

# Protecting the Rights of Child Victims of Sexual Offences: A Review of POCSO Act 2012

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## ABSTRACT

The Protection of Children from Sexual Offences (POCSO) Act of 2012 establishes a legislative framework to protect children from sexual abuse, exploitation, and harassment. The term 'child' is defined in the Act as any person under the age of 18. The Act was designed to offer a comprehensive legal framework for the protection of children from sexual offences and to address India's rising rate of child sexual abuse. The acknowledgement of the rights of the child victim, which is the topic of this research study, is one of the important features of the Act. This research paper focuses on the Protection of Children from Sexual Offences Act of 2012 and the rights of child sexual offence victims. This paper covers the many rights recognised by the POCSO Act, including the right to protection, privacy and confidentiality, support and help, compensation, rehabilitation, and information. The report also highlights the significance of the Act's successful implementation in ensuring the protection and wellbeing of minor victims of sexual offences. The study emphasises the importance of the POCSO Act in protecting child victims' rights and establishing a framework for their care, protection, and rehabilitation.

**Key Words :** POCSO Act 2012, Child, Sexual Offence, Victims, Protection, Rehabilitation

## INTRODUCTION

The POCSO Act of 2012 is a special law established to protect children from sexual exploitation. The Act recognises the vulnerability of children and incorporates several legal and procedural protections to ensure their safety. The Act employs a victim-centred approach, intending to preserve the child victim's rights and interests throughout the investigation and trial. It is not a comprehensive criminal code in and of itself; the Code of Criminal Procedure, 1973, Indian Penal Code, 1860, Juvenile Justice Act, 2015, and Information Technology Act, 2000 encompass the procedure and describe the offences.

The POCSO Act of 2012 is a gender-neutral statute that recognises sexual abuse can occur in both boys and girls. Rape, sexual assault, sexual harassment, and the use of a child for pornographic purposes are all prohibited

under the Act. The Act also recognises the use of technology in the commission of sexual offences against children.

The POCSO Act of 2012 has a broad scope and includes a variety of offences relating to child sexual exploitation. The Act applies to offences committed against children under the age of 18. The Act applies to everyone who commits sexual offences against children, including family members, relatives, and acquaintances.

The Act includes a number of legal and procedural safeguards to protect young victims during the investigation and prosecution. These include the establishment of a special court for the prosecution of Act-related offences, in-camera sessions, and the appointment of a special public prosecutor. The Act also establishes special cells in police stations to handle complaints of sexual offences against children. The Act requires such offences to be reported and imposes a

penalty on anyone who fails to do so.

### **Rights of Child under POCSO Act:**

The POCSO Act provides for a range of rights and protections for child victims of sexual offenses. These include:

#### ***Right to Privacy and Confidentiality:***

The Act recognises the child victim's right to privacy and secrecy. At no point during the investigation or trial can the identity of the child victim be revealed. Anyone who violates this provision is subject to prosecution under the Act.

The Identity of the child victim cannot be revealed by anybody, including the media, under the POCSO Act. Anyone who violates this provision is subject to prosecution under the Act. The Act also forbids the dissemination of any information that could reveal the name of the minor victim. This includes any photographs or images that may betray the child victim's identity.

It calls for the trial to be held in private, which implies that the proceedings are not open to the public. During the trial, the court may additionally order that the Identify of the child victim be hidden from the accused individual and their legal representative.

It also ensures that the child victim's privacy is protected during the investigation. The investigating officer must take steps to ensure that the child victim's identity is not revealed during the investigation. The Act also allows for the use of video conferencing services to record the child victim's statement, which can be used as evidence during the trial.

#### ***Right to Protection***

The Act's provisions ensure that the young victim is protected during the inquiry and trial. During the trial, the child victim may be accompanied by a parent or guardian. The court may also decide that the proceedings be held in private to preserve the child victim's privacy and safety.

It calls for the formation of special courts to hear offences under the Act. These courts must conduct the trial in a child-friendly way and take precautions to ensure that the child victim is neither intimidated or traumatised throughout the trial. The courts can also require the use of video conferencing facilities to record the child victim's statement, which can then be used as evidence during the trial.

Further, the Act calls for the appointment of a special

public prosecutor to defend the child victim during the trial. This ensures that the young victim's interests are protected and that they are not subjected to any more trauma during the trial.

It additionally allows for the minor victim's protection from the offender during the trial. The court can order that the accused individual be isolated from the child victim during the trial and take other measures to guarantee the child victim's safety and security.

The POCSO Act also mandates the installation of specific cells in police stations to handle reports of sexual assaults on children. These cells must be staffed by properly trained police officers who understand the needs of kid victims.

#### ***Right to Support and Assistance :***

It recognises a child victim's entitlement to support and aid during the inquiry and trial. As directed by the court, the child victim may be assisted by a special educator, psychologist, or any other professional. The Act includes a number of safeguards to guarantee that child victims receive adequate care and help throughout the investigation and trial process.

It calls for the child victim to be assigned a special support person or guardian. This person is in charge of offering emotional and psychological support to the kid victim as well as assisting them in dealing with the trauma of the offence. The court appoints the support person, who can be a relative or a friend or a professional counsellor.

The Act also provides for the child victim's medical assessment and treatment. Within 24 hours of the offence being reported, the minor victim is entitled to a medical examination by a certified medical practitioner. The medical examination is carried out in a child-friendly way, with precautions taken to ensure that the child victim is not traumatised throughout the examination. The Act also provides for the payment of the child victim's medical bills.

The POCSO Act also calls for the development of special counselling centres for children who have been sexually abused. These facilities are manned by properly qualified counsellors who offer counselling and assistance to child victims and their families.

The law also provides for child victim compensation. The state government is required to compensate the child victim for any loss or injury caused by the offence. The state government determines the amount of

compensation, which can vary based on the severity of the offence.

It recognises the right of child victims of sexual offences to be supported and assisted. The Act includes a number of safeguards to guarantee that child victims receive adequate care and help throughout the investigation and trial process. The successful application of these regulations is critical to ensuring that the child victim can cope with the trauma of the offence and receive the support needed to rehabilitate.

#### ***Right to Compensation:***

The Act establishes a child victim's right to compensation. The court has the authority to require the criminal to compensate the child victim for the physical and mental suffering caused by the sexual offence. It makes provision for compensating the child victim for any loss or injury sustained as a result of the offence. The compensation is designed to provide financial assistance to the child victim and their family members in order to assist them in dealing with the consequences of the offence.

The state government determines the amount of compensation payable to the child victim. The POCSO Act requires the state government to develop a plan for compensating minor victims of sexual offences. The programme outlines the amount of compensation payable for various sorts of offences and how the compensation is to be paid.

The compensation payable to the child victim can include the following:

#### ***Medical expenses:***

All medical expenditures incurred as a result of the offence are reimbursable to the child victim. This can include medical care, hospitalisation, and prescription costs.

#### ***Loss of earnings:***

If a young victim is unable to attend school or work due to the offence, they are entitled to compensation for lost earnings.

#### ***Mental trauma:***

As a result of the offence, the child victim may suffer from mental trauma. They are entitled to financial compensation for their emotional trauma, which may include the expense of counselling and therapy.

#### ***Rehabilitation:***

To recover from the offence, the young victim may require rehabilitation treatments. They are eligible for reimbursement for the cost of rehabilitation therapies such as physiotherapy or occupational therapy.

The state government pays the compensation due to the child victim. The compensation is given from a fund set up by the state government specifically for this purpose. The fines levied on the convicted under the PoCSO Act replenish the fund.

The Act recognises the child victim's right to rehabilitation. The state government is responsible for providing the child victim with necessary medical, psychological, and social support services .

The Act provides for child victim rehabilitation to assist them in recovering from the trauma of the offence and reintegrating into society.

The POCSO Act compels the state government to create rehabilitation services for sexually abused children. Counselling, therapy, and medical care, as well as vocational training and education, are examples of these services. The rehabilitation services are provided by skilled professionals and are tailored to the child victim's individual needs.

The Act also allows for the designation of a support person or guardian for the minor victim. This person is in charge of offering emotional and psychological support to the kid victim as well as assisting them in dealing with the trauma of the offence. The support person can also assist the child victim in obtaining rehabilitation and other services.

The state government pays for the child victim's rehabilitation services, which are provided free of charge. The government is expected to provide adequate resources to guarantee that child victims of sexual offences have access to the necessary rehabilitative services.

In addition to the state government's rehabilitative services, the POCSO Act compels the state government to establish Special Courts for the expeditious prosecution of sexual offences against children. The introduction of these courts contributes to ensuring that the child victim is not subjected to lengthy legal proceedings and that justice is delivered in a timely manner. A rapid trial of the case may also aid the young victim's recovery from the shock of the offence.

The Act calls for the creation of rehabilitation services for child victims in order to assist them in

recovering from the trauma of the offence and reintegrating into society. The successful application of these regulations is critical to ensuring that the child victim can cope with the trauma of the offence and receive the support needed to rehabilitate.

### **Right to Information:**

The Act recognises the child victim's right to be kept up to date on the status of the investigation and trial. The child victim has the right to be informed of the trial's date, time, and location. The right to information is a fundamental right guaranteed by the Indian Constitution. The right to information is especially important for child victims of sexual offences under the Protection of Children from Sexual Offences (POCSO) Act of 2012.

It emphasises the child victim's right to be informed about the judicial proceedings against the offender. The child victim has the right to know the status of the case, including the next hearing date and the investigation's progress. The child victim has the right to be informed about available support services, such as counselling and rehabilitation, as well as how to obtain them.

The POCSO Act compels police to notify the child victim, or their parents or guardians, about the Act's numerous provisions, including the kid's rights and the reporting procedure. The police must also give the child victim a copy of their statement and keep them updated on any changes in the case.

In addition, the POCSO Act requires that the trial of sexual offenses against children be conducted in a child-friendly manner. This means that the court must ensure that the child victim is not subjected to any further trauma during the trial. The court must also explain the legal process and proceedings to the child victim in a language and manner that they can understand.

The right to information is essential for the protection of child victims of sexual offenses. It helps to ensure that the child victim is aware of their rights and can participate in the legal proceedings against the accused person. It also helps to ensure that the child victim can access the support services they require to recover from the trauma of the offense.

The Act provides for the police and the court to inform the child victim about the various provisions of the Act, the legal proceedings, and the available support

services. The effective implementation of these provisions is essential to ensure that the child victim is informed about their rights and can participate in the legal proceedings against the accused person.

### **Judicial Pronouncement under POCSO:**

#### ***Ashish Kumar and ors. Vs State of U.P. and Ors.<sup>1</sup>***

In this case, a FIR was filed under sections 147, 354 A, 352, 323, and 506 of the IPC, as well as sections 7/8 of the POCSO. The victim was approximately 16 years old, and she had accused molestation, etc. The Court observed that because the instant matter arises from a case that is based on a police report rather than a complaint, the matter is sent to the Magistrate for an opinion on whether it is a fit case for taking cognizance and committing the matter to trial or not. After the investigation is done and the charge-sheet is delivered by the police, the Magistrate has no authority to exclude or include any portion from the charge-sheet. The same would be permissible by the trial court only at the time of framing of charge under Sections 216, 218 or 228 CrPC, as the case may be, which means that after submission of the charge sheet, the prosecution is free to argue before the appropriate trial court at the stage of framing of charge that on the given state of facts, the charge of certain other offences should also be framed."

"The Hon'ble High Court held that in a case which is triable by a Court of Session though the Magistrate cannot add or alter a charge but he is empowered by sections 209 and 323 of the Code to commit the case to a Court of Session. Since under Section 31 of the POCSO Act a Special Court constituted under the said Act is deemed to be a Court of Session, the Magistrate, if he finds that offences triable by a Special Court under the POCSO Act are also made out, he is empowered to commit the case to the Special Court by taking aid of the provisions of section 209 of the Code. But such commitment arises after the Magistrate takes cognizance of the offences laid in the charge sheet."

#### ***Sharath Chandra Pottala Vs Union of India<sup>2</sup>***

"The case was broadly discussed on the following two potential grounds:"

a) "Section 34 of POCSO empowers the Special Court under POCSO to determine the age of an accused

1. MANU/UP/0439/2015

2. 2014 (2) WLN 410 (Raj.)

if question arises over the age of a juvenile accused whereas there is no provision for the accused person to seek determination of age of victim despite there being a valid and sustainable question and dispute over the age of victim and such an anomaly in POCSO creates a serious prejudice for the accused person”.

b) “A Special Court under POCSO would not have jurisdiction to try an offence when the victim is major and therefore when a dispute or question arises over the age of victim, there ought to be a procedure for deciding the same and denial of such remedy to the accused would be serious infringement of the fundamental right of accused under Arts. 14 & 21 of the Constitution of India.”

“The Court after giving considerations to the challenges made to the provisions of POCSO Act, that the so-called shortcomings, anomaly or lacuna in the procedure as provided, remain bereft of substance and do not make out a case against the constitutionality of the enactment. Court said that it remains a trite that a statutory provision could be challenged as ultra vires on the grounds either on the legislative competence or if the provision offends any of the provision of the Constitution. Legislative competence is not in question in the present case; and on the submissions as made, it is unable to find any of the constitutional provisions being offended by the enactment. It said that POCSO has been enacted for the very special purpose to protect the children from the Sexual Assaults and Sexual Harassment etc. The procedure for recording the statement of the child was also the medical examination of the child in Section 27 in accordance with Section 164-A of Code of Criminal Procedure.”

“Designation of Special Courts for trying the offences under the Act has been made with the provisions overriding even the other special enactments like Information & Technology Act, 2000. Petition was dismissed by the Hon’ble Court.”

### ***Siddu Vs State of Karnataka and ors.*<sup>3</sup> :**

“Interpretation of Section 34 of POCSO Act is done by the court in this pertinent case. The Hon’ble Karnataka High Court said that the main object of considering the age of the accused under Section 34 of the POCSO Act 2012 is to decide which Court is proper to try the accused and also to sentence him. If the accused is held to be

less than 18 years and is a Juvenile, the learned Sessions Judge will lose his power to conduct trial and the Juvenile Justice Board alone is competent authority to try and dispose of the case, in accordance with the said special enactment. Therefore, it is incumbent upon the learned Sessions Judge, who is competent, to pass appropriate order under Section 34 of the POCSO Act, 2012 to pass order deciding whether the accused is a Juvenile’ or he has crossed the age of 18 years in order to try him before the Sessions Court. Even, if there is any doubt with regard to the age of the accused and the Court requires some more evidence to resolve the dispute, it can take such evidence and on the basis of that evidence, it has to decide the age of the Juvenile and thereafter only, the Court has to proceed with the merits of the case.”

### ***Gangadhar Sethy Vs State of Orissa*<sup>4</sup> :**

“In this case the Court adverted over the age of the victim girl at the time of incident since for attracting the ingredients of offence under section 4 of POCSO Act which deals with punishment of penetrative sexual assault, the victim must be a child as per the definition of child provided under section 2(d) of the POCSO Act which indicates that child means any person below the age of eighteen years and also because section 376(2)(i) of Indian Penal Code will be attracted only when the rape is committed on a woman when she is under sixteen years of age. After looking into the evidences the court is satisfied that the victim was within the age group of five to seven years and thus one of the ingredients of both the offences *i.e.*, section 376(2)(i) IPC and section 4 of POCSO Act regarding age is satisfied.”

“On the question of offence of rape or penetrative sexual assault on the victim, Court looked into the medical examination which suggested that the victim was a nubile virgin on the date of her examination and there was no evidence to corroborate recent or past sexual intercourse. No injuries present on her person or in or around her private parts. Report further shows that the victim was a girl child aged about six years and her hymen was intact and no penetrative test was done during the examination. Court held that none of the ingredients of Section 3 of POCSO Act is satisfied in this case. Therefore it cannot be said that section 4 of POCSO Act which deals with punishment of penetrative sexual assault is attracted.

3. 2016 SCC OnLineKar 708

4. 2015 SCC OnLineOri 173

Similarly in absence of any statement of the victim that she was raped by the appellant or in absence of any corroborative medical evidence, it would not be proper to convict the appellant under section 376(2) (i) IPC.”

“Court took a view that materials available on record shows the assault has been made on the private parts of the victim and the ingredients of the offence under section 8 of the POCSO Act is also clearly made out.”

“Therefore, the court said that the conviction of the appellant under section 376(2)(i) of IPC is not sustainable in the eye of law and accordingly the same is set aside and instead he is convicted under section 354 of IPC. Similarly the order of conviction of the appellant under section 4 of POCSO Act is set aside and instead he is convicted under section 8 of POCSO Act.”

#### ***Ravinder Kumar Vs State*<sup>5</sup> :**

“In the instant case a petitioner has file the petition in the instant case to quash the FIR which was registered under Sections 354/451/323/34 I.P.C. & Section 12 of POCSO Act on the ground that parties have settled the matter. The court held that In view of the fact that the parties have amicably resolved their differences of their own free will, volition and without any coercion and no useful purpose will be served in continuance of the proceedings, rather the same would create further acrimony between them, it would be in the interest of justice to quash the above mentioned FIR and the proceedings pursuant.”

#### ***P. Shanmugavel Raj Vs State and Ors.*<sup>6</sup> :**

“In this case the court elaborately observed section 28 and 32 of POCSO Act 2012.”

“The Hon’ble Court, from a bare reading of Section 28 of the POCSO Act, the Parliament has conferred powers on the State Government to designate a Court of Sessions to be a Special Court to try the offences under the Act. In other words, POCSO Act does not empower the State Government to constitute or create new Courts under the Act, but only empowers the State Government to designate in each District a Court of Sessions to be a Special Court to try the offences under the Act. The Court further held that Section 32(1) of the POCSO Act

casts a duty upon the State Government to appoint a Special Public Prosecutor for every Special Court for conducting cases under the provisions of the POCSO Act. The State Government cannot abdicate its duty by not appointing sufficient number of Public Prosecutors, because trial under the POCSO Act should not get unnecessarily delayed on account not the failure of the State Government to appoint Special Public Prosecutors. Only to achieve this end, Parliament in its wisdom has cast a statutory duty on the State Government to appoint Special Public Prosecutors so that prosecutions do not suffer for want of Prosecutors.”

#### ***K. Muthu Mariappan Vs The States. Nagamuthu*<sup>7</sup> :**

“In this case the court gave a micro interpretation of various provisions of POCSO.”The Court observed that in order to attract any offence under the provisions of the POCSO Act, it should be proved by the prosecution that as on the date of the commission of the crime, she was a child. The term child has been defined in Section 2(d) of the Act, which states that child means any person below the age of 18 years. Thus, for the purpose of the offence of kidnapping as well as for any offence under the POCSO Act, the age of victim should be proved to be below 18 years as on the crucial date.”

“The Court decided as to whether the act of the accused in having sexual intercourse with the victim would fall under Section 4 or Section 5(1) r/w Section 6 of the Act. Court looked into the term penetrative sexual assault which has been defined in Section 2(f) of the POCSO Act, which states as follows: - penetrative sexual assault has the same meaning as assigned to it in Section 3. Whereas Section 5(1) of the POCSO Act which deals with aggravated penetrative sexual assault reads as follows:”

“whoever commits penetrative sexual assault on the child more than once or repeatedly is said to commit aggravated sexual assault. Court got into the gravity of both offences *i.e.* Section 3 & 5 that which of them is a major offence. The aggravated penetrative sexual assault, which is made out of several particulars, includes a mere penetrative sexual

5. 2014(2)JCC 1210

6. 2014 SCC OnLine Mad 2589.

7. MANU/TN/1611/2015

assault, which is made out of some of those particulars. Therefore, there can be no difficulty in holding that the Sections 4 and 6 read with Section 5(1) of the POCSO Act are cognate offences and Section 4 of the POCSO Act is a minor offence to Section 6 r/w Section 5(1) of the POCSO Act.”

“To bring clarity to the above conclusion, the Court also went into punishment as provided under these penal provisions. Though the maximum punishment awardable under Section 4 as well as Section 6 is imprisonment for life with fine, the minimum punishment provided in Section 4 of the POCSO Act is imprisonment of either description for a term which shall not be less than seven years, whereas the minimum punishment provided under Section 6 of the POCSO Act is rigorous imprisonment for a term which shall not be less than ten years.”

“The term imprisonment under Section 4 of the POCSO Act may be of either description, viz., either rigorous or simple, whereas under Section 6 of the POCSO Act, the term imprisonment shall be only rigorous.”

“From these ingredients, it can be noted that in the matter of punishment also, Section 4 of the POCSO Act is minor to Section 6 of the POCSO Act. It also hold that the conviction of the appellant under Section 4 of the POCSO Act, though the appellant stood charged under Section 6 r/w Section 5(1) of the POCSO Act and there was no charge under Section 4 of the POCSO Act, it is not illegal and so the same is liable to be confirmed.”

***Pranil Gupta Vs State of Sikkim*<sup>8</sup> :**

“In his case the consent of the Victim aged about 14 years, was in question. The allegation against the accused was filed under Section 4 of the POCSO Act, 2012 and under Section 363 of the Indian Penal Code, 1860.”

“The Hon’ble HC rejecting the contention of appellant that it was a consensual act and they were having a love affair, the Court looked into Section 375 of IPC, which indicates that when the offence of rape has been committed, the consent of the victim under 18 years of age is irrelevant. Similarly, for an offence under POCSO Act, 2012 which is a more stringent Act, the consent of the child would be of no consequence, as she

is protected by the provisions of law. Court agrees that the Victim herself went along with her friend to Pelling to meet the accused and she stayed with the accused with her own will. But for an offence under Section 3 of the POCSO Act, 2012 the consent of a minor is irrelevant. It must also be borne in mind that Section 30(2) of the POCSO Act, 2012 requires that a fact is stated to be proved for the purposes of Section 30(1), only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability. It has also been clarified that Culpable Mental State includes intention, motive, knowledge of the fact and the belief in or reason to believe a fact. Thus, mere denial of the offence U/S 313 of the Cr.P.C. by the accused will not suffice, he has to establish lack of mens rea beyond a reasonable doubt.”

***Supreme Court Kaushal Kishor Vs State of Uttar Pradesh and others*<sup>9</sup> :**

“In this case four important issues emerge for consideration. They are:”

- a) “When a victim files an FIR alleging rape, gang rape or murder or such other heinous offences against another person or group of person, whether any individual holding a public office or a person in authority or in charge of governance, should be allowed to comment on the crime stating that ‘it is an outcome of political controversy’. More so, when as an individual, he has nothing to do with the offences in question?”
- b) “Should the ‘State’, the protector of citizens and responsible for law and order situation, allow these comments as they have the effect potentiality to create a distrust in the mind of the victim as regards the fair investigation and, in a way, the entire system.”
- c) “Whether the statements do come within the ambit and sweep of freedom of speech and expression and exceed the boundary that is not permissible?”
- d) “Whether such comments (which are not meant for self-protection) defeat the concept of constitutional compassion and also conception of constitutional sensitivity?”

8. 2015 SCC OnLineSikk 113

9. (2016)9 SCC 395

**Conclusion:**

In conclusion, the Protection of Children from Sexual Offences (POCSO) Act, 2012 is a landmark legislation that recognizes and safeguards the rights of child victims of sexual offenses in India. The Act provides a comprehensive framework for the protection, care, and rehabilitation of child victims of sexual offenses.

Effective implementation of the POCSO Act is crucial to ensure that the rights of child victims of sexual offenses are protected. The Act requires the establishment of Special Courts for the speedy trial of sexual offenses against children and the establishment

of rehabilitation services for child victims. The Act also mandates the training of professionals involved in the care and protection of child victims of sexual offenses.

To summarise, the POCSO Act, 2012 is a crucial step towards assuring the protection and wellbeing of child sexual abuse victims in India. The Act recognises and protects the rights of child victims while also establishing a framework for their care, protection, and rehabilitation. The Act's successful implementation is critical to ensuring that child victims of sexual offences are treated with dignity and respect, and that they are able to heal from the trauma of the offence.

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