



## Juvenile justice and protection of children from sexual offences under POCSO act - A critical study

Meenakshi<sup>1</sup>, Pratiksha Bhardwaj<sup>2</sup>

<sup>1</sup> Department of Law, University Institute of Legal Studies, Chandigarh University, Mohali, Punjab, India

<sup>2</sup> Assistant Professor, Department of Law, University Institute of Legal Studies, Chandigarh University, Mohali, Punjab, India

### Abstract

This article provides a thorough analysis of the POCSO Act and the Indian juvenile justice system through a critical lens, highlighting their effectiveness in resolving the complex issues pertaining to both juvenile offenders and victims of sexual offenses. The first section of the article provides an outline of the important concepts and historical development of the juvenile justice system, emphasizing the legislative framework that oversees juvenile justice in India. The POCSO Act's history and clauses are then explored, with specific attention paid to important elements including the age of consent, special courts, and penalties. The POCSO Act and the juvenile justice system's actual execution are critically analysed for a significant amount of the text. The pros and cons of both punishment and rehabilitation for young offenders are discussed, as well as the difficulties in determining mental maturity. The POCSO Act's enforcement concerns are also thoroughly examined in this article, with particular attention paid to reporting and registration loopholes, victim assistance networks, and delays in the administration of justice. The effects on kids and society are examined, with a focus on the psychological fallout for young victims and the social obstacles to their recovery. International viewpoints on child protection and juvenile justice provide a comparative comparison with global norms, emphasizing best practices and lessons discovered in different legal systems. Case studies highlight significant incidents covered by the POCSO Act, adding to the legal precedents and their consequences.

**Keywords:** Juvenile justice, pocso act, child protection, sexual offences, rehabilitation, mental maturity assessment

### Introduction

The development of the juvenile justice system is a story of legal frameworks undergoing transformation, driven by a humane recognition of the unique needs and vulnerabilities of young offenders. In the past, society have understood that young criminals require particular treatment, different from the punitive methods used for adult offenders. Due to this realization, a distinct juvenile justice system was created, with a focus on education, rehabilitation, and reintegration into society. Unlike the punitive tactics associated with the adult criminal justice system, the juvenile justice system is based on the notion that young people have the ability to change and should be given opportunities for growth and development.

The POCSO Act has become a historic legislative intervention in India with regards to protecting children's rights and well-being. This comprehensive legislative framework was enacted in 2012 and recognizes the unique nature of crimes perpetrated against children, while addressing the rising occurrence of sexual offenses against minors. In addition to defining different types of sexual crimes, the POCSO Act imposes strict guidelines for the swift and kid-friendly resolution of cases. Its core beliefs centre on the necessity of creating a protective barrier around child victims, which includes taking steps to safeguard their privacy, dignity, and mental health.

### Research Questions

- To what extent does the Indian juvenile justice system effectively strike a balance between the concepts of rehabilitation and punishment for juvenile offenders, especially in situations involving sexual offenses?
- How well has the POCSO Act met its goals in terms of protecting child victims' rights and privacy, delivering

prompt and efficient justice, and resolving systemic issues with the legislation and its implementation?

### Research Objectives

- To evaluate how well juvenile justice system rehabilitation programs support young offenders' successful reintegration into society while taking into account both the long-term socioeconomic results and the short-term recidivism rate.
- To investigate the effects of modifications to the POCSO Act on the effectiveness and impartiality of judicial processes, emphasizing the preservation of victims' rights, quick case resolution, and general deterrence of sexual offenses against minors.

### Research Methodology

This study employs a doctrinal approach as its research technique, scrutinizing extant legal literature, legislation, court judgments, and scholarly writings. The goal of the study is to offer a thorough knowledge of the legislative framework and evaluate its efficacy in protecting children from sexual crimes by critically reviewing the provisions of the POCSO Act and the Juvenile Justice System.

### Literature Review

Priyank Nandan, "POCSO Act and Juvenile Justice: An Analysis of Existing Laws and Practices in India," 4, *Indian Journal of Law and Legal Research*, 1 (2022-2023) <sup>[6]</sup>.

For many people, handling a case of child abuse in a busy outpatient clinic might be too much to handle. Notwithstanding the stringent enforcement of The POCSO Act, 2012, many noticeable defects exist that hinder its efficient execution. This article clarifies the moral and legal conundrums that arise in daily practice in addition to

highlighting the act's advantages. Children have seldom been exempted from the abuse, brutality, and horrors committed on them by others throughout human history. At different periods and places, different children have experienced sexual assault, detention, beatings, torture, malnutrition, and even execution. In certain nations, child abuse has become a major social issue, whereas it is rare or non-existent in other nations. While there isn't a clear set of predictive markers, it appears that situations with fast socio-cultural change, urban migration, family breakdown, and related events are associated with an increase in child abuse cases.

Divyanshi Sharma, "POCSO: A Stringent Legislation," 2, *Jus Corpus Law Journal*, 449 (2022) <sup>[4]</sup>

Families and children, who have inalienable rights to love and appropriate medical and mental care, must be protected. According to Indira Gandhi, they shouldn't be created just to suffer. The IPC, 1860's shortcomings in the handling of child abuse cases were the driving force for the enactment of child-centric regulations. Pornography is one of the many offenses that are fully covered under the POCSO laws. In addition, it creates Special Courts with kid-friendly judicial processes to shield victims from experiencing trauma again. As a result, the judiciary's broad function is commendable as it works to preserve the integrity of the legislative meaning through its interpretations.

### Overview of the Juvenile Justice System

The transformational journey that the juvenile justice system in India has undergone is a reflection of the shifting public perspectives on juvenile offenders. In the past, the way that law-abiding kids were treated was harsh, reflecting the prevailing sentiments of society in various historical eras. But the course of the system changed when it was realized that minors needed special, rehabilitative care. A significant turning point was the Juvenile Justice (Care and Protection of Children) Act of 2000, which established the Juvenile Justice Boards and Children's Courts. By highlighting the special needs and vulnerabilities of young offenders, this legislative intervention sought to bring the judicial system into compliance with international norms. The historical development shows a gradual move away from punitive tactics and toward a more sophisticated comprehension of rehabilitation and reintegration.

India's juvenile justice system is guided by a number of important tenets and goals. The most important of them is the acknowledgement of juveniles' age-specific needs and rights. The approach places a strong emphasis on the social reintegration and rehabilitation of young offenders, paying particular attention to their general growth and well-being. Decision-making procedures within the juvenile justice system are guided by the best interest's principle, which places the wellbeing of the child first. The child's right to participate is another important tenet, guaranteeing that their opinions and preferences be taken into account when making decisions that impact them. Through the promotion of a sense of accountability and responsibility for their actions, this participative method aims to empower young people.

The Juvenile Justice (Care and Protection of Children) Act, 2015 is the primary legal framework that governs juvenile justice in India. This act sets systems for rehabilitation and social reintegration, as well as specifies processes for dealing with juvenile offenders, juvenile justice boards, and

children's courts. The Act emphasizes the commitment to bringing local legislation into line with international best practices by incorporating agreements and standards from throughout the world. Notably, it recognizes the developmental distinctions between adolescents and adults and raises the age of criminal liability. To further emphasize the rehabilitative character of the system, the Act also provides measures for diversion, which allow for alternatives to formal legal processes for minor infractions.

### Facets of POCSO Act

This legislation's punishment structure is based on the idea of deterrence and seeks to hold those responsible for any potential harm done to a minor victim accountable. Penetrative sexual assault (Section 3), aggravated penetrative sexual assault (Section 5), sexual assault (Section 7), and sexual harassment (Section 11) are examples of sexual offenses against children that are included in Chapter 2. The main difference between Section 3 and Section 375 of the IPC is the POCSO Act's wider reach. Interestingly, this clause ignores children's permission and is gender-neutral, covering both the accused and the victim. Penalties under Section 4 follow the violation under Section 3, and the severity of the penalty is contingent upon the victim's age. Exception 2 of Section 375 IPC, which shields a husband from prosecution for rape or penetrating sexual assault against his wife who is between the ages of 15 and 18, presents a problem when examining the later portion of the law. The *Independent Thought v. Union of India* case, in which the Supreme Court substantially revised Section 375 IPC's Exception 2 to bring it into compliance with constitutional morality while identifying breaches of Articles 14, 15, and 21, makes clear that the POCSO Act resolves this dilemma. The primacy of this specialized legislation is established by Section 42A in cases when POCSO and general laws disagree. In instance, where the offender is a family, someone in a position of authority, or someone with whom the victim has a trusting connection, Section 5 outlines unique conditions related to the victim. If the victim is less than 12 years old, the crime carries a minimum sentence of 20 years in solitary confinement, a life sentence, or execution, along with possible fines.

In Section 7, incidents of non-invasive sexual assault are covered, including non-skin-to-skin contact as well as other forms of physical contact motivated by sexual desire. The Hon'ble Supreme Court underlined the main goal of the POCSO Act, protecting minors from sexual abuse, in the case of *Attorney General for India v. Satish & Ors*. As recommended, a restrictive interpretation would defeat the Act's main goal.

POCSO's Chapter 3 addresses crimes in which a minor is used for sex-related reasons in pornographic media platforms. Penalties for storing, using, and failing to report such material are outlined in Sections 14 and 15. The process for reporting instances is outlined in Chapter 5 along with the POCSO Rules. Notably, POCSO applies severe penalties not only to offenders but also to persons and authorities that are involved at various levels of the legal process.

The duty to report a crime begins as soon as it is discovered or suspected to be committed. Failing in any of the two situations might result in a fine, six months in jail, or both. There is no deadline for submitting a complaint as long as it is clear from the outset or is backed by solid evidence. The

POCSO penalizes false complaints and disinformation under Section 22. The Act forbids the media from revealing any information about a child's identification, including name, address, photos, family history, school, and other facts. Media companies that violate the law may be subject to a fine, a minimum punishment of six months that can be extended to a year, or both.

### **Impact on Children and Society**

The POCSO Act's provisions for child victims of sexual assaults frequently result in serious and long-lasting psychological effects. Numerous mental and behavioral problems, such as anxiety, depression, post-traumatic stress disorder (PTSD), and a lowered feeling of self-worth, might result from the traumatic event. The loss of a child's innocence can interfere with their regular growth trajectory, making it more difficult for them to build positive relationships and damaging their emotional health. Comprehending the intricate psychological implications of such experiences is vital in order to craft efficacious therapies and systems of support that are customized to the distinct requirements of these susceptible victims.

The way society reacts to child victims of sexual misdeeds is frequently defined by marginalization, blame, and shame. Victims may encounter doubt, ridicule, or even rejection, which exacerbates the difficulties they already experience in the wake of such horrific incidents. For these youngsters to successfully rehabilitate, they must overcome societal stigma. Rehabilitation programs need to address the larger cultural attitudes that support victim-blaming in addition to the urgent legal issues. Encouraging an atmosphere of empathy and comprehension is crucial for the reintegration of survivors into their communities, guaranteeing that they have the necessary assistance for a substantial recuperation. In order to both prevent and lessen the effects of child sexual crimes, education and awareness are essential. Incorporating a thorough comprehension of permission, healthy relationships, and personal boundaries into school curricula would provide kids with the information they need to defend themselves. Community-wide awareness initiatives may simultaneously challenge preconceptions, debunk falsehoods, and create a climate that supports reporting and helpful behaviour. In addition to providing a safety net for those who have suffered such trauma, education of parents, teachers, and the general public helps to create a protective barrier around children and lowers the frequency of sexual assaults. Education becomes a potent instrument in ending the cycle of abuse and advancing a safer, more compassionate society by addressing the underlying causes and creating a culture of prevention and support.

### **International Perspectives on Juvenile Justice and Child Protection**

Comparing domestic juvenile justice and child protection practices to international norms illuminates the differences in strategies used by different countries. Rehabilitative approaches, which prioritize the rehabilitation of young offenders into society above punitive measures, are being adopted by nations like Sweden and Norway. To address the underlying causes of delinquency, a focus on education, counselling, and vocational training is maintained. On the other hand, the United States and other countries have adopted a more punitive approach, frequently sentencing

young offenders to severe terms that are equivalent to those for adults. It is possible to gain a sophisticated grasp of the moral ramifications and efficacy of various systems by examining these distinct perspectives.

When best practices in juvenile justice systems throughout the world are examined, important tactics that have worked well to support rehabilitation, lower recidivism rates, and protect the rights of young offenders are revealed. The notable restorative justice method, which is being employed in Canada and New Zealand, places an emphasis on making amends for the harm caused by the offense and includes both victims and offenders in the process of resolving it. Furthermore, diversion programs, which are popular in Germany and Japan, offer counselling and community service as alternatives to formal court proceedings for young people. As seen in Scandinavia, the use of interdisciplinary teams made up of social workers, psychologists, and attorneys guarantees a comprehensive and individualized approach to adolescent rehabilitation. Policymakers may learn how to improve the efficiency and equity of their own juvenile justice systems by investigating these best practices.

### **Recommendations for Reform**

The effectiveness of the juvenile justice system is critical to guaranteeing that, for young offenders, rehabilitation comes before punitive actions. Comprehensive reforms are desperately needed to improve the juvenile justice system. In order to effectively handle the distinctive requirements and circumstances of juvenile offenders, the juvenile justice system should, first and foremost, provide judges, attorneys, and social workers with specialized training programs. Furthermore, it is critical to build counselling and rehabilitation facilities that prioritize the mental health and skill development of juvenile offenders. Through the creation of an atmosphere that supports reform and reintegration, the juvenile justice system can more effectively achieve its rehabilitative goals.

Though a major legislative step forward, the POCSO Act needs to be amended to meet new issues and shortcomings. The definition of sexual offenses has to be reviewed and updated in light of how these crimes are changing. Furthermore, the Act ought to specifically address the intersectionality of offenses, taking into account the victim's and offender's age, gender, and mental health. Legislative action is also required in the areas of stricter sanctions and a more sophisticated method of determining the age of consent. To further strengthen the effectiveness of the Act, measures pertaining to the prompt resolution of cases and the confidentiality of victim names need to be strengthened. Child victims of sexual assaults need a strong support network that goes beyond the court system because of the trauma they have endured. In order to do this, counselling services has to be increased, guaranteeing that victims and their families get thorough mental health care. Furthermore, creating kid-friendly areas in courtrooms can help create a more relaxed and accepting environment in which victims can talk about their experiences. To establish a comprehensive support system, law enforcement authorities, child welfare groups, and educational institutions must work together more closely. In order to ensure that victims are informed and empowered throughout the legal process, there should also be a concentrated effort to increase knowledge of the support systems that are available.

## Conclusion

The study highlights the difficulties that beset the POCSO Act's implementation and enforcement, from the enduring problem of postponed justice to deficiencies in victim care services. Beyond the immediate criminal act, sexual offenses have a tremendous psychological impact on children and create societal shame that impedes their rehabilitation. Drawing similarities with international norms and clarifying best practices, international perspectives offer insightful information that might guide our further efforts to improve the juvenile justice system and child protection procedures. This critical research is a call to action as well as a thorough analysis of the situation of juvenile justice and child safety today. It calls on to work together to create a system that not only penalizes offenders but also, and perhaps more crucially, gives special attention to the protection and rehabilitation of the young people impacted by these horrible acts. The cry for persistent efforts, well-informed changes, and a future where every child's rights and dignity are unassailable, guaranteeing a society that really protects its most vulnerable members, resounds in the end.

## References

1. Arshia Sekhri, "Critical Analysis: Age Determination under the POCSO Act, 2012," 5, *Indian Journal of Law and Legal Research*, 1 (2023).
2. Madhana B. "A Study on Juvenile Justice Act, 2000," 2, *Indian Journal of Law and Legal Research*, 1 (2021).
3. Damini Chauhan, "An Analysis of POCSO Act, 2012," 3, *Indian Journal of Law and Legal Research*, 1 (2021).
4. Divyanshi Sharma. "POCSO: A Stringent Legislation," 2, *Jus Corpus Law Journal*, 449 (2022).
5. Muskan Malhotra; Prachi Sehgal, "POCSO Act, 2012: A Tale of Delay in Justice," 1, *Jus Corpus Law Journal*, 257 (2021).
6. Priyank Nandan, "POCSO Act and Juvenile Justice: An Analysis of Existing Laws and Practices in India," 4, *Indian Journal of Law and Legal Research*, 1 (2022-2023).