

The Role of Judiciary Towards Children Under the Protection of Children from Sexual Offences Act, 2012: A Study

Ashok Paul Batra

Faculty of Legal Studies, University School of Law, Desh Bhagat University, Mandi Gobindgarh, Punjab

Dr. Arti

Assistant Professor, Faculty of Legal Studies, University School of Law, Desh Bhagat University, Mandi Gobindgarh, Punjab

Dr. Anu Mutneja

Assistant Professor, Faculty of Legal Studies, University School of Law, Desh Bhagat University, Mandi Gobindgarh, Punjab

Abstract

The Protection of Children from Sexual Offences (POCSO) Act, 2012, was enacted to provide a robust legal framework for the protection of children against sexual abuse and exploitation. This study explores the critical role played by the Indian judiciary in interpreting, implementing, and evolving the provisions of the Act to ensure child-friendly justice. It highlights landmark judgments, judicial activism, and procedural innovations that emphasize the child's best interests. The paper also examines challenges faced by the judiciary, such as delays in trials, inadequate infrastructure, and the need for sensitization of stakeholders. The study concludes by recommending systemic reforms and enhanced judicial training to strengthen the effective enforcement of the Act and uphold the rights and dignity of child victims.

Keywords : Judiciary; child sexual abuse; child protection laws; judicial interpretation; child-friendly justice; legal framework; victim rights; Indian legal system; child welfare.

Introduction

The judiciary plays a crucial role in implementing the Protection of Children from Sexual Offences Act (POCSO), 2012, which aims to safeguard minors from sexual crimes. This Act establishes a child-friendly legal framework, ensuring that judicial

processes are sensitive to the needs of children, thereby minimizing their trauma during legal proceedings¹. The judiciary's involvement is pivotal in interpreting the law, adjudicating cases, and ensuring justice for victims².

Objectives of the Study

- a) To analyze the judicial interpretation and implementation of the POCSO Act.
- b) To evaluate the effectiveness of special courts under the Act.
- c) To understand the challenges faced by the judiciary in ensuring child-friendly proceedings.
- d) To assess the impact of landmark judgments in shaping jurisprudence under the Act.

Literature Review

The POCSO Act mandates the establishment of special courts to expedite trials involving child victims, ensuring timely justice (Andrade & Rao, 2013). It emphasizes the "best interest of the child, prioritizing their emotional and psychological well-being throughout the legal process (Handa & Goswami, 2024). Judicial decisions have reinforced the Act's provisions, addressing ambiguities and ensuring comprehensive protection for all minors, regardless of gender (Kumar & Paswan, 2024). Challenges in Implementation Despite its strengths, the judiciary faces challenges such as delayed justice and lack of awareness about the Act among stakeholders (Yadav, 2022). The mandatory reporting clause can complicate cases, potentially leading to family discord and further victimization of the child (Andrade & Rao, 2013). There is a need for systemic reforms to enhance the effectiveness of the judiciary in handling POCSO cases (Yadav, 2022). While the judiciary's role under the POCSO Act is fundamentally protective, critics argue that the stringent provisions may inadvertently lead to negative

¹ Jordan, J., Basuki, B., & Fitrian, A. (2024). Penegakan Hukum terhadap Pelaku Tindak Pidana Persetubuhan yang Dilakukan oleh Anak. *Depositi*, 2(4), 230–248. <https://doi.org/10.59581/deposisi.v2i4.4263>

² Kumar, S., & Paswan, P. (2024). Role and importance of judiciary in protecting children from sexual offences. <https://doi.org/10.61120/plr.2023.v2i137-42>.

consequences for families involved, highlighting the need for a balanced approach in legal proceedings.

Outline of the POCSO Act, 2012

The Protection of Children from Sexual Offences (POCSO) Act, 2012, is landmark legislation in India aimed at safeguarding minors from sexual abuse and exploitation. It establishes a comprehensive legal framework that prioritizes the best interests of children, ensuring their protection throughout legal proceedings. The Act addresses various forms of sexual offenses, including assault, harassment, and pornography, and applies equally to all minors, regardless of gender. Below are key aspects of the POCSO Act:

Fundamental Provisions

The Act categorizes offenses such as sexual assault, sexual harassment, and child pornography, providing clear definitions and penalties for each (Handa & Goswami, 2024). It mandates child-friendly legal processes, including the use of special courts and the prohibition of the death penalty for offenders, ensuring a supportive environment for victims (Kaur & Garg, 2024). In 2021, there were 53,874 cases registered under the POCSO Act, indicating a significant recognition of child sexual abuse in India (Maity & Chakraborty, 2023). The Act has reportedly reduced the growth rate of sexual offenses against children from 4.681% to -4.611%, showcasing its effectiveness in enhancing child protection (Maity & Chakraborty, 2023).

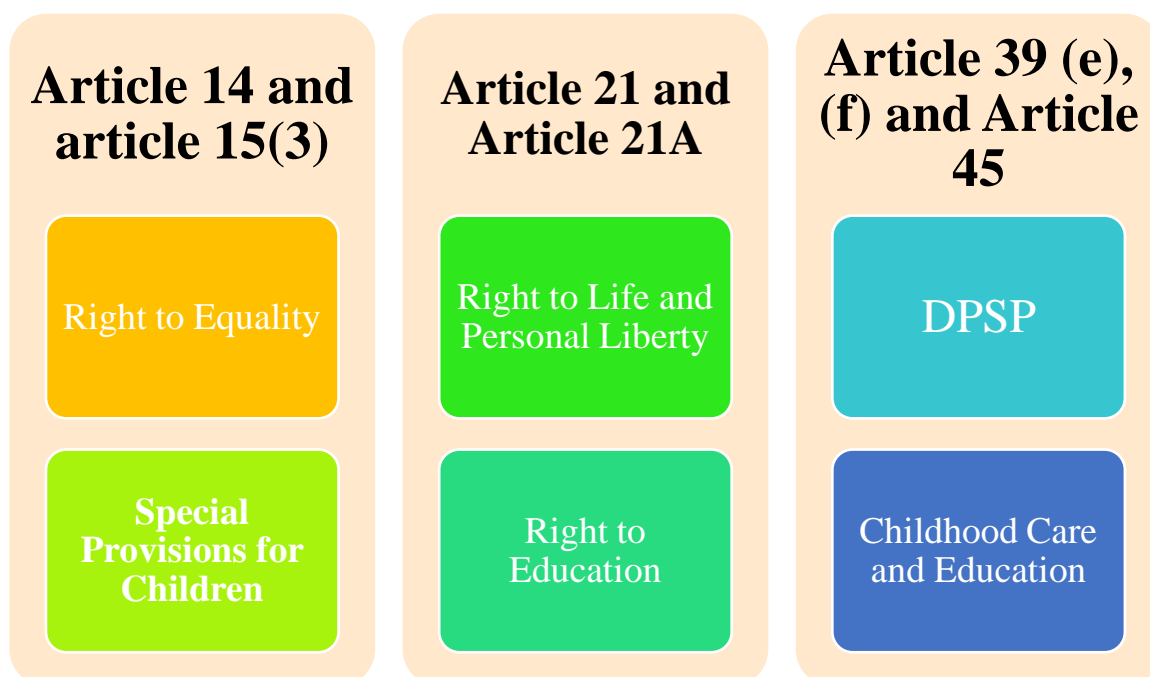
Challenges and Limitations

Despite its robust framework, challenges such as delayed justice, lack of awareness, and systemic reforms hinder the Act's effectiveness (Yadav, 2022). There is a pressing need for increased public awareness and education regarding the provisions of the POCSO Act to ensure better reporting and support for victims (Yadav, 2022). While the POCSO Act represents a significant advancement in child protection, ongoing challenges in

implementation and societal attitudes towards child sexual abuse must be addressed to fully realize its potential³.

Constitutional Provisions Related to Child Protection

The Constitution of India provides a strong foundation for the protection and welfare of children, which complements the objectives of the POCSO Act, 2012. The judiciary, while interpreting and enforcing the POCSO Act, often relies on these constitutional provisions to uphold the rights of children. Fundamental constitutional provisions include-



Article 14 – Right to Equality

This guarantees equality before the law and equal protection of laws to all individuals, including children. The judiciary ensures that children, as a vulnerable group, are provided equitable access to justice and protection from discrimination⁴.

³ Seth, R., & Srivastava, R. N. (2017). Child Sexual Abuse: Management and prevention, and protection of children from Sexual Offences (POCSO) Act. *Indian Pediatrics*, 54(11), 949–953. <https://doi.org/10.1007/S13312-017-1189-9>

2. Article 15(3) – Special Provisions for Children

This clause permits the State to make special provisions for children. It serves as a basis for child-centric laws like POCSO and allows the judiciary to interpret such laws liberally in favour of child protection⁵.

3. Article 21-Right to Life and Personal Liberty

The right to life includes the right to live with dignity, safety, and protection from abuse. The judiciary has expanded the scope of Article 21 to encompass the right of children to be free from sexual violence and exploitation⁶.

4. Article 21A – Right to Education

Ensuring that child victims continue to receive education without interruption is part of the broader judicial approach to rehabilitation under the POCSO framework⁷.

5. Article 39(e) and (f) – Directive Principles of State Policy

These mandate the State to ensure that children are not abused and that they are given opportunities to develop in a healthy manner. Though not enforceable by courts, the judiciary often invokes these principles to guide judgments and policy directions related to child welfare⁸.

Article 45 – Provision for Early Childhood Care and Education

This directive principle underlines the importance of a supportive environment for children's growth, which the judiciary considers when handling sensitive POCSO cases involving very young victims⁹.

⁴ Article 14, Constitution of India

⁵ Article 45, Constitution of India

⁶ Article 21, Constitution of India

⁷ Article 21A, Constitution of India

⁸ Article 39, Constitution of India

⁹ Article 45, Constitution of India

Judicial Framework and Child-Centric Approach

The judiciary plays a crucial role under the POCSO Act, ensuring a child-friendly legal process, safeguarding children from the trauma of legal proceedings, and facilitating swift justice in cases of sexual offenses against minors, as highlighted in significant court decisions¹⁰. The POCSO Act, 2012, ensuring the 'best interest of the child' is prioritized throughout legal proceedings, thereby safeguarding minors from sexual offenses and providing a congenial legal environment for their cases. The role of the judiciary under the Protection of Children from Sexual Offences Act, 2012 is a beneficiary. It primarily discusses the Act's provisions, ambiguities, and implications for medical and mental health professionals. *In Alakh Alok Srivastava v. Union of India*¹¹ the Supreme Court took suo motu cognizance of rising child rape cases and directed the setting up of special courts for speedy trials under the POCSO Act. The Court emphasized the need for time-bound justice to prevent secondary victimization of child survivors.

*Satish Ragde v. State of Maharashtra*¹² case involved the controversial interpretation of "sexual assault" under Section 7 of the POCSO Act. The Bombay High Court initially held that groping a child without "skin-to-skin" contact does not constitute sexual assault. The Supreme Court reversed this decision, reaffirming that such narrow interpretations defeat the very purpose of the POCSO Act.

The court in *State of Punjab v. Gurmit Singh*¹³ case laid down crucial principles for handling sexual offence cases involving minors. The Court emphasized the need for in-camera trials and treating the testimony of child victims with sensitivity. **In 2020** *Kumari A v. State of Kerala*¹⁴ the Kerala High Court stressed that the delay in reporting a POCSO offence should not weaken the case of the victim, especially when the child

¹⁰ Ibid.

¹¹ W.P. (Crl.) No. 1/2018 (Supreme Court)

¹² Criminal Appeal No. 40 of 2021 (Supreme Court)

¹³ AIR 1996 SC 1393

¹⁴ 2020 SCC OnLine Ker 312

has undergone trauma and fear, which can explain hesitation in disclosure. In *Re: Exploitation of Children in Orphanages in State of Tamil Nadu v. Union of India & Ors*¹⁵ the Supreme Court expanded the scope of child protection to include institutional care. It emphasized proper implementation of POCSO in childcare institutions and accountability of authorities.

Critical Analysis

The article aims to critically assess various aspects of the Act, including its important provisions, the implications of recent amendments, and the strategies employed for enforcement. This suggests a thorough evaluation of both the strengths and weaknesses of the Act. The review also addresses the challenges faced in enforcing the Act and discusses potential future directions for child protection within this legal framework¹⁶. This indicates that the paper not only looks at the current state of the law but also considers its evolution and the ongoing issues that need to be addressed¹⁷. The POCSO Act, focusing on its amendments, enforcement challenges, and future implications for child protection in India¹⁸. This sets the stage for a detailed exploration of the Act's role in safeguarding children against sexual offenses¹⁹.

Conclusion and Suggestions

The Protection of Children from Sexual Offences Act (POCSO), 2012, is a significant legislative step aimed at addressing child sexual abuse in India. It is the first law that specifically targets child sexual offences and is designed to be gender-neutral, covering both contact and non-contact offences, with severe penalties for offenders, including life

¹⁵ *Suo Motu Writ Petition (Civil) No. 102/2007*

¹⁶ Agnihotri, S., & Das, M. (2015). Reviewing India's protection of children from sexual offences act three years on. <http://eprints.lse.ac.uk/74845/>.

¹⁷ Ibid.

¹⁸ Gupta, R., Mittal, A., & Chegudi, M. (2024). Child abuse and pocso act 2012: approach, challenges and future direction (pp. 137–149). <https://doi.org/10.58532/v3bdms25p6ch3>

¹⁹ Sinha, I., & Singh, R. (2023). Critical Analysis of POCSO: In Light of the Rights of Adolescents. *International Journal For Multidisciplinary Research*. <https://doi.org/10.36948/ijfmr.2023.v05i06.10289>

imprisonment. Despite its strengths, the implementation of POCSO faces numerous challenges. Medical professionals often feel overwhelmed by the mandatory reporting requirements, which may deter victims from seeking help. This could lead to increased rates of suicides, unsafe abortions, and other health issues among victims. The act has several legal and ethical dilemmas that need to be addressed. For instance, the law does not clearly define what constitutes "developmentally appropriate sexual activity" among adolescents, leading to confusion about what behaviors may be considered abusive. There is a significant gap in public awareness and understanding of the act, which hampers its effectiveness. Training and awareness campaigns for stakeholders, including healthcare providers, police, and the general public, are essential for the successful implementation of POCSO. The act mandates that all hospitals provide free medical treatment to sexual assault victims, but there is still confusion regarding the medical examination process. Healthcare professionals often face dilemmas about whether to conduct examinations themselves or refer patients to specialists, which can delay care. Overall, while POCSO represents a hopeful step towards protecting children from sexual offences, its effectiveness is hindered by various challenges, including legal ambiguities, lack of public awareness, and the need for better training for professionals involved in the care of child victims. To improve the situation, the paper suggests that workshops and educational programs should be conducted to address the ethical, legal, and clinical dilemmas faced by professionals, ensuring that children's rights and protection are prioritized.

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