

THE POCSO ACT, 2012

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INTRODUCTION

The problem of child sexual abuse is more grievous than any other crime. There is no such day in India when a single case of child sexual abuse does not get reported. A report was submitted by the women and child development ministry of India in 2007, in which the core study was Child abuse. It was found that 53.2% of the children in India have faced more than one form of sexual abuse from different phases of their lives. Of this, 53.2% of the children 52.94% were boys. The National Crime Reports Bureau published a report in 2018 in which a total of 21,605 rape cases were reported in the country. This is quite a big number. The worse part is that the number of cases reported is way less than the number of offenses committed each day and the situation worsens because the abusers reported in these cases are generally the people who know the child personally and are in a position of trust and responsibility to the child. Cases are usually not reported in such a situation, or even the child's parents are not aware of it. The Government of India enacted the Protection of Children from Sexual Offenses Act, or the POCSO Act, in 2012 to protect children from various sexual offenses. The act treats both genders as different entities and recognizes both girls and boys as victims of sexual violence. The act considers anyone under the age of eighteen to be a child. The welfare of the child is crucial in achieving their healthy physical, emotional, mental, and social development. The act also ensures that children's interests are protected at all stages of the legal process by incorporating child-friendly mechanisms for reporting, recording evidence, investigation, and speedy trial of offenses by designated special courts. The Indian Penal Code was inadequate to address these crimes against children. The IPC does not explicitly mention these crimes. Another major reason for the POSCO to come to light was because of the stringent procedure under the IPC. Even adults who have been victims of these offenses are afraid to appear in court when summoned as a part of the procedure. A child would face even more difficulties in such a situation. It would pressurise them not to speak out the complete truth and may lead to blinding the judgment of the court. Such a procedure is not suitable for children.

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The following are the offenses under the POCSO Act:

- Penetrative sexual assault
- Sexual assault
- Sexual harassment
- Use of a child for pornographic purposes

Instigating or abetting any of these offenses is also punishable. All of these offenses must be reported to the Special Juvenile Police Unit or the local police. An offense can be reported by anyone, including a child. According to the POCSO Act, everyone is required to report the sexual abuse of a child. Failure to report or record any information relating to such offenses is a punishable offense. A child, on the other hand, cannot be punished for failing to report.

SALIENT FEATURES OF THE ACT:

- The POCSO Act defines in detail the various types of offenses, such as touch-based, non-touch, penetrative, and pornographic crimes, and does not leave any type of offense out.
- A person under the age of 18 is considered a child under the act.
- The act also includes a provision for victim compensation.
- Only the POCSO Court has jurisdiction to hear the act-related matter.
- The INNOCENT TILL PROVEN GUILTY principle does not apply to the POCSO Act of 2012. When a complaint is filed in this case, it is assumed that he intended to commit a sexual act.
- A child-friendly procedure is available.
- If a child is abused at home, the Child Welfare Commission will relocate him for care and protection.

The POCSO act also has provisions for reporting false cases of child sexual abuse; Section 22 of the POCSO Act 2012 states that anyone who files a false complaint or provides false

information about any of the offenses listed in sections 3, 5, 7, or 9 of the act with the intent to defame, threaten, or humiliate a person is guilty of a crime. Such a person faces up to six months in prison, as well as a fine or both. However, if a person provides false information about a crime against a child and knows the information is false but victimizes the child by providing such information, the POCSO Act Punishment for such an offense is a maximum of one year in prison, a fine, or both. A point to be noted here is that if a child gives false information, then there is no punishment under the POCSO Act Punishments.

Victims of child sexual abuse are unable to immediately report their abuse due to the trauma they have experienced. Recognizing this, the Union Ministry of Law and Justice clarified in 2018 that under the POCSO Act, there is no time or age limit for reporting sexual offenses. As a result, a victim can report an offense at any time, even years after the abuse has occurred. Organizations working with children in India cannot dismiss child sexual abuse complaints lodged against their employees on the grounds of time-lapse. On the other hand, many states in the United States and several countries in the European Union continue to impose time limits for victims of child sexual abuse seeking legal redress. Such limitation periods create formidable barriers for victims who intend to come forward with their allegations of sexual abuse later in life. Section 23 of the POCSO Act provides security of the victim's identity from any form of media. This helps the victim to get a sense of security in coming forward with their issues. People usually tend to not report such cases thinking about the effect it will have on their social image in the future. But, because of this provision, would help the victims raise their voices. Every case of child sexual abuse should be reported according to the Act. If a person with knowledge of the abuse fails to report it, they may face up to six months in prison, a fine, or both.

CONCLUSION

Despite the fact that our country has such comprehensive child sexual abuse laws, the scope of such abuse is staggering. According to a 2017 World Vision India survey, one in every two children in India is a victim of sexual abuse. Furthermore, in the vast majority of cases, the perpetrators are known to the victim, causing the victim to be hesitant to approach authorities for redress. The need of the hour is to educate the public about child sexual abuse so that there is no hesitation in reporting such crimes. Furthermore, the investigating agencies should be well trained, and professionals such as medical practitioners involved in the stages of investigation and trial should be efficient so that there is no room for error. The POCSO Act

already makes the procedure child-friendly, and judicial officers, magistrates, and police officers should follow this so that the child victims can have faith in them.

CASES IN NEWS:

- Delta rape case
- 2017 Unnao Rape Case
- 2021 Sexual Assault Rulings by (then) Judge Pushpa Virendra Ganediwala
- 2014 Badaun gang-rape allegations
- Muzaffarpur shelter case
- Kathua rape case

LANDMARK JUDGMENTS:

- Jarnail Singh v. State of Haryana (2013)
- Alakh Alok Srivastava v. Union of India and Others (2018)
- State of Karnataka v. Shivanna (2014)
- Gaya Prasad Pal @ Mukesh v. State (2016)
- Balaji Sarjerao Kamble v. State of Maharashtra (2017)
- Nipun Saxena v. Union of India (2019)

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