video or any computer-generated picture which cannot easily be differentiated from a real child. It includes all those images which shows a child to be involved in such activities whether it is created, adapted or modified<sup>4</sup>.

According to this Act, any person who uses a child for the purpose of sexual gratification through any kind of media either printed or electronic, no matter whether it was aimed for distribution or just personal use is said to have used the child for pornographic purposes. It includes the display of a child's sexual organs, indecent representation of a child, and engaging a child in true or simulated sexual activity where penetration is not a mandatory condition<sup>5</sup>.

The POCSO Act punishes any person committing an offence under section 13 with an imprisonment for at least 5 years and fine and if the person is convicted for the same offence again, then he would be punishable with imprisonment for minimum of 7 years and fine.

The POCSO Act provides punishment for storing or possessing pornographic material that involves a child in three different situations. Firstly, if it has been done to share such material so as to commit child pornography then it is punishable with a minimum fine of Rs. 5000, and if such an act is repeated then with a fine not less than Rs. 10,000. Secondly, if such storage or possession has been done to display or distribute it, then the punishment is imprisonment for a term which may extend to 3 years, or with fine, or both<sup>6</sup>.

If the said pornographic material is possessed with an intention to use it for commercial purposes, then the person would be punishable with imprisonment, the term of which would be between 3 years to 5 years, or fine, or both. And if the same is committed again, the punishment would be between 5 years to 7 years of imprisonment and fine.

- **Establishment of Special Courts**

The Act provides for the establishment of Special Courts for trial of offences under the Act, keeping the best interest of the child as of paramount importance at every stage of the judicial process.

- **Rights of child at the time of recording of statement:**

Recording the statement of the child at the residence of the child or at the place of his choice, preferably by a woman police officer not below the rank of sub-inspector. While recording the statement the police must not be in uniform, assistance of an expert person, translator and interpreter must be provided to the child. If the child is disabled then the assistance of special educator or any person who is familiar with the manner of communication of child.

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<sup>4</sup> Section 2 (da) of the POCSO Act, 2012

<sup>5</sup> Section 13 of the POCSO Act, 2012

<sup>6</sup> Section 15 of the POCSO Act, 2012

- **Right against detention:**

This is a fundamental right of the child that the detention of the child must be as per the procedure established by law otherwise it will be treated as illegal detention. Again there is an obligation imposed on the police department that no child to be detained in the police station in the night for any reason.

- **Medical examination:**

Under this Act, the medical examination of the child to be conducted in presence of the parent of the child or any other person in whom the child has trust or confidence. In case the victim is a girl child, the medical examination shall be conducted by a woman doctor. These are special protection provided at the time of medical examination. Child sexual abuse is rarely diagnosed merely on the basis of physical examination. In many instances, the scars or bruises on the body of the victim are not found either because the cases are not immediately reported or the sexual abuse does not result in such injuries.

In case of *Pintu v. State of U.P.*<sup>7</sup> (2020), the accused was convicted under Section 377 of the Indian Penal Code, 1860 and Section 6 of the POCSO Act were set aside on the ground there was no mark or external injury on victim therefore the Allahabad High Court held that in case of sexual assault on a boy of 7 years by person of 23 years there should have some kind of external injury.

In another case, *State (NCT of Delhi) Vs. Anil*<sup>8</sup> the Trial Court and Delhi High Court had acquitted the accused on the ground that, the victim refused herself for medical, failed to prove physical relation with an accused and there were no injuries on her body. On the basis of above types of case it can be said that there is need of external injury and mark or injury on the body of victim or accused it will be helpful to prove that there is commission of sexual offence with child.

- **Frequent breaks for the child during trial:**

At the time of trial, frequent break should be given to the child and Child not to be called repeatedly to testify before the competent authority. No aggressive questions to be asked to the child at the time of trial. These limitations are necessary to protect the mental condition of the child.

- **Punishment for attempt and unsuccessful:**

Under this Act, attempt to commit an offence is punishable and half punishment of the commission of the offence is provided to the person for attempt to commit crime. This Act also provides punishment for intent to commit offence even though it becomes unsuccessful attempt but it is punishable.

- **Burden of proof:**

Under this Act, offences like Penetrative Sexual Assault, Aggravated Penetrative Sexual Assault, Sexual Assault and Aggravated Sexual Assault, the burden of proof is shifted to the accused.

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<sup>7</sup> Criminal misc. Bail application no. - 23418 of 2020

<sup>8</sup> CRL.L.P.No. 259/2016

- **Punishment for false complaint:**

This Act provides punishment for false complaint or false information with malicious intention and encouraging t any one for such act is also libel for punishment i.e. six months. If false complaint is made against the child then this punishment will enhance up to one year<sup>9</sup>.

- **Media has been barred from disclosing identity of the child:**

Under this Act the Media having certain limitations while disclosing the identity of the child. It may be possible with the prior permission of the special court. If media is failed to obey this limitation then will be punishable form six moths to one year punishment<sup>10</sup>.

- **Right to speedy trial:**

Right to speedy trial is part of right to life and personal liberty under article 21 of the Constitution of India. This right s also protected under this Act. This right provides that evidence of the child must be recorded within 30 days. It is also states that, special court has to complete trial within one year<sup>11</sup>.

In the instance case of *Shubham Vilas Tayade Vs. State of Maharashtra*<sup>12</sup> the Special Court allowed the prosecution for recording evidence after 30 days of taking cognizance. This order was challenged by the accused, on the ground of violative of Section 35 of the POCSO Act. It was held that, the Special Court can record evidence after 30 days and the only criteria provided by Section 35 of this Act is that the reasons for the delay have to be recorded.

- **Relief and rehabilitation:**

This Act provides relief and rehabilitation of the child, as soon as the complaint is made to the Special Juvenile Police Unit (SJPU) or local police, these will make immediate arrangements to give the child, care and protection such as admitting the child into shelter home or to the nearest hospital within twenty-four hours of the report. The SJPU or the local police are also required to report the matter to the Child Welfare Committee within 24 hours of recording the complaint, for long term rehabilitation of the child.

- **Right to survival and right to privacy:**

It is most important human rights of the child in the form of survival Right to survival is part of right to life and personal liberty under article 21 of the Constitution. Therefore is duty of the state to protect right to survival and protect from evil society and brought in a secure environment. The main objective behind insertion of this section is to protect the right to privacy of a child against whom any offence under the POCSO Act has been committed so as to maintain the confidentiality of the proceedings for the best interests of the child victim<sup>13</sup>.

<sup>9</sup> see section 22 of the pocso act, 2012

<sup>10</sup> Section 23 of the POCSO Act, 2012

<sup>11</sup> Section 35 of the POCSO Act, 2012.

<sup>12</sup> Criminal Writ Petition No. 68 of 2018

<sup>13</sup> Section 23 of the POCSO Act, 2012.

- **Duty of the Central and State Government:**

Under this Act it is duty on the Central and State Government that create awareness through various means of media and provide knowledge about the provision of this Act The Act to the public, children, parents and guardians.

**Major changes made by the Protection of Children from Sexual Offences (Amendment) Act, 2019:**

Offence	POCSO Act, 2012	POCSO Amendment Act, 2019
Use of child for pornographic purposes	Maximum: 5 years	Minimum: 5 years
Use of child for pornographic purposes resulting in penetrative sexual assault	<ul style="list-style-type: none"> <li>• Minimum: 10 years</li> <li>• Maximum: life imprisonment</li> </ul>	No change
Use of child for pornographic purposes resulting in aggravated penetrative sexual assault	Life imprisonment	<ul style="list-style-type: none"> <li>• Minimum: 20 years</li> <li>• Maximum: life imprisonment, <i>or</i> death</li> </ul>
Use of child for pornographic purposes resulting in sexual assault	<ul style="list-style-type: none"> <li>• Minimum: Six years</li> <li>• Maximum: Eight years</li> </ul>	<ul style="list-style-type: none"> <li>• Minimum: Three years</li> <li>• Maximum: Five years</li> </ul>
Use of child for pornographic purposes resulting in aggravated sexual assault	<ul style="list-style-type: none"> <li>• Minimum: Eight years</li> <li>• Maximum: 10 years</li> </ul>	<ul style="list-style-type: none"> <li>• Minimum: Five years</li> <li>• Maximum: Seven years</li> </ul>

- **Directions given by Court on POCSO:**

There are some cases decided by the courts and given some landmark directions for prevention of sexual offences against child in *India. Bijoy Vs. State of West Bengal*<sup>14</sup> in this case accused was convicted of committing of sexual assault in this case the Calcutta High Court issued some guidelines which has to be follow by the investigation agencies for the protection of dignity of victim as under-

- The police officer has to register the FIR as per Section 19 of the POCSO Act and also have to inform to the victim and parents about the protection and their rights about legal aid.
- After lodging of the FIR, the child should be immediately sent for medical examination under Section 27 of the POCSO Act. If the child who falls within the definition of child need of care and protection then the matter must be forward to the Child Welfare Committee.
- The identity of the victim is not to be disclosed in any media.

<sup>14</sup> Decided on 2<sup>nd</sup> March, 2017

- Compensation under Section 33(8) of the POCSO Act can be awarded by the Special Court at the interim stage.
- The compensation at the interim stage is independent of compensation to be paid by the convict upon conviction.

The objective behind providing compensation is the relief and rehabilitation of the child victim and the reparation to the victim when the State has failed to protect the individual from crimes.

Again in *Sunderlal Vs. The State of M.P. and Ors.* In this case the father of rape victim filed petition under article 226 of the Constitution of India for permission to terminate the pregnancy. The Madhya Pradesh High Court paid emphasis on the report according to which the length of the pregnancy was 20 weeks. Following directions issued by the court.

- In the case of a minor, the consent of the petitioner is enough for the termination of pregnancy and it is not essential to obtain the consent of the minor victim.
- The right to termination of pregnancy flows from Article 21 of the Indian Constitution.
- A committee constituted of 3 registered medical practitioners has to form an opinion regarding the termination of pregnancy in accordance with the Medical Termination of Pregnancy Act, 1971.
- If the Committee gives permission to terminate the pregnancy, then all the services and assistance are to be provided to the victim by the Respondent i.e. State.
- In case of termination of the pregnancy, the DNA sample of the foetus is to be kept in a sealed cover in accordance with the procedure.

### Issues Challenges on POCSO Act:

- POCSO is silent and not provided clear direction about the provisions of Consent of the child while undergoing the medical examination. In these types of cases parents or investigation offices insisting for giving consent.
- The provisions of medical examinations under this Act, if the victim is female child then the medical examination should be done by the female doctor but on other hand if there is any emergency under such circumstances Government Medical officer has duty to examine rape victim. It is mandatory duty imposed under CrPC . This conflicting issue may arise if female doctor is not available in rape cases.
- Consented sexual act by the adolescent and adult under this Act are illegal and no general exceptions to this rule therefore both adolescent will liable for punishable under this Act.
- Child marriages are considered as illegal under this Act but under certain personal law it get sanction thus it create conflict between personal law and central legislation
- Lack of trained offices including, medical, police officer and investigating agencies, expert persons and persons associated with these types of offences.

- Victim is facing more problems at the time of getting medical care, assistance and interim compensation. It should be conducted within reasonable time and as per the procedure by medical experts.
- Some cases not reported due to the reason of reputation in the society.
- A provision of speedy trial is mentioned under this Act but it having practical difficulties to decide cases within reasonable period.
- Two finger test violets right to privacy and dignity under article 21 of the Constitution<sup>15</sup>.
- Lack of awareness amongst the people regarding protection and prevention of sexual offences against children and rights provided under this Act.
- Delay in disposal of cases is also vital issue.
- Justice is not getting due to reason of lache of evidences about this crime.

### Sum up:

On the basis of above explanation it is concluded that, the POCSO Act tries to protect some human rights as discussed in above manner. Some changes done by the POCSO Amendment Act, 2019 and increased some penalties for offences under this Act. Main object behind such amendment is to prevention of child from sexual offences. But still there are some challenges and issues before the society at large. There are certain loopholes or lacunas in the Act therefore it gets benefit to the accused person.

Today it is need to sensitize community or society regarding child sexual abuse, harassment and assault so it will easy to report the cases. Under this Act various authorities are performing their duties so they must be well trained, it will helpful to to investigate properly and to provide justice to the victim. The POCSO Act already makes the procedure child friendly and this approach should be followed by the judicial officers, magistrates, and police officers so that the child victims could repose them properly.

Human rights and fundamental rights plays vital role in the cases relating to the sexual offences against children. As per the above discussion number of cases decided by the Courts and directions issued for better implementation of this Act. These directions must be followed by the authorities at the stage of proceedings. State has to protect all these rights very carefully while deciding the cases. Then and the objectives of the Act will fulfill.

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<sup>15</sup> . it was held in Lillu @ Rajesh and another Vs.. State of Haryana (2013)



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