

Child Sexual Abuse in India: Legal Protections Under the POCSO Act

Jyoti

B. Com, LLB, LLM, PGDCA, Kurukshetra University, Kurukshetra, Haryana, India

Received: 19 Mar 2024, Received in revised form: 15 Apr 2025, Accepted: 19 Apr 2025, Available online: 25 Apr 2025

Abstract

Child sexual abuse constitutes a serious violation of child rights, human dignity, and constitutional guarantees in India. The Protection of Children from Sexual Offences Act, 2012 was enacted to address the inadequacies of general criminal law by providing a comprehensive, child-centric legal framework for preventing and punishing sexual offences against children. This paper examines the evolution of laws relating to child sexual abuse, the salient features of the POCSO Act, and the procedural safeguards designed to ensure child-friendly justice. It critically analyses the role of the judiciary in interpreting and strengthening the Act through purposive and progressive judgments, while balancing child protection with the right to a fair trial. The study also evaluates the impact of the POCSO (Amendment) Act, 2019, particularly the introduction of enhanced punishments and the death penalty for aggravated offences, and the debates surrounding deterrence and effective justice. The paper argues that while the statutory framework has significantly strengthened child protection, the success of the POCSO regime ultimately depends on consistent implementation, institutional capacity, judicial sensitivity, and a holistic approach that integrates prevention, rehabilitation, and victim-oriented support mechanisms.

Keywords— *Child Sexual Abuse, POCSO Act, Child Rights, Sexual Offences, Indian Criminal Law.*

I. INTRODUCTION

Child sexual abuse (CSA) is a serious violation of a child's bodily integrity, dignity, and autonomy. It involves engaging a child in sexual activities that the child is incapable of understanding, consenting to, or resisting due to age, dependency, or power imbalance. The World Health Organisation defines CSA as the involvement of a child in sexual activity for the sexual gratification of an adult or older adolescent, whether through force, coercion, manipulation, or abuse of trust (WHO, 2006). CSA is not confined to physical contact; it also includes non-contact acts such as sexual harassment, exposure to pornography, voyeurism, and online exploitation.

In India, the Protection of Children from Sexual Offences Act, 2012 (POCSO) provides a comprehensive statutory definition by criminalising penetrative sexual

assault, sexual assault, sexual harassment, and the use of children for pornographic purposes. The Act adopts a gender-neutral and age-specific approach, recognising all persons below eighteen years as children and acknowledging their heightened vulnerability (POCSO Act, 2012).

Magnitude of Child Sexual Abuse in India

The magnitude of CSA in India is alarming and continues to pose a major challenge for the criminal justice system. Data published by the National Crime Records Bureau shows a consistent increase in reported POCSO cases over recent years, indicating both rising incidence and improved reporting mechanisms (NCRB, 2022). Despite this, experts emphasise that CSA remains significantly under-reported due to fear, stigma, social pressure, and lack of child-sensitive support systems.

Empirical studies reveal that, in many cases, the offender is known to the child, often a family member or member of the immediate social environment, which further discourages reporting and delays legal action (MWCD, 2007).

II. LITERATURE REVIEW

Pitre and Lingam (2021) explain how raising the age of consent to 18 and mandatory reporting under sexual-violence laws (including POCSO's ecosystem) can criminalise adolescent consensual relationships, intensify family control, and create barriers to sexual and reproductive healthcare. The paper argues that legal protection may function as patriarchal regulation unless aligned with adolescent rights and access to health care.

Ferrao (2024) evaluates India's POCSO Special Courts as a key institutional innovation for child victims, noting improvements in dedicated trial structures but persistent constraints—heavy caseloads/pendency, operational difficulties, and uneven capacity across districts. The article highlights that effectiveness depends on resourcing, judicial preparedness, and procedures that consistently safeguard the rights of child victims during trial.

Significance of the Study

This study holds significant academic, legal, and social importance as it critically examines child sexual abuse in India through the lens of the Protection of Children from Sexual Offences (POCSO) Act, 2012. By analysing the conceptual foundations, legal safeguards, and practical functioning of the Act, the study contributes to a deeper understanding of child-centric criminal jurisprudence in India. It is significant for legal scholarship as it evaluates whether the existing statutory framework adequately balances child protection with procedural fairness and effective justice delivery. From a policy perspective, the study highlights implementation gaps, institutional challenges, and emerging concerns that can inform legislative reforms and administrative improvements. Socially, the research underscores the gravity of child sexual abuse as a violation of fundamental rights and human dignity, thereby reinforcing the need for awareness, prevention, and victim-oriented responses. The study is also relevant for judges, lawyers, law enforcement agencies, and child welfare professionals, as it provides insights into improving child-friendly mechanisms and strengthening the overall child protection system in India.

Objectives:

- i. To evaluate procedural safeguards and child-friendly mechanisms provided under the POCSO regime.
- ii. To assess the role of the judiciary in interpreting and strengthening child protection jurisprudence.

III. CONCEPTUAL AND LEGAL FRAMEWORK OF CHILD PROTECTION IN INDIA

1. Forms of Child Sexual Abuse

Child sexual abuse manifests in multiple forms, each involving the exploitation of a child's vulnerability and violation of bodily autonomy. Major forms include:

- i *Penetrative Sexual Assault* – Involves penetration of the vagina, anus, mouth, or urethra of a child by any body part or object, criminalised under Section 3 of the POCSO Act (POCSO Act, 2012)
- ii *Non-Penetrative Sexual Assault* – Includes sexual touching with sexual intent without penetration, such as fondling or inappropriate physical contact (POCSO Act, 2012).
- iii *Sexual Harassment* – Encompasses verbal or non-physical acts like sexually explicit remarks, gestures, showing pornography, or stalking a child (WHO, 2006).
- iv *Sexual Exploitation and Pornography* – Involves using a child for the production, distribution, or consumption of pornographic material, including online abuse (Choudhry et al., 2018).
- v *Online and Digital Abuse* – Includes grooming, sextortion, and exposure to sexual content through digital platforms, increasingly prevalent due to internet access (UNICEF, 2021).
- vi *Incest and Abuse by Known Persons* – Abuse committed by family members, caregivers, or trusted individuals, often remaining undisclosed due to fear and social stigma (MWCD, 2007).

These forms highlight the complex and evolving nature of child sexual abuse, necessitating comprehensive legal and protective responses.

2. Vulnerability of Children and Power Imbalance

Children are inherently vulnerable due to their physical, emotional, cognitive, and social immaturity, which significantly limits their capacity to understand, resist, or report sexual abuse. This vulnerability is

further intensified by a pronounced power imbalance between children and adults, or between older adolescents and adults. Power in this context arises from age, authority, trust, dependency, and social positioning, enabling perpetrators to exploit children with minimal risk of immediate disclosure (WHO, 2006).

One of the primary sources of vulnerability is dependency. Children rely on adults for care, protection, education, and emotional support. When the abuser occupies a position of authority—such as a parent, relative, teacher, caregiver, or employer—the child may fear punishment, abandonment, or disbelief, discouraging resistance or reporting (Choudhry et al., 2018). Emotional manipulation, threats, and inducements are frequently used to maintain silence, reinforcing the imbalance of power.

Social and cultural factors further exacerbate vulnerability. In many societies, including India, children are expected to obey elders unquestioningly, and discussions around sexuality are taboo. This cultural silence limits children's awareness of abuse and their ability to articulate harm (Pitre & Lingam, 2021). Gender, poverty, disability, and lack of education also increase susceptibility, as marginalised children often have limited access to protective mechanisms and legal remedies.

The law recognises this inherent imbalance. The POCSO Act, 2012, is premised on the assumption that a child's consent is legally irrelevant, acknowledging that children cannot freely or meaningfully consent to sexual acts due to unequal power relations. Judicial interpretations have repeatedly emphasised that power asymmetry, rather than physical force alone, lies at the core of child sexual abuse. Addressing CSA, therefore, requires not only punitive legal measures but also structural interventions that reduce dependency, enhance child awareness, and promote safe environments that counter entrenched power hierarchies.

3. Constitutional Protections for Children

The Indian Constitution provides a robust framework for the protection and welfare of children, recognising them as a vulnerable group requiring special safeguards. Article 21, which guarantees the right to life and personal liberty, has been judicially interpreted to include the right to live with dignity, bodily integrity, and protection from sexual exploitation. Article 14 ensures equality before the law, while Article 15(3) empowers the State to make special provisions for

children to address structural disadvantages. Further, Article 23 prohibits trafficking and forced labour, indirectly safeguarding children from sexual exploitation and abuse. The Directive Principles of State Policy reinforce these protections through Articles 39(e) and 39(f), which mandate the State to ensure that children are not abused and that their development occurs in conditions of freedom and dignity. Additionally, Article 45 obligates the State to provide early childhood care and education, recognising the link between education, awareness, and protection. Collectively, these constitutional provisions establish a rights-based foundation that supports specialised child protection laws such as the POCSO Act, 2012.

4. International Obligations (UNCRC and Related Instruments)

India's commitment to child protection is further reinforced by its international obligations. As a signatory to the United Nations Convention on the Rights of the Child (UNCRC), 1989, India is bound to ensure protection of children from all forms of sexual abuse and exploitation under Articles 19 and 34. The UNCRC adopts a holistic child-rights approach, emphasising the principles of the best interests of the child, survival and development, and child participation. Complementary instruments such as the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000) and the ILO Convention No. 182 on Worst Forms of Child Labour further strengthen international norms against sexual exploitation. Indian courts have consistently relied on these international standards to interpret domestic laws in harmony with global child rights principles, thereby integrating international obligations into the national legal framework.

Evolution of Laws Addressing Child Sexual Abuse in India

1. Position under the IPC Prior to POCSO

Before the enactment of the POCSO Act, child sexual abuse cases were dealt with under general provisions of the Indian Penal Code, 1860, such as Sections 354 (outraging modesty), 375 (rape), and 377 (unnatural offences). These provisions were not child-specific and largely focused on penetrative acts, offering limited recognition to non-penetrative abuse, sexual harassment, and exploitation of male children.

2. Limitations of General Criminal Law

The IPC framework suffered from several limitations in addressing child sexual abuse. It was gender-biased, lacked clear definitions of child-specific offences, and did not recognise the unique vulnerability of children. Procedural safeguards were absent, trials were not child-friendly, and evidentiary standards often led to secondary victimisation, discouraging reporting and effective prosecution.

3. Judicial Recognition of the Need for Special Legislation

Indian courts gradually acknowledged the inadequacy of general criminal law in protecting children from sexual abuse. Through progressive interpretations emphasising child dignity and welfare, the judiciary highlighted the need for specialised legislation that could address varied forms of abuse and ensure child-sensitive procedures, thereby influencing legislative reforms in child protection jurisprudence.

4. Enactment and Objectives of the POCSO Act, 2012

The POCSO Act, 2012, was enacted to provide a comprehensive, child-centric legal framework to address sexual offences against children. Its objectives include defining specific offences, ensuring gender neutrality, introducing child-friendly procedures, establishing Special Courts, and safeguarding the best interests, dignity, and privacy of child victims throughout the justice process.

Salient Features of the Protection of Children from Sexual Offences (POCSO) Act, 2012

1. Gender-Neutral and Child-Centric Approach

One of the most significant features of the POCSO Act, 2012, is its gender-neutral framework, which recognises that both boys and girls can be victims of sexual abuse. Unlike the Indian Penal Code, the Act does not restrict protection on the basis of gender, thereby addressing a major gap in earlier criminal law (POCSO Act, 2012). The Act is also child-centric, as it defines a child uniformly as any person below eighteen years of age and prioritises the best interests, dignity, and psychological well-being of the child throughout investigation and trial.

2. Definition of Offences under the Act

The POCSO Act provides clear and exhaustive definitions of sexual offences against children, including penetrative sexual assault (Section 3), sexual assault (Section 7), sexual harassment (Section 11),

and use of children for pornographic purposes (Section 13). By covering both contact and non-contact forms of abuse, the Act addresses the diverse and evolving nature of child sexual exploitation (Choudhry et al., 2018).

3. Aggravated Offences and Enhanced Punishments

The Act recognises aggravated forms of sexual abuse where the offence is committed by persons in positions of trust or authority, such as police officers, teachers, relatives, or public servants, or where the child is particularly vulnerable (Section 5). The POCSO (Amendment) Act, 2019, introduced stricter punishments, including enhanced minimum sentences, reflecting the legislature's intent to strengthen deterrence against grave offences (Pillai & Paul, 2019).

4. Presumption of Guilt and Burden of Proof

To address evidentiary challenges and power imbalances, Sections 29 and 30 of the Act introduce a statutory presumption of guilt, shifting the burden of proof to the accused once foundational facts are established. This marks a departure from traditional criminal jurisprudence and underscores the law's victim-protective orientation, while remaining subject to judicial scrutiny and fair-trial safeguards.

5. Mandatory Reporting Provisions

Section 19 of the Act imposes mandatory reporting obligations on any person, including professionals, who has knowledge or apprehension of a POCSO offence. Failure to report is punishable under Section 21. This provision aims to address chronic under-reporting of child sexual abuse but has also generated debate regarding confidentiality, professional ethics, and adolescent autonomy (Pitre & Lingam, 2021).

Procedural Safeguards and Child-Friendly Mechanisms under the POCSO Act

1. Role of Special Courts

The POCSO Act mandates the establishment of Special Courts in each district to exclusively try offences under the Act (Section 28). These courts are designed to ensure speedy trials and a child-sensitive adjudicatory process. Judges presiding over Special Courts are expected to possess adequate training and sensitivity to handle child victims. The exclusive jurisdiction of these courts reduces procedural delays and minimises the child's repeated exposure to adversarial settings (Ferrao, 2024). Judicial practice has emphasised that Special Courts are central to the Act's protective intent.

2. In-Camera Trials and Speedy Justice

To protect the dignity and privacy of child victims, POCSO mandates in-camera proceedings and requires that trials be completed, as far as possible, within one year (Sections 33 and 35). Public access to proceedings is restricted to prevent secondary victimisation and social stigma. Courts have consistently held that delayed justice aggravates trauma and undermines the rehabilitative objectives of child protection laws.

3. Child-Friendly Reporting and Recording of Evidence

The Act prescribes child-friendly procedures at every stage of the criminal process. Statements of the child must be recorded at a place of the child's choice, preferably by a woman police officer not below the rank of Sub-Inspector (Section 24). Aggressive questioning, repeated narration of incidents, and exposure to the accused are expressly discouraged. The use of video-conferencing and intermediaries is encouraged to reduce psychological stress (POCSO Act, 2012).

4. Protection of Identity and Privacy

Section 23 of the Act strictly prohibits disclosure of the child's identity through media or public records. Courts have treated breaches of confidentiality as serious violations of children's rights, recognising privacy as intrinsic to dignity and mental well-being. Protecting identity also increases victims' and families' willingness to approach legal authorities (Choudhry et al., 2018).

5. Role of Police, Medical Professionals, and Support Persons

The POCSO framework assigns clearly defined responsibilities to institutional actors. Police officers are duty-bound to provide immediate protection and assistance, while medical examinations must be conducted in a child-sensitive manner, preferably by trained professionals (Section 27). The Act also recognises the role of support persons, including counsellors and child welfare experts, to assist the child during the investigation and trial. This multidisciplinary approach reflects an understanding that effective justice requires coordination among legal, medical, and psychosocial domains (Juyal et al., 2017).

Role of the Judiciary in Interpreting the POCSO Act

1. Supreme Court and High Court Interpretations

The Indian judiciary has played a pivotal role in shaping the interpretation and application of the

POCSO Act, 2012. The Supreme Court has consistently emphasised that POCSO is a special, welfare-oriented legislation enacted to protect children from sexual exploitation and must therefore be interpreted purposively rather than narrowly. In *Alakh Alok Srivastava v. Union of India* (2018), the Court stressed the State's obligation to ensure effective implementation of the Act, particularly the establishment of Special Courts and child-friendly procedures. High Courts across India have further clarified procedural safeguards, evidentiary standards, and sentencing principles under POCSO, thereby strengthening the Act's operational framework.

2. Progressive Judicial Trends

Judicial decisions under POCSO reflect a progressive shift towards recognising the psychological vulnerability of child victims. Courts have accepted that minor inconsistencies in a child's testimony cannot be treated as fatal to the prosecution's case, given the trauma associated with abuse. In *State of Himachal Pradesh v. Sanjay Kumar* (2017), the Supreme Court held that the testimony of a child victim, if found reliable, does not require corroboration. This approach demonstrates judicial sensitivity towards child psychology and aligns with international child rights standards.

3. Balancing Child Protection with Fair Trial Rights

While adopting a victim-centric approach, courts have also ensured that the constitutional right to a fair trial is not compromised. In *Bijoy v. State of West Bengal* (2017), the Supreme Court cautioned against the mechanical application of statutory presumptions under Sections 29 and 30 of the POCSO Act. The Court clarified that the presumption of guilt arises only after the prosecution establishes foundational facts. This balanced approach safeguards the rights of the accused while preserving the statute's protective intent.

4. Landmark Judgments under the POCSO Act

Several landmark judgments have contributed significantly to POCSO jurisprudence.

- i. In *Attorney General for India v. Satish* (2021), the Supreme Court overturned a restrictive interpretation adopted by the Bombay High Court and reaffirmed that sexual intent, not physical skin-to-skin contact, is the decisive factor in determining sexual assault.
- ii. In *Independent Thought v. Union of India* (2017), the Court harmonised POCSO with

constitutional morality by criminalising marital sexual assault involving minor wives, thereby prioritising child rights over outdated social norms. These judgments collectively demonstrate the judiciary's crucial role in reinforcing child protection while upholding constitutional principles.

- iii. *State of Karnataka v. Shivanna @ Tarkari Shivanna* (2014), in this landmark judgment, the Supreme Court laid down mandatory guidelines for prompt recording of statements of child victims in sexual offence cases. The Court directed that statements under Section 164 CrPC must be recorded at the earliest, preferably within 24 hours, to reduce trauma and prevent torture. Though decided in a rape context, the principles have been consistently applied in POCSO cases, reinforcing the importance of child-sensitive and time-bound procedures (*State of Karnataka v. Shivanna*, 2014).
- iv. *Phul Singh v. State of Madhya Pradesh* (2022). In this case, the Supreme Court reaffirmed that sexual assault under POCSO must be assessed based on sexual intent, and courts should avoid stereotypical reasoning or moral judgments. The decision emphasised victim dignity, proportional sentencing, and judicial restraint, contributing to a more rights-oriented and sensitive interpretation of child sexual abuse cases (*Phul Singh v. State of M.P.*, 2022).

Recent Amendments and Emerging Developments under the POCSO Framework

The Protection of Children from Sexual Offences (Amendment) Act, 2019, marked a significant legislative response to rising incidents of child sexual abuse in India. The amendment was introduced with the stated objective of strengthening deterrence, expediting justice, and reinforcing the protective intent of the original Act. It amended key provisions relating to punishment, especially for aggravated forms of sexual offences against children (POCSO Amendment Act, 2019).

One of the most notable changes introduced by the 2019 Amendment is the enhancement of minimum and maximum punishments. The amendment increased the minimum sentence for penetrative sexual assault and introduced the death penalty as a sentencing option for aggravated penetrative sexual assault, particularly where the offence results in the death of the child or

leaves the child in a persistent vegetative state. These changes reflect a shift towards a more punitive approach aimed at reinforcing deterrence (Pillai & Paul, 2019).

However, the introduction of capital punishment under POCSO has generated considerable legal and academic debate. Critics argue that the death penalty may not necessarily deter sexual offences against children and could potentially discourage reporting, especially in cases where the offender is a family member. Concerns have also been raised regarding the compatibility of extreme punitive measures with principles of restorative justice and child-centric jurisprudence (Pitre & Lingam, 2021). Supporters, on the other hand, view stricter punishments as a strong symbolic assertion of the State's commitment to child protection.

In terms of impact, the amendments have reinforced the seriousness with which child sexual abuse is treated under Indian law. Courts have increasingly emphasised speedy trials, the dignity of victims, and proportionate sentencing in light of the amended provisions. Nevertheless, empirical evidence suggests that effective child justice depends not solely on enhanced punishments but on consistent implementation, institutional capacity, and victim support mechanisms. Thus, while the 2019 Amendment represents a decisive legislative development, its success ultimately rests on holistic enforcement rather than punitive severity alone.

IV. CONCLUSION

The research demonstrates that child sexual abuse in India is a grave violation of constitutional values, human dignity, and child rights, necessitating a specialised and child-centric legal response. The evolution from the general provisions of the Indian Penal Code to the enactment of the Protection of Children from Sexual Offences Act, 2012 reflects legislative and judicial recognition of the unique vulnerability of children and the inherent power imbalance involved in such offences. The POCSO Act provides a comprehensive framework through clearly defined offences, gender-neutral protection, child-friendly procedures, Special Courts, and safeguards for privacy and dignity. Judicial interpretation has further strengthened this framework by adopting purposive and progressive approaches, recognising the reliability of child testimony, emphasising speedy and in-camera trials, and ensuring that procedural protections are meaningfully implemented. At the same time, courts

have sought to balance child protection with the accused's right to a fair trial, thereby preserving the integrity of the criminal justice system.

The recent amendments introduced through the POCSO (Amendment) Act, 2019, signify a shift towards stricter penal measures, including enhanced minimum sentences and the introduction of the death penalty for aggravated offences. While these changes underline the State's commitment to combating child sexual abuse, the analysis reveals that deterrence cannot rest solely on punitive severity. Effective child justice depends equally on robust implementation, institutional capacity, trained stakeholders, and psychosocial support for victims. Persistent challenges such as under-reporting, procedural delays, and uneven functioning of Special Courts continue to affect outcomes under the Act. Therefore, the protection of children from sexual offences requires a holistic approach that integrates legal enforcement with awareness, prevention, rehabilitation, and sensitivity. Only through such a balanced and rights-based framework can the objectives of the POCSO Act be fully realised and the promise of child-centric justice be meaningfully upheld.

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