

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

---

Volume 6 | Issue 1

---

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Sexual Offences against Children in India

---

DR. ANUPAM MANHAS<sup>1</sup> AND ANKIT KUMAR<sup>2</sup>

## ABSTRACT

*The present research paper deal with the crime against children specifically under POCSO Act, 2012. Here the researcher has thrown delight over mainly three Offences which covers under POCSO Act, 2012 namely sexual Assault, sexual harassment and pornography. Further, the Researcher has made an analysis of protection of children sexual offences Act, 2012 and for complete study over particular topic have taken the help of NCRB report and SCRB report. It was found that major crime head under crime against children, during 2020 data NCRB related to Kidnapping, Abduction. It was also found that the crime against children in the year 2021. The total of 1,49,404 case of crime against children were registered during year 2021 which is showing an increase of 16.2% over the last year.*

**Keywords:** Sexual Assault, Sexual harassment, pornography, POCSO.

## I. INTRODUCTION

Legal protection against sexual exploitation . The sexual abuse of children , especially girls, is a problem of great concern in view of vulnerability of their condition ,deleterious impact of the exploitation on their health and life, and wide prevalence of the evil . It is of multitude reasons. Its vilest form is child prostitution ,which is dealt under Immoral Traffic Act,1956 whereas offences like kidnapping for immoral purpose, outraging the modesty , pornography, procuring , sale or letting for hire, rape and unnatural offences are the offences dealt under the Indian Penal Code 1860. The patriarchic social structure, economic exploitation and aggressive male sexuality are the common reasons attributed to these deviant acts.<sup>3</sup> The nation future depends upon young children or the children deserve compassion and bestowal of the best care protect this burgeoning human resource . A child is born innocent and if nourished with tender care and attention. Both he/she will blossom with faculties physical , mental, moral and spiritual , into a person of stature and excellence. Children is future asset. Children are the backbone of human society. The development of a nation is determined by the priority given to his child. Children are the supreme assets of the nation. The ministry of woman and child development enacted the protection of children from sexual

---

<sup>1</sup> Author is an Associate Professor of Law at Career Point University Hamirpur, India.

<sup>2</sup> Author is a PhD Scholar at Career Point University Hamirpur, India.

<sup>3</sup> P.Ishwara Bhat, Law & Social Transformation (Published by Eastern Book Company, 34 Lalbagh, Lucknow. Edn., 1<sup>st</sup> 2009).

Offences (POCSO) Act 2012 in response to the rising incidence of child sexual abuse in India. The Act recognises and define various crimes that can be committed against children, irrespective of their gender, procedure that has to be followed and the punishment for the same. Specific care needs to be taken that children grow up to become agile citizens, physically fit, mentally sound and alert and socially and morally healthy. But unfortunately, in spite of there being a number of resolutions and laws both at national and global level, the condition of children is far from satisfactory. History is the witness that this innocent and helpless creature has been subject to variety of exploitation.<sup>4</sup> The sexual offences crime against children is increase day to day. The constitution of India protect child or children and protect the rights of children. The Acts deal with the Children and POCSO Act 2012 is also protect the Sexual offences against children. The Researcher to study the area of District Hamirpur of Himachal Pradesh. The Researcher collect both type of data primary and secondary. The sexual offences against children in the area of District Hamirpur of Himachal Pradesh.

## II. DEFINITION OF CHILD

The term child has been defined differently by different laws. There is no uniform definition of the term 'child' or 'children' in India. Some Act defines the term 'child' and others define the term 'Minor'. Most of the legislations fixed age of eighteen years while defined 'child' or 'Minor'. The term '*Child*' means any human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.<sup>5</sup> It means a person who has not completed the age of sixteen years.<sup>6</sup> *Some law define Child as* a person who is under the age of fifteen years.<sup>7</sup> Yet another defines it as a person who, if male, has not completed twenty one years of age and, if a female, has not competed eighteen years of age.<sup>8</sup> There is law that defines '*Juvenile*' or '*Child*' means a person who has not completed eighteenth year of age.<sup>9</sup>

The child is at times confused with the term minor. The term '*Minor*' means a person who, under the provisions of the Indian Majority Act, 1875, is to be deemed not to have attained his

---

<sup>4</sup>Convention on the Rights of the Child Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49.

<sup>5</sup> Article.1 . Convention on the Rights of the Child Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49.

<sup>6</sup> Section. 2(aa), Immoral Traffic (Prevention) Act, 1956 (Act no.104 of 1956)

<sup>7</sup> Section.2, The Children (Pledging of Labour) Act, 1933(Act no.2 of 1933)

<sup>8</sup> Section.2(a), The Child Marriage Restraint Act, 1929 (Act no.19 of 1929)

<sup>9</sup> Section. 2 (k), The Juvenile Justice (Care and Protection of Children) Act, 2000 (Act no 56 of 2000)

majority.<sup>10</sup> It means a person who has not completed the age of eighteen years.<sup>11</sup>

The Guardians and Wards Act, 1890 also does not define the term 'Child'. It defines that (iv). The Children (Pledging of Labour) Act, 1933 defines that '(v). The Child Marriage Restraint Act, 1929 defines that '(vi). The POCSO Act 2012 defines that "child" means any person below the age of eighteen years.<sup>12</sup>

The number cases increasing day by day of sexual offences crime against children. The POCSO Act 2012 makes a specific provision section 43 for creating mass awareness about the law. The child sexual abuse has been largely neglected. Rape, prostitution, and human trafficking were the few recognized sexual crimes against minors or children in India. They were all dealt with under the broad provisions of Indian Penal Code 1860 which made no difference between adult and child victims of the crime.

### III. TYPES OF SEXUAL OFFENCES

Sexual abuse of child is not a new term for the third world countries. From the time immemorial the children have become the victim of sex related offences<sup>13</sup>. Sexual offences against children have been broadly divided into two parts:-

A. Child Sexual Abuse

B. Child Sexual Exploitation

**(A) Child Sexual Abuse:** - It means involvement of a child in sexual activities other than penetration. Child sexual abuse is further divided into these types:-

a. Physical Sexual Abuse

b. Verbal Sexual Abuse

c. Emotional Sexual Abuse

a. **Physical Sexual Abuse:** - Physical sexual abuse means touching and fondling of the sexual parts of the child's body (genitals and anus) or touching breasts of pubescent females; the child is forced to touch the sexual parts of a partner's body; sexual kissing and embraces.

---

<sup>10</sup> Section 3, Indian Majority Act, 1875 (Act No. 9 of 1875).

<sup>11</sup> Section.4(a), The Hindu Minority and Guardianship Act, 1956 (Act No.32 of 1956),

<sup>12</sup> Section.2(1)(d), The POCSO Act 2012 (Act no.32 of 2012, Section 2(n) The Mental Health Act, 1987, Section 2(t) The Mental Healthcare Act, 2017.

<sup>13</sup> [https://en.wikipedia.org/wiki/Child\\_sexual\\_abuse](https://en.wikipedia.org/wiki/Child_sexual_abuse) visited on 30/11/2022.

- b. **Verbal Sexual Abuse:** - Sexual language that is inappropriate for the age of child, used by perpetrator to generate sexual excitement, including making lured comments about the child's body and making obscene phone calls.
- c. **Emotional Sexual Abuse:** - Use of a child by parents or adult to fill inappropriate emotional needs, thereby forcing the child to fulfill the role of a spouse.

**(B) Child Sexual Exploitation:** - It involves the manipulation of the child into sexual activity in exchange for things such as money, gifts, accommodation, affection or status. All these illegal sexual activities are considered sexual offences under Indian legal system various offences covered under child sexual exploitation include child prostitution ,rape, child marriage ,child trafficking ,unnatural offences ,sex tourism, pornography, etc.

#### **IV. REASONS**

The reasons for Sexual Offences against children under POCSO Act, 2012 and they are also deal with the Children sexual causes are<sup>14</sup> :-

##### **1. Individual Cause.**

These causes include the consumption of alcohol and drug use by the perpetrator. Other factors resulting in sexual offences against children are delinquency, lack of concern for others, aggressive behaviors and acceptance of violent behaviors, early sexual initiation, coercive sexual fantasies, preference for impersonal sex and sexual-risk taking, exposure to sexually explicit media, hostility towards women, adherence to traditional gender role norms, hyper-masculinity, suicidal behavior and prior sexual victimization or perpetration

##### **2. Relationship Cause.**

The relationship issues also influence sexual offences against children. Factors like family history of conflict and violence, childhood history of physical, sexual, or emotional abuse, emotionally unsupportive family environment, poor parent-child relationships, particularly with fathers, association with sexually aggressive, hypermasculine, and delinquent peers and Involvement in a violent or abusive intimate relationship are known to have impact on the perpetrators of crime under POCSO.

##### **3. Community Cause.**

---

<sup>14</sup> <https://wcd.nic.in/sites/default/files/POCSO-ModelGuidelines>. visited on 19-01-2023

These causes include poverty, lack of employment opportunities and institutional support from police and judicial system, general tolerance of sexual violence within the community and weak community sanctions against sexual violence perpetrators.

#### 4. Societal Cause.

Societal causes include societal norms that support sexual violence, male superiority and sexual entitlement, maintain women's inferiority and sexual submissiveness, weak laws and policies related to sexual violence and gender equity and high levels of crime and other forms of violence.

#### 5. Protective Cause.

Protective Cause may lessen the likelihood of sexual violence victimization or perpetration. These Cause can exist at individual, relational, community, and societal levels, Families where caregivers work through conflicts peacefully, Emotional health and connectedness, Academic achievement and Empathy and concern for how one's actions affect others.

### **V. LAW ON PROTECTION FROM SEXUAL OFFENCES**

Child Sexual Abuse is an alarming reality and is being increasingly reported in India as well as globally. Pediatricians and allied medical professionals are often the first point of contact with abused children and their families. They have a key role in detecting Child Sexual Abuse, providing immediate and long-term care and support to the victims and their families. India is adopted the Protection of Children from Sexual Offences Act (POCSO) in 2012.<sup>15</sup> It is a comprehensive law on sexual abuse, which expands the scope and range of forms of sexual offences, makes reporting of abuse mandatory and defines guidelines for the examination of victims. Pediatricians and health care professionals need to acquire necessary expertise for clinical evaluation of child sexual abuse, and its prevention, management and reporting.

### **VI. CRIME AGAINST CHILDREN UNDER POCSO STATISTICS**

The incidents of crime against children across India has raised serious concern with 53,874 cases registered in 2021 alone under the POCSO (Protection of Children from Sexual Offences) Act. According to data released by the National Crime Records Bureau (NCRB), a total of 1,49,404 cases relating to crime against children were registered in 2021 as against 1,28,531 cases in 2020, a rise of 16.2 per cent. If statistics of the NCRB are an indication, every crime against a child was registered under the POCSO Act. In 2021, a total of 33,348 incidents were registered under Sections 4 and 6 (punishment for penetrative sexual assault

---

<sup>15</sup> <https://link.springer.com/article/> visited on 19-01-2023

and aggravated penetrative sexual assault) of the POCSO Act and in these cases 33,036 were cases involving crime against girls while 312 were involving crime against boys. The crime rate against children went up from 28.9 per cent in 2020 to 33.6 per cent in 2021.

The major crime heads under Crime against Children during 2020 were kidnapping and Abduction accounting for 45% of the crimes committed against children and 38.1% cases were involving Protection of Children from Sexual Offences Act 2012 including Child rape. The crime rate registered per lakh Children Population was 33.6 in 2021 as compared to 28.9 in 2020.<sup>16</sup>

## **VII. ANALYSIS OF PROTECTION OF CHILDREN SEXUAL OFFENCES ACT, 2012**

The POCSO act 2012 deal with the sexual Offences against children and I have study the data published in government agencies websites like National Crime Record Bureau and State Crime Record Bureau both of the agencies provided data and all crimes data are provide in this websites. The Crime against children are also deal with the Protection Of children Sexual Offences Act, 2012.<sup>17</sup> The Act to protect children from offences of sexual assault, sexual harassment and pornography and provide from establishment of Special Court for trial of such offences and matters connected therewith or incidental thereto.

POCSO ACT ,2012 deal with the mainly three Offences are –

Sexual assault , Sexual harassment , Pornography.

The Article 15 (3) of the Constitution provide inter alia , empowers the State to make Special provisions for Children. It is necessary for the proper development of the child that his or her right to privacy and confidentiality be protected and respected by every person by all means and through all stages of a judicial process involving the child.

The State parties to the Convention on the Rights of the Child are required to undertake all appropriate national, bilateral and multilateral measures to prevent—

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity
- (b) the exploitative use of children in prostitution or other unlawful sexual practices
- (c) the exploitative use of children in pornographic performances and materials

The sexual exploitation and sexual abuse of children are heinous crimes and need to be effectively addressed.

---

<sup>16</sup> <https://ncrb.gov.in/> visited on 20-01-2023.

<sup>17</sup> [https://legislative.gov.in/sites/default/files/The%20Protection%20of%20Children%20from%20Sexual%20Offences%20Act,%202012\\_0](https://legislative.gov.in/sites/default/files/The%20Protection%20of%20Children%20from%20Sexual%20Offences%20Act,%202012_0). Visited on 20-01-2023.

Silent feature of the POCSO ACT,2012 are :-

1. Gender Neutral.
2. Lodging FIR
3. Burden of Proof and based on principle.
4. Special Court.
5. Procedure.

The total sections.46 and one schedule deal with the POCSO Act,2012

### **Chapter .I They are deal with the short title , extent and commencement under this Act.**

Section.1 deal with the title and it extent whole of India.

Section.2. They deal with the Definition of Sexual offences like child, child pornography, domestic relationship etc. are involved in this section.

### **Chapter .II Sexual Offences Aaginst Children and These are divided into Five parts are-**

- A. Penetrative Sexual Assault And Punishment Therefor
- B. Aggravated Penetrative Sexual Assault And Punishment Therefor
- C. Sexual Assault And Punishment Therefor
- D. Aggravated Sexual Assault And Punishment Therefor
- E. Sexual Harassment And Punishment Therefor

The Section.3 to Section.12 these are deal with the sexual offences committed against children and definition are provide under this.

### **Chapter III. Using Child For Pornographic Purposes And Punishment Therefor**

Section 13 to Section 15 they deal with the use of child for pronography purposes and Punishment also deal with under this.

### **Chapter IV. Abetment Of And Attempt To Commit An Offence**

Section 16 to 18 these are deal with the Abetment of an offence and Punishment are describe under this.

### **Chapter V. Procedure For Reporting Of Cases**

Section.19 to Section.23 the Procedure for Reporting of Offences and they deal with special Juvenile Police Unit and local Police both are describe under this . Every report given in sub section shall be-

ascribed an entry number and recorded in writing, be read over to the informant, shall be

entered in a book to be kept by the Police Unit.

Punishment deal with the Section.21, Section.22 and Section.23 Procedure for media.

### **Chapter VI. Procedures For Recording Statement Of The Child**

Section.24 to 27 they deal with the recording of statement of child or Additional provision under this and Section.25 Recording of statement of a child by Magistrate and Section.27 these are related to Medical examination of child and conduct in accordance with Section.164A Code Criminal Procedure,1973<sup>18</sup>.

### **Chapter VII. Special Courts**

Section.28 to Section.32 they deal with the Designation of Special Courts and presumption of certain offences and culpable mental state. The application of Code of Criminal Procedure 1973 proceeding in special court . Section 32. Deal with the special Public Prosecutors.

### **Chapter VIII. Procedure And Powers Of Special Courts And Recording Of Evidence**

Section.33 to Section.38 They deal with the power and procedure of special court and procedure in case of commission of offences by child and determination of age by special court. Section.37 Trials to be conducted in camera and provisions of Section.284 of the Code of Criminal Procedure,1973. <sup>19</sup>Section.38 Assistance of an interpreter or expert while recording evidence of child. child has a mental or physical disability, the Special Court may take the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed to record the evidence of the child.

### **Chapter IX. Miscellaneous**

Section.39 to Section.46 they deal with the Guidelines for child to take assistance of expert and Right of child to take assistance of legal practitioner. The section.41 deal with provisions of sections.3 to 13 not to apply in certain cases medical examination or medical treatment is undertaken with the consent of parents. The Section.43. Public awareness about Act -The Central Government and every State Government, shall take all measures to ensure that—

(a) the provisions of this Act are given wide publicity through media including the television, radio and the print media at regular intervals to make the general public, children as well as their parents and guardians aware of the provisions of this Act;

(b) the officers of the Central Government and the State Governments and other concerned

---

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

persons (including the police officers) are imparted periodic training on the matters relating to the implementation of the provisions of the Act.

Section.45. power to make rules and Section.46 they deal with the power to remove difficulties.

The whole Act divided into chapters and sections the protection of children sexual offences Act,2012 Nine chapters deal with different 46. Sections and also include one schedule under this Act. The main object of the Act is the welfare of the child and every provision of this Act has been devised keeping in mind the effect it will have on the child suffering. legal researchers, how courts are performing to implement a relatively new special law that directly affects the rights of one of the most vulnerable sections of society, i.e., children, is an important question that deserves answering.

## **VIII. CONCLUSION**

Aware of the importance of children in our society, the Constitution of India has incorporated several provisions to ahead their rights and repel all forms of exploitation. Chapter III of the Constitution, dedicated to Fundamental Rights, includes provisions to allow special measures for children, overarching the right to equality. A recent amendment has also included a provision for free and compulsory education to all children between 6 to 14 years under the Chapter III of the Constitution. The Chapter also includes dedicated Articles to prohibit the trafficking of humans and the employment of children in factories. The Constitution has further directed the government to endeavour to provide early childhood care and improve public health. However, despite these strong constitutional and international law frameworks towards strengthening child rights, India lacked any dedicated provision against child sexual abuse till 2012. Even after independence, the criminal law failed to recognise sexual assault and exploitation of children as separate offences and continued to try these cases under the generic provisions for offences affecting the human body and sexual offences. These generic provisions were vastly ill-equipped to address all the instances of sexual exploitation against children. While the provision against rape under the Indian Penal Code, 1860, section 375, criminalised sexual offences against women which included penilevaginal penetration, other forms of aggravated sexual assault did not attract the provision for rape and were tried under the provisions for unnatural offences or assault to woman with intent to outrage her modesty. Further, these provisions failed to criminalise the instances of sexual assault and molestation of boys. The offences under IPC, intended to criminalise sexual offences against women, fell short of addressing the complexities, social impact and mental impact of sexual exploitation of children. The nature of the criminal trial under the Code for Criminal Procedure, 1973 did not

account for the needs of child witnesses who were victims of sexual offences and the support they need to participate in the criminal justice process.

\*\*\*\*\*