

Gender Justice and Child Protection: The Political Significance of the POCSO Act in India

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Abstract

Child sexual abuse constitutes a grave social issue in contemporary India, negatively impacting the safety, dignity, and development of children across various communities. For many years, this problem remained largely obscured in India due to deep-seated social prejudices, weak legal provisions, and a pervasive lack of awareness. However, the enactment of the 'Protection of Children from Sexual Offences Act' (POCSO) in 2012 ushered in a radical transformation in the country's legal and political landscape regarding child protection. This article examines the nexus between gender justice, equality, and child protection by analyzing the POCSO Act and its political significance in contemporary India. The Act has established a comprehensive legal framework across India to combat various forms of sexual offenses committed against children, while also introducing procedural mechanisms aimed at making the judicial process more sensitive to the needs of the victims. One of the most salient features of this legislation is its 'gender-neutral' character, which acknowledges the reality that both boys and girls can fall victim to sexual abuse. This perspective reflects a broader understanding of gender justice - one that transcends the traditional focus solely on female victims to emphasize equal protection for all children. Simultaneously, the Act highlights the state's expanding role in safeguarding vulnerable social groups and

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reinforcing institutional accountability. Consequently, this analysis also reviews the political and social debates surrounding the implementation of the Act, thereby situating the POCSO legislation within the broader framework of democratic governance and human rights. This study argues that the Act represents a pivotal step toward strengthening child rights and, by extension, establishing gender justice in India. However, robust legal provisions alone are insufficient to ensure effective protection; rather, they must be complemented by widespread social awareness, enhanced institutional capacity, and unwavering political commitment.

Keywords: Child Protection, Gender Justice, Child Rights, Sexual Abuse Law, Legal Protection India.

Introduction

Child protection is an indispensable duty and obligation of every democratic state. Children are regarded as one of the most vulnerable and unprotected segments of society, for their safety and care, they rely on their families, society, and various institutions. When these protective mechanisms fail, the consequences can be extremely grave and far-reaching. Child sexual abuse can be characterized as one of the most heinous and alarming forms of violence. It severely impairs the physical and psychological well-being of the victimized child. In many instances, this psychological trauma persists for years on end. In a country like India, this issue remained largely hidden from the public eye for a considerable period. It is observed that, in the vast majority of cases, families often refrain from filing complaints regarding such crimes due to social stigma and the fear of public shame. Furthermore, many victimized children themselves remained silent. The absence of specific legal safeguards further exacerbated the situation, rendering it even more complex and dire. In the past, incidents of child sexual abuse were typically adjudicated under the purview of general criminal laws. However, these laws were not specifically designed to address the unique needs of children. Moreover, previous statutes lacked clear definitions for the various forms of abuse. Additionally, there was a distinct lack of sensitive and supportive legal mechanisms for victimized children during the investigation and trial phases. Consequently, many children were compelled to navigate through an extremely stressful legal process and, in many cases, faced prolonged delays in obtaining justice. The enactment of the 'Protection of Children from Sexual Offences Act' marked a watershed moment, ushering in a transformative change across the entire nation. This legislation establishes a specialized framework for addressing sexual offenses committed against minors. It defines a 'child' as any individual under the age of eighteen (18). Furthermore, it specifically categorizes various types of sexual offenses and introduces stringent penal provisions for offenders. The primary objective of this Act was to render the judicial system more sensitive and responsive to

the specific needs of victimized children. It introduces child-friendly procedures during police investigations and court hearings. Another significant feature of this Act is its 'gender-neutral' approach. The legislation acknowledges that both boys and girls can fall victim to sexual abuse. This perspective reflects a broader concept of gender justice and embodies a modern outlook. It also specifically underscores the State's responsibility to provide equal protection to all children. In essence, the 'POCSO Act' is regarded as a pivotal step in India toward safeguarding children's rights and strengthening legal accountability. Consequently, to comprehend how law, politics, and social awareness currently interact in the ongoing efforts to ensure the safety and dignity of children, it is imperative to possess a thorough understanding of the role played by this Act.

Nature of Offenses Under the POCSO Act

This Act encompasses various offenses. These include penetrative sexual assault, aggravated penetrative sexual assault, sexual assault, aggravated sexual assault, sexual harassment, and obscene acts. The Act contains provisions regarding the abetment of and attempts to commit such offenses. It also prescribes penalties for the failure to report and register cases under this law. Furthermore, the Act provides for punishment for making false complaints. It also stipulates penalties for disclosing information regarding the identity of child victims of these offenses. For most offenses covered under this Act, there exist corresponding offenses under the BNS- (IPC) and the Information Technology Act. According to Section 42 of the POCSO Act, when an act committed by an accused constitutes an offense under both the BNS- (IPC) and the POCSO Act, the accused shall be liable to the higher punishment prescribed under either of the two laws, but not under both. Therefore, charges should be framed under the BNS- (IPC) in addition to the POCSO Act. In any case under the POCSO Act where the prosecution's case fails solely due to a failure to prove the victim's age, the accused may still be convicted under the BNS- (IPC).

Chart of offences Under POSCO Act

Penetrative sexual assault

Sec.3 (Definition)

Sec.4 (Punishment)

Aggravated penetrative sexual assault

Sec.5 (Definition)

Sec.6 (Punishment)

Sexual assault

Sec.7 (Definition)

Sec.8 (Punishment)

Aggravated sexual assault

Sec.9 (Definition)

Sec.10 (Punishment)

Sexual harassment

BSec.11 (Definition)

Sec. 12 (Punishment)

Using child for pornographic purpose

Sec. 13 (Definition)

Sec. 14 (Punishment)

Storing pornographic material

Sec. 15 (Punishment)

Abetment

Sec. 16 (Definition)

Sec. 17 (Punishment)

Attempt

Sec. 18 (Punishment)

Failure to report or record

Sec. 19 (Duty)

Sec.21 (Punishment)

False complaint or false information

Sec.22 (Punishment)

Punishment against media

Sec.23 (Punishment)

Historical background child protection act in India

In India, the necessity of protecting children from sexual abuse-along with the strategies to achieve this-has gained increasingly clear recognition over time. Prior to this, there was no distinct legislation focused exclusively on children; instead, incidents of abuse were adjudicated under the purview of the Indian Penal Code (IPC). This existing law, however, failed to explicitly define sexual offenses committed against children. Furthermore, it did not acknowledge the unique vulnerability or precarious position of children. Consequently, many

incidents remained hidden from public view, or failed to receive any meaningful redress through the judicial process. It can be said that toward the end of the 20th century, awareness regarding this issue began to grow gradually. Reports of child abuse occurring within homes, schools, and various institutions began to surface publicly. Various civil society groups and child rights activists expressed deep concern over the matter. They highlighted the flaws and shortcomings inherent in the existing legal framework and demanded the enactment of a law that would place its primary emphasis squarely on the protection of children. India had, in fact, already pledged to uphold globally recognized child rights standards through its ratification of the United Nations Convention on the Rights of the Child. This commitment exerted pressure on the state to undertake legal reforms. By the early 2000s, the issue had garnered even greater attention. Various studies revealed that a significant number of children were falling victim to sexual abuse in one form or another. Yet, very few of these incidents ever reached the courts; the vast majority of cases remained concealed—often resolved through informal compromises or silenced through intimidation. Social prejudices, the fear of public stigma, sheer terror, and a general lack of awareness acted as significant impediments in this regard. Moreover, the previous judicial process itself was arguably neither particularly supportive of children nor truly ‘child-friendly.’ Throughout the stages of investigation and trial, victimized children frequently suffered additional psychological trauma. This dire situation clearly underscored the urgent need for a radical overhaul of the legal system. Consequently, the demand for comprehensive and holistic legislation grew increasingly insistent. Policy makers, legal experts, and rights activists began working in concert, driven by the primary objective of establishing a legal framework capable of guaranteeing both the protection and the delivery of justice for children. It was as a result of this collective effort that the 'Protection of Children from Sexual Offences Act'-popularly known as the 'POCSO Act'-was passed by Parliament in 2012. This legislation marked the beginning of a groundbreaking transformation in India's legal history. It explicitly defines various forms of sexual offenses committed against children and, alongside this, introduces a supportive and sensitive judicial process for them. Thus, an analysis of the historical context of child protection in India reveals a narrative of progressive evolution. What was once shrouded in a veil of neglect and silence has now transitioned to a stage of recognition and effective action. In this long journey toward ensuring gender-based justice and the safety of children, the 'POCSO Act' stands as a pivotal milestone.

India long ago declared that child marriage is child rape

Child marriage is still legal in parts of the world. In sections of Africa, the Middle East, and even the United States, girls as young as 14 can be married off with parental consent, without it being a crime. India, the country that is home

to all the prominent religions of the world, long ago criminalised child marriage with the Prohibition of Child Marriage Act, 2006. Furthermore, the Supreme Court of India went a step ahead and pronounced that sexual intercourse with a child on the pretext of marriage amounts to nothing less than child rape (*Independent Thought v. Union of India*).

This shift is huge. It reframes marriage of children not as a cultural practice, but as a crime against their rights and agency. Few countries have taken such an unambiguous stand.

India's JJ Act sees children as rights holders

The Juvenile Justice (Care and Protection of Children) Act, 2015 is equally remarkable. Where many legal systems treat children either as dependents to be sheltered or offenders to be punished, the JJ Act adopts a rights-based, rehabilitative approach, where it is the state's constitutional obligation to ensure the welfare and protection of the child (*Sampurna Behura v Union of India*). It covers everything from adoption and foster care to the treatment of children in conflict with the law. It brings in child-friendly courts, special juvenile police units, and a focus on rehabilitation over retribution.

POCSO: Zero tolerance for sexual crimes

The Protection of Children from Sexual Offences Act, 2012 (POCSO) has set global standards in addressing child sexual abuse. While other nations rely on scattered provisions of general criminal law, India created a dedicated statute that criminalises a wide range of offences: penetrative and non-penetrative assault, harassment, pornography, and grooming. It applies to both boys and girls, introduces mandatory reporting, and ensures child-friendly procedures in investigation and trial.

Features

The POCSO Act, 2012 was made to give a clear and focused law for child sexual abuse, which earlier was mainly covered under the Indian Penal Code. Before this Act, sections like rape, outraging modesty, and unnatural offences were used to deal with such crimes. But these provisions were not enough. They were not child-specific. They also did not fully recognise different forms of abuse. The POCSO Act changed this situation. It clearly defines a child as a person below eighteen years. It explains different types of offences in detail. These include penetrative sexual assault, sexual assault, sexual harassment, and use of children in pornography. Each offence has its own punishment. This makes the law more clear and strong. The Act is gender-neutral. It protects both boys and girls. This is different from many parts of the Indian Penal Code, where focus was mostly on female victims. Another important feature is strict punishment. In serious cases, punishment can be life imprisonment. After amendments, even the death penalty is possible in aggravated situations. The

Act also talks about aggravated offences. These include cases where the offender is in a position of trust, like a teacher, police officer, or family member. Punishment becomes more severe in such cases. The law also makes reporting of offences compulsory. Any person who knows about such abuse must inform the police. Failure to report can lead to punishment. This creates social responsibility. The Act also works along with other laws like the Juvenile Justice Act and the Information Technology laws to deal with online crimes.

Another strong feature of the POCSO Act is its child-friendly approach, which was mostly missing in the Indian Penal Code system. The law understands that children need care and protection during legal procedures. It says that the statement of the child should be recorded at a safe place, often the child's home. The police officer should not wear uniform. This reduces fear. The language used should be simple. The law also protects the identity of the child. Media cannot publish names or details. This ensures privacy and dignity. Special courts are created to deal with such cases. These courts are expected to complete trials quickly, usually within one year. This is very different from normal criminal cases under the Indian Penal Code, where delays are common. The Act also says that the child should not be called again and again for testimony. This reduces mental stress. Medical examination must be done carefully and with consent. A parent or trusted person can stay with the child. The law also provides support persons and legal aid. This helps the child understand the process. Another important feature is the shift in burden of proof in certain cases. The accused has to prove innocence in specific situations. This is different from general criminal law principles. It helps in cases where evidence is hard to collect. Overall, the POCSO Act works as a special law that improves and strengthens the existing system under the Indian Penal Code. It focuses not only on punishment but also on protection, dignity, and justice for children.

POCSO Act and Gender Justice

The Protection of Children from Sexual Offences Act plays an important role in shaping the idea of gender justice in India by changing how the law understands victims and protection. In earlier times, legal focus was mostly on girls, and the suffering of boys was rarely discussed in public or in courts. This created an incomplete picture of abuse. The POCSO Act tries to correct this gap. It is gender-neutral. It protects every child below eighteen years, whether boy or girl. This approach is important because gender justice is not only about women, but about fairness and dignity for all. The law also recognises that abuse can happen in private spaces like homes, schools, and neighbourhoods. Many offenders are known to the child. This truth was often ignored before. By accepting this reality, the Act brings hidden problems into the open. It also gives importance to the emotional and mental condition of the child. The

procedures are made simple and less frightening. The child can speak in a safe place. Identity is kept secret. This helps in building trust in the system. These steps support justice in a deeper sense. At the same time, some concerns remain. The law does not clearly deal with consensual relationships between adolescents. In such cases, the boy is often treated as an offender even when both are close in age. This creates debate about fairness and misuse. It shows that strict protection can sometimes clash with personal choice. Even with these issues, the Act has started a wider conversation in society. It has increased awareness. It has pushed institutions to act with more responsibility. It also shows that gender justice must include children and must address both protection and rights together.

Implementation Challenges

The implementation of the Protection of Children from Sexual Offences Act faces many practical problems, even though the law itself is strong. One major issue is delay in the justice process. The Act says that cases should be completed within a short time, but in reality many cases take years. Courts are overburdened. Special courts are not always available in every district. This creates long waiting periods for victims and their families. Another challenge is low conviction rate. Many cases fail because of weak evidence. Child victims may change their statements due to fear or pressure. In many situations, the accused is a family member or a known person. This makes it difficult for the child to speak freely. Social stigma also plays a role. Families sometimes avoid legal action to protect their reputation. There is also lack of proper training among police and officials. Some officers are not sensitive while dealing with children. This can make the process more painful. Medical examination is not always done properly. In rural areas, facilities are limited. Another issue is misuse of the law in certain cases. There are situations where complaints are filed due to personal disputes or family pressure, especially in cases involving teenage relationships. This creates confusion between consent and crime. It puts pressure on the justice system. Awareness is also low among people. Many families do not fully understand the provisions of the law. They do not know how to report cases or seek help. Coordination between different agencies is weak. Police, courts, child welfare committees, and hospitals do not always work together smoothly. This reduces the effectiveness of the Act. All these problems show that making a law is not enough. Proper implementation needs resources, training, awareness, and strong monitoring. Without these, the goal of protecting children and ensuring justice remains incomplete.

Political Significance of the POCSO Act

The Protection of Children from Sexual Offences Act holds deep political significance in India because it reflects how the state responds to issues of child safety, gender justice, and public demand for accountability. The law did not

emerge in isolation. It came at a time when awareness about child sexual abuse was increasing and society was beginning to speak more openly about such crimes. Public pressure, media attention, and activism played an important role in pushing the government to act. In this sense, the Act represents a shift towards rights-based governance, where the protection of vulnerable groups becomes a visible responsibility of the state. It also allows political leaders to show commitment to law and order, especially in matters related to women and children. The strong punishments under the Act send a message that such crimes will not be tolerated. At the same time, the law shapes political narratives around morality, protection, and social values. It reflects how the state defines childhood and innocence, and how it seeks to regulate behaviour in society. The Act also brings attention to the role of institutions like police, courts, and child welfare bodies. Their performance becomes part of political debate. Another important aspect is federal responsibility. While the law is made at the national level, its implementation depends on state governments. This creates differences in how the Act works across regions. It raises questions about capacity and governance. The law also becomes part of discussions on legal reform and justice delivery. It shows how politics, law, and society are closely connected. At the same time, it reveals certain tensions. Strict legal provisions can sometimes clash with social realities, such as adolescent relationships or family pressures. These situations create debate and criticism, which again enter the political space. Overall, the Act is not only about punishment of crime. It is also about how the state builds trust, responds to citizens, and presents itself as a protector of rights and dignity in a democratic system.

Judicial Interpretations and Evolving Jurisprudence

Judicial interpretation has played a key role in shaping how the Protection of Children from Sexual Offences Act works in practice. Courts have tried to balance the strict language of the law with the realities of society. One clear position taken by judges is that consent of a minor has no legal value. Even if a child appears to agree, the law treats it as an offence. This shows the protective nature of the Act. At the same time, courts have faced difficulty in cases involving adolescents. In many such cases, relationships are voluntary but still fall under the law. Some judges have expressed concern about this situation. They have tried to read the law carefully to avoid harsh outcomes, but their options are limited. Another area of interpretation relates to the meaning of 'sexual intent.' Courts have said that physical contact alone is not enough. The intention behind the act must also be considered. This helps prevent misuse in minor or unclear situations. Courts have also stressed the need for child-friendly procedures. They have reminded police and trial courts to follow proper guidelines. Protection of identity and dignity has been strongly supported. In some judgments, higher courts have corrected errors made by lower courts,

especially where evidence was not properly understood. At the same time, judges often depend on medical reports and witness statements, which are not always reliable. This creates difficulty in decision-making. Over time, these interpretations are slowly building a body of law around the Act. This evolving approach shows that law is not fixed. It grows through practice and experience. Courts are trying to protect children while also ensuring fairness, but this balance is not always easy to achieve.

Conclusion

The Protection of Children from Sexual Offences Act marks a major shift in India's legal approach when read alongside the Indian Penal Code, especially provisions like Section 375 (rape), Section 354 (outraging modesty), and Section 377 (unnatural offences, as it earlier existed). These IPC sections provided a basic framework, but they were not designed with children in mind. They lacked clarity on different forms of abuse and did not offer child-friendly procedures. The POCSO Act filled this gap by creating specific definitions, strict punishments, and a system that focuses on the needs and dignity of the child. It recognises that children require special care during investigation and trial. This makes the law more sensitive and practical. At the same time, the IPC still plays an important role. In many cases, charges are framed under both laws. This strengthens the legal response but also requires careful handling by courts and police. However, the success of this legal framework depends on proper implementation. Delays in courts, lack of trained officers, and social stigma continue to affect justice delivery. There are also debates around how strictly the law is applied in cases involving adolescents, where consent and age become complex issues. These concerns show that legal reform must go along with social understanding. Even with these limits, the POCSO Act has changed the direction of legal thinking in India. It has brought child protection into the centre of criminal justice. When combined with the IPC, it shows an evolving system that is trying to balance punishment with protection, and legal rules with human dignity.

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