

**DE JURE NEXUS LAW JOURNAL**

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**PROTECTION OF CHILDREN FROM SEXUAL OFFENCES WITH  
SPECIAL REGERENCES TO POCSO ACT, 2012**

*“Safety and securities don’t just happen, they are the result of collective consensus and public investment. We owe our children, the most vulnerable citizens in our society, a life free of violence and fear”*

*-Nelson Mandela*

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**Abstract**

*One hundred eight children are sexually abused every day. According to the data collected by National Crime Records Bureau, in the year 2020, a total number of 47,221 cases under the POCSO Act, 2012, were filed across the nation. Both boys and girls were equally prone to abuse, which acted as the base of motivation for a gender-neutral law. However, 99% of the offences were against girls, making them more vulnerable to sexual offences than boys out of all the cases. This social issue cannot be rectified unless we can make everyone feel safe irrespective of time, place, day, or any other parameter.*

**Introduction**

The main objective of enacting a new law named The Protection of Children from Sexual Offences Act, 32 of 2012 was to protect children below the age of 18 from sexual abuse of any kind like harassment, assault and pornography etc. This act is competent with Article 15(3) of the Constitution of India, which states “Nothing in this article shall prevent the State from making any special provision for women and children”.

Before POCSO Act, 2012 the law governing this issue was not gender-neutral as they were more focused on girls, leaving the male children in the blue. However, this act does not recognise the gender of the offender. This act covers more wide range of offences that can be committed to safeguard the rights of the children and punish the offenders, which were not mentioned in IPC,1860.

The definition of children under section 2(d)<sup>1</sup> of the POCSO Act, 2012 is “child” means any person below the age of eighteen years”.

There is a rapid growth in the number of sexual offences against children in recent times.

POCSO is a beautifully written legislation with special enactment which established a special court and different measures for proceedings where any children below 18 years of age are concerned. It also makes reporting of any kind act mandatory.

A report suggests that “every second child has been sexually assaulted in India. This report also revealed that India has the doubtful difference of having the world’s biggest figure of sexually abused children with a child below 16 years raped every 155th minute, a child below 10 every 13th hour and one in every 10 children sexually abused at any point of time.” It further states that “A majority of sexual abuse cases occur in the home, school or the neighbourhood next door. In India, many gruesome incidents of CSA have been recorded in the past ranging from incest, rapes, sexual abuse, sodomy, inappropriate touch to sexual assaults. The worst part is that such abuse is inflicted upon a child by a person in his immediate circle and a stunning majority of these cases go unnoticed”.

## Offences under POCSO Act, 2012

There are a total of 5 sexual offences mentioned in the POCSO Act, 2012.

- 1) Penetrative Sexual Assault- Penetrative sexual assault is defined under section 3<sup>2</sup> of the POCSO Act, 2012 defines it as “A person is said to commit “penetrative sexual assault” if— (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child do so with him or any other person; or (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child do so with him or any other person; or (c) he manipulates any part of the body of the child to cause penetration into the vagina, urethra, anus or any part of the body of the child or makes the child do so with him or any other person; or (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child do so to such person or any other person”. And section 4<sup>3</sup> defines its punishment to be a minimum of 7 years extending up to imprisonment for life.
- 2) Sexual Assault- Section 11<sup>4</sup> of the POCSO Act, 2012 defines it as “A person is said to commit sexual harassment upon a child when such person with sexual intent,— (i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other

<sup>1</sup> The Protection of Children from Sexual Offences Act, 2012(Act 32 of 2012), s, 2(d)

<sup>2</sup> The Protection of Children from Sexual Offences Act, 2012(Act 32 of 2012), s, 3

<sup>3</sup> The Protection of Children from Sexual Offences Act, 2012(Act 32 of 2012), s, 4

<sup>4</sup> The Protection of Children from Sexual Offences Act, 2012(Act 32 of 2012), s, 11

person; or (iii) shows any object to a child in any form or media for pornographic purposes; or (iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or (v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or (vi) entices a child for pornographic purposes or gives gratification therefor". And article 12<sup>5</sup> defines its punishment as three years.

An assault would be termed as aggravated only if it is committed by one of these-

- Police officer
  - Public servant
  - Management/staff of jail, remand home or safe house etc.
  - Management of hospital
  - Management at an educational and religious place etc.
- 3) Aggravated Penetrative Sexual Assault – If the committed offence is said to be Aggravated Penetrative Sexual Assault, then its punishment would increase from a minimum of 10 years up to imprisonment for life.
- 4) Aggravated Sexual Assault- If the committed offence is said to be Aggravated Sexual Assault, then its punishment would increase from a minimum of 5 years up to 7 years in prison.
- 5) Using a child for pornographic purposes- section 13<sup>6</sup> dealing with this act defines it as *"Whoever, uses a child in any form of media (including programme or advertisement telecast by television channels or internet or any other electronic form or printed form, whether or not such programme or advertisement is intended for personal use or distribution), for sexual gratification, which includes— (a) representation of the sexual organs of a child; (b) usage of a child engaged in real or simulated sexual acts (with or without penetration); (c) the indecent or obscene representation of a child, shall be guilty of the offence of using a child for pornographic purposes."* The punishment structure for the commission of this act is mentioned in section 14<sup>7</sup> with a minimum of 5 years up to imprisonment for life.

Other Offences mentioned in the POCSO Act are-

- If someone is caught with stored pornographic material involving a child would be imprisonment for 3 years and/or a fine.
- Failure to complain would also lead to imprisonment of 6-12months. However, this provision exempts the victim.
- Making a false complaint is also punishable by imprisonment of 6-12 months.

<sup>5</sup> The Protection of Children from Sexual Offences Act, 2012(Act 32 of 2012), s, 12

<sup>6</sup> The Protection of Children from Sexual Offences Act, 2012(Act 32 of 2012), s, 13

<sup>7</sup> The Protection of Children from Sexual Offences Act, 2012(Act 32 of 2012), s, 14

Just like every coin has two sides, despite being the most progressive law to safeguard children from sexual offences it comes with some drawbacks as well.

- The issue at hand is not with POCSO, but with Cr.PC. The Criminal Procedure Code (Cr.PC) prohibits judicial judges from taking cognizance of matters after a certain time limit has passed. Such a condition makes historical reporting of child sexual assaults before to 2012 legally impossible. This creates an insurmountable legal hurdle to the recording of historical child sexual assaults committed before to 2012.
- “Once an act is done, it's done” we can punish a criminal in any way possible, however, it wouldn't matter to a child who had suffered and is in trauma, however, the child and family can be healed through counselling but this act was silent about that.

### **Conclusion**

The above report states that there is a high need for the protection of children from sexual abuse. CSA is a shame for a society, Awareness can play a significant role to protect children. Almost all studies, in general, brought out different challenges and gaps in the field of POCSO sensitization and implementation, such as required reporting, age of consent, and the requirements of the POCSO act. These concerns must be thoroughly reviewed in order to make the legislation strong and implementable in its entirety.



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