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# **PROTECTION OF CHILDREN FROM SEXUAL ABUSE WITH REFERENCE TO POCSO ACT 2012, AND OTHER LAWS**

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## **ABSTRACT**

Children are often seen as the most innocent members of society, yet for many years, India lacked a specific law dedicated solely to protecting them from sexual abuse. This changed following the 1989 UN Convention on the Rights of the Child, which led to the creation of “The Protection of Children from Sexual Offences (POCSO) Act of 2012”. This comprehensive law was designed to shield minors from assault, harassment, and pornography while prioritizing their safety and dignity during investigations and trials. Notably, the Act is gender-neutral, meaning it protects all children regardless of their gender identity, and it introduced reforms like Special Courts and child-friendly statement recording to ensure cases are resolved within a year. This research examines how the POCSO Act is actually functioning and identifies specific barriers and systemic issues that hinder its success. It also examines other legal provisions that work alongside POCSO to protect children from various crimes. By analyzing the legal definition of "child" in different laws, this study aims to explain how the law balances the sensitive nature of crimes involving minors with the need for stringent punishment.

Keywords : POCSO Act 2012, Sexual Abuse, Sexual Assault, Pornography, Imprisonment.

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## INTRODUCTION

### “God is Child and Child is God”

In India, children are often seen as divine beings because of their natural innocence. They are considered the purest people in society, as they are not yet influenced by the greed, dishonesty, or social problems that often affect adults. This view highlights that children are born free from the negative behaviors and manipulations found in the world around them. The Constitution of India under Directive Principles of State Policy vide Article 39 (f) “mandates states to formulate policies to ensure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment”. The Indian Constitution includes specific rules to protect children from being exploited, forced into work, or trapped in child labor. Anyone who violates these basic rights can be punished by law<sup>3</sup>. However, even with these legal protections, children are still among the most at-risk groups in the country and frequently become victims of various crimes. Crimes of a sexual nature are particularly devastating, as they can cause deep emotional pain and trauma that stays with a child for the rest of their life

## PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT, 2012

Art 15(3) of Indian Constitution, empowers “the State to make special provisions for the Children”. In order to safeguard minors from sexual abuse, offences and exploitation, the legislature passed the POCSO Act of 2012. The Act's goal is to safeguard children's interests against sexual offenses and exploitation. The Act covers a wide range of offenses, including both penetrative and non-penetrative sexual acts, as well as sexual harassment, assault, and child pornography. Legislature making the statute **gender-neutral**, the law ensures that all children, regardless of their gender, receive the same high level of protection and care under the legal system. Here Child means “any person below the age of 18 whether it is male or female”.

According to the World Health Organization, it is estimated that approximately 1 billion children worldwide experience some form of sexual violence<sup>4</sup>. The number of child sexual abuse cases in India

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<sup>3</sup> Art. 23 &24, J.N.Pandey, “Constitution law of India”, Central Law Agency

<sup>4</sup> <https://www.who.int> (visited 21 January 2025)

continues to rise steadily. According to the National Crime Records Bureau (NCRB), approximately **162,000 complaints** involving sexual offenses against children were filed in 2022, marking an **8.7% increase** from the previous year.<sup>5</sup>

## **NATURE OF OFFENCES**

The POCSO Act is a comprehensive law with nine chapters that address offenses, penalties, and procedures. The POCSO Act divides sexual offenses into major categories:

1. Sexual Assault (Sec. 7)
2. Aggravated Sexual Assault (Sec. 9)
3. Penetrative Sexual Assault (Sec 3 & 4)
4. Aggravated Penetrative Sexual Assault (Sec 5& 6)
5. Sexual Harassment (Sec 11 & 12)
6. Using Child Pornography (Sec 13)

## **PENETRATIVE SEXUAL ASSAULT**

“Sec 3 of POCSO Act 2012 deals with the Penetrative Sexual Assault and it says that , “A person is said to commit penetrative sexual assault, if he penetrates his penis to any extent into the vagina, mouth, urethra, or anus of a child or if he insert , to any extent any object or a part of the body not being the penis into the vagina, or if he manipulate any part of the body of the child so as to cause to penetration into the vagina, urethra, anus or any part of the body or applies his mouth to the penis, vagina, anus, urethra or makes the child to do so with him or any other person. Here Person include the Men and Women both and even child also. Sec 4 provide the punishment i.e, -

- Imprisonment of not less than 10 years to Life imprisonment and fine
- Whoever commits such offence on a child who is below the sixteen years of age shall be punished with imprisonment of not less than 20 years to life imprisonment for remainder of life and fine<sup>6</sup>.”

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<sup>5</sup> Timesofindia.indiatimes.com (visited 21 January, 2025)

<sup>6</sup> <https://www.indiacode.nic.in>

## AGGRAVATED PENETRATIVE SEXUAL ASSAULT

Section 5 of the POCSO Act defines **Aggravated Penetrative Sexual Assault**, which identifies specific situations where the crime is considered even more severe due to the offender's role or the victim's vulnerability. This section applies to individuals in positions of authority or trust, such as police officers, members of the armed forces, public servants, and staff or management at schools, hospitals, jails, or religious institutions. It also covers cases involving gang rape, crimes committed by relatives or people in a "fiduciary relationship" (those responsible for the child's care), and assaults against children with physical or mental disabilities. By focusing on these specific circumstances, the law recognizes that a breach of trust or the targeting of a highly vulnerable child warrants the most serious legal consequences.

Sec 6 provide the punishment i.e,

- “Rigorous imprisonment for a term which shall not less then 20 years but which may extend to life imprisonment or death”.<sup>7</sup>”

## SEXUAL ASSAULT

Section 7 of the POCSO Act defines **Sexual Assault** as any act where a person, with sexual intent, touches a child's private parts such as the vagina, penis, anus, or breasts or engages in any other physical contact with sexual intent that does not involve penetration. A crucial legal point here is that "skin-to-skin" contact is not required to prove the crime; the mere presence of sexual intention behind the physical contact is enough to establish the offense.

Under Section 8, the law sets strict penalties for this crime. Convicted individuals face a prison sentence of at least three years, which can be extended to five years, along with a fine.

Section 9 of the POCSO Act defines **Aggravated Sexual Assault**, which identifies cases where sexual assault is considered more severe due to the perpetrator's position or the specific circumstances of the crime. This section applies when the offense is committed by someone in a position of power or trust, such as a police officer, medical professional, public servant, or a member of the armed forces. It also covers assaults by family members, jail officials, or those who target particularly vulnerable victims, including children with physical or mental disabilities or pregnant minors. Furthermore,

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<sup>7</sup> <https://indiakanoon.org>

Section 9 includes crimes committed during communal violence, instances of gang rape, or cases where the assault is accompanied by an attempt to murder the child.

Sec 10 said that “whoever commit that offence shall be punished with imprisonment which shall not be less than five years but which may extend to seven years and also fine”.

## **SEXUAL HARASSMENT**

Section 11 of the POCSO Act defines Sexual Harassment against a child. This section focuses on actions intended to make a child feel uncomfortable or threatened through non-physical or indirect means.

According to this section, sexual harassment occurs when someone:-

- **Uses sounds or gestures:** Makes inappropriate remarks, sounds, or physical signs, or shows objects or body parts intended for the child to see or hear.
- **Shows pornography:** Forces or invites a child to look at any pornographic material.
- **Stalks or monitors:** Repeatedly follows, watches, or tries to contact a child, whether in person or through digital platforms and social media.
- **Uses threats or blackmail:** Threatens to share real or fake images or videos that show the child’s body or depict them in a sexual situation.
- **Forces exposure:** Pressures or tricks a child into showing their body or any private parts to the offender or any other person

Sec 12 provide the punishment of sexual harassment i.e , “Imprisonment of either description for a term which may extend to three years and shall also be liable to fine”.<sup>8</sup>

## **USING CHILD PORNOGRAPHY**

Chapter III of the POCSO Act is dedicated to the serious issue of child pornography, covering the various ways such material is used, stored, or shared. Specifically, Sections 13, 14, and 15 outline what constitutes these crimes and set the legal consequences for those involved. Section 13 states that

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<sup>8</sup> <https://bba.org.in>

“anyone who uses a child for pornographic purposes by either representing the sexual organs of the child or using a child in real or simulated sexual acts or representing a child indecently or obscenely in programmes or advertisements on television or on internet, commits the offence under this section and is liable in accordance with Sections 14 and 15 of the POCSO Act”. Section 14 of the POCSO Act, 2012, sets out the legal penalties for using a child for pornographic purposes. The law distinguishes between first-time and repeat offenders to ensure a stricter response to habitual crimes. A person convicted for the first time faces a mandatory prison sentence of at least five years, along with a fine. For those who commit the offense again, the punishment becomes more severe, with a prison term that can extend up to seven years in addition to a fine.<sup>9</sup>. Section 15 provides the punishment for persons “who store or possess the pornographic material involving children; it is a fine of not less than five thousand rupees, and in case of a second or subsequent offense, a fine shall not be less than ten thousand rupees. Punishment for storing or possessing pornographic material in any form involving a child for transmitting or propagating or displaying or distributing in any manner at any time except for the purpose of reporting is imprisonment for a period which may extend upto 3 years or with fine or with both. Punishment for storing or possessing pornographic material in any form involving a child for commercial purpose shall be punished on the first conviction with imprisonment of either description which shall not be less than 3 years which may extend to 5 years, or with fine, or with both and in the event of second or subsequent conviction, with imprisonment of either description which shall not be less than 5 years which may extend to 7 years and shall also be liable to fine”.

In this act, abetment and attempt to commit any offence also punishable under sec 17 and 18. Sec 18 said that “if anyone attempt to commit any such offence shall be punished with imprisonment which may extend to one half of the imprisonment for life or one half of the longest term of imprisonment provided for that offence or with fine or both”.

## **OTHERS FEATURES OF THE POCSO ACT 2012**

1. Anyone who knows or suspects that a child has been abused must report it to the police. This includes the general public and even other children.

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<sup>9</sup> <https://www.indiacode.nic.in>

2. Under Section 20, places like hospitals, photo studios, and media houses must immediately alert the police if they find any material related to child sexual abuse.
3. The media is strictly forbidden from revealing the identity of a child victim. Those who break this rule face six months to one year in prison or a fine.
4. Only a female police officer (at least the rank of Sub-Inspector) can record a child's statement. To reduce the child's fear, the officer must wear civilian clothes rather than a police uniform.
5. State governments, along with the High Court, must set up "Special Courts" specifically designed to handle these cases.
6. In a unique legal twist, the court will presume the accused person is guilty unless they can prove their innocence.
7. The child's statement must be recorded within **30 days**, and the entire legal trial should be completed within **one year** of the court taking notice of the case.
8. The court must ensure the child does not see the accused during the proceedings. However, the accused still has the right to a fair legal defense.
9. Trials are conducted "in-camera" (privately), and the child has a right to their own legal lawyer.
10. The Central and State governments are required to educate the public about this law and create guidelines to keep children safe

## **CHILD SEXUAL ABUSE WITH REFERENCE TO OTHER LAWS**

In addition to the POCSO Act of 2012, several other Indian laws provide essential protections for children against sexual abuse and exploitation like Bhartiya Nyaya Sanhita, 2023, Juvenile Justice (Care and Protection of Children) Act, 2015, Information Technology Act, 2000, Hindu Marriage Act 1955, Bhartiya Shakshya Adiniyam, 2023. The provisions of this act which deals with the child sexual abuse are given under below –

### **BHARATIYA NYAYA SANHITA, 2023 (IPC,1860)**

The Bharatiya Nyaya Sanhita (BNS), 2023, which has replaced the Indian Penal Code (IPC) of 1860, serves as India's primary legal framework for defining and punishing crimes. Recognizing the urgent need to address rising violence, the legislature introduced Chapter V, titled "Offences Against Women

and Children," as a dedicated section within this new code. Beyond this specific chapter, the BNS contains several other provisions designed to tackle sexual crimes against minors. The key sections addressing these offenses are detailed below:

**Sec 74 : Outraging the Modesty of a Women** – Modesty means decency in behaviour, in manner, or in conduct. Hon'ble Supreme Court held that "a baby girl born with a modesty". It is a virtue attached to a women owing to her sex". According to sec 74, "whoever ( also include women) assaults or uses criminal force with the intention or knowledge that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less then one year but which may extend to five years and also libe for fine". In the case of **Raja Pandurang v. State of Maharashtra (2004)**, the Supreme Court said "modesty." is an inherent quality linked to her gender. It is defined as the virtuous dignity and feminine self-respect that is naturally associated with her being a woman.

**Section 87: Kidnapping, Abducting or Inducing Woman to Compel Her Marriage** - "This section also plays a critical role in addressing the issue of child marriage, as the kidnapping or abduction of a young girl often leads to her being forced into marriage and subsequent sexual exploitation. Under this law, if a person kidnaps or abducts a female with the intent to force her into marriage against her will or with the knowledge that such a marriage is likely to occur without her consent they are committing a serious crime. This also applies to cases where a female is taken or tricked with the purpose of forcing her into illegal sexual relations. Those found guilty of these acts face severe legal consequences, including a prison sentence that can last up to **10 years**, along with a fine."

**Section 96: Procuration of Child** - "This legal provision serves as a vital safeguard for all children, regardless of their gender, by protecting them from various forms of sexual exploitation. Sec 96 said that, "Whoever( whether male or female) by any means induces any child to go from any place or to do any act, with the intention or knowledge that such child will be forced or seduced to do any illicit intercourse with any person shall be punishable with imprisonment which may extend to ten years, and will likewise be responsible to fine". The punishment for the offence is 10 Years and Fine and it is a non-bailable offence which is triable by session court."

**Section 141: Importation of Girl or Boy from Foreign Country** – “This section punishes those who bring girls (21 years) or boys (18 years) from abroad with wrong intentions and force or lure them into illicit relations with others. Such person punished with imprisonment of 10 years and fine”.

**Section 98: Selling Minor for Purposes of Prostitution, etc.**- “This legal framework, specifically under Sections 98 and 99 of the Bharatiya Nyaya Sanhita (BNS), focuses on preventing the exploitation of minors under the age of eighteen. Section 98 prohibits the sale, hiring, or any form of disposal of a child regardless of gender when the perpetrator knows or intends for the minor to be used for prostitution, illicit sexual acts, or any other immoral or illegal purposes. Similarly, Section 99 addresses the act of buying a minor for these same exploitative reasons. Both sections carry heavy penalties, including a prison sentence of up to **ten years** and a fine.

**Sec 63: Rape** - The term "rape" finds its roots in the Latin word *rapio*, signifying a forceful seizure, and is legally defined under the Bharatiya Nyaya Sanhita (BNS) as a man engaging in sexual acts with a woman against her will or without her consent. The evolution of this law was significantly influenced by the landmark *Mathura rape case*<sup>10</sup>, which prompted 1983 reforms establishing that a victim's lack of physical injuries or visible resistance does not equate to legal consent. In response to Supreme Court directives, the legislature broadened the definition of the crime and introduced several protective measures. These include Sections 64 through 70 of the BNS (replacing IPC Sections 376A to 376D) to cover various forms of assault, and Section 120 of the BSA, 2023, which creates a legal presumption that consent was absent in specific cases. Furthermore, to protect the survivor's dignity, Section 72 of the BNS makes it a criminal offense to reveal the identity of a victim. According to sec 63, the definition of rape is very wide and it said that, “ A man is said to commit rape, if he penetrates his penis to any extent into the vagina, mouth, urethra, or anus of a woman or if he insert , to any extent any object or a part of the body not being the penis into the vagina, or if he manipulate any part of the body of the woman so as to cause to penetration into the vagina, urethra, anus or any part of the body or applies his mouth to the penis, vagina, anus, urethra or makes the makes to do so with him or any other person”.

**Section 79 ,Word, gesture or act intended to insult the modesty of a woman** -Under this section also the intention of the perpetrator is important. According to section 79, insulting the modesty of

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<sup>10</sup>Tuka Ram and Anr v. State of Maharashtra SC 1979 AIR 185

any women<sup>11</sup> also an offence and according to this section “if anyone have intention to insult the modesty of any women, so speak any word , makes any sound or gestures or exhibits any object with the intention that such sound, shall be heard or such gestures or object shall be seen by such women or intrudes upon the privacy of such women, shall be punished with imprisonment for a term which may extend to three years and also fine”<sup>12</sup>.

## **BHARATIYA SAKSHYA ADHINIYAM, 2023 (THE INDIAN EVIDENCE ACT, 1872)**

The Bharatiya Sakshya Adhinyam (BSA), 2023, serves as a foundational procedural law that dictates how evidence is handled in court, covering aspects like factual relevance, who carries the responsibility of proof, and legal assumptions. Notably, this Act plays a vital role in protecting children and vulnerable individuals by allowing the court to make specific legal assumptions that cannot be easily challenged.

While Section 119 of the Act empowers judges to assume certain facts or human behaviors based on the natural order of events, Section 120 introduces a critical safeguard in sexual assault trials. Specifically, in cases of rape, the court shall presume that the victim did not give consent if she said, she did not give consent. This effectively shifts the **burden of proof** onto the accused, who must then provide evidence to demonstrate that the act was, in fact, consensual<sup>13</sup>.

## **THE HINDU MARRIAGE ACT, 1955**

Child marriage is a historical issue in India that predates the colonial era and continues to pose severe risks to minors. Research indicates that girls married before the age of 15 are 50% more likely to experience domestic or sexual violence compared to those who marry as adults. To address this, the Hindu Marriage Act (HMA) of 1955 integrates protections against child exploitation by setting strict age requirements for a legal union.

According to Section 5(iii) of the HMA, a valid marriage requires the bride to be at least 18 years old and the groom to be at least 21. If these conditions are ignored, the marriage is considered a violation of the Child Marriage Restraint Act, 2006 making it subject to being declared void by a court. As a

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<sup>11</sup> BNS, Sec 2 (35), women means women of any age

<sup>12</sup> SN Mishra, Indian Panel Code

<sup>13</sup> Principles of The Law of Evidence, author Dr. Avtar Singh

specific legal remedy, Section 13(2)(iv) of the HMA empowers a woman to seek a divorce if she was married before reaching the legal age of consent.

Section 18(a) of Hindu Marriage Act (HMA),1955, if “a child marriage is performed by any person, then that person shall be punished with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees, or with both”. Hence, The Hindu Marriage Act, 1955, also protects the children from sexual abuse<sup>14</sup>.

## **THE INFORMATION TECHNOLOGY ACT, 2000**

The dark side of the digital world is increasingly defined by the rise of cyber-enabled crimes, particularly those targeting minors. Data from 2022 reveals a troubling 32% increase in such offenses compared to the previous year, highlighting a growing trend of online victimization.<sup>15</sup> Within this Act, Section 67 establishes penalties for the transmission or publication of obscene digital content. This is further expanded by Sections 67A through 67C, which specifically address sexually explicit material and child pornography, while also mandating that internet intermediaries preserve relevant data as directed by the government.

Under Section 67A, the law dictates that anyone who distributes or publishes sexually explicit content faces up to five years in prison and a fine for a first-time offense, with subsequent convictions carrying a seven-year sentence and fines reaching ten lakh rupees. Section 67B provides even more stringent protections for minors, criminalizing the creation, downloading, or distribution of any digital material depicting children in sexually explicit acts. This section also targets "online grooming" the act of enticing children into digital relationships for exploitative purposes. Violators of Section 67B face up to five years of imprisonment and a ten lakh rupee fine for their first offense, with penalties escalating to seven years for repeat offenders<sup>16</sup>.

## **THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015**

Effective from January 15, 2016, the Juvenile Justice (Care and Protection of Children) Act, 2015, superseded the previous 2000 legislation to provide a more robust legal framework for minors. Under

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<sup>14</sup> Paras Diwan, “Modern Hindu Law” Allahabad Law Agency

<sup>15</sup> Timesofindia.indiatimes.com

<sup>16</sup> <https://indiakanoon.org>

this Act, a "juvenile" is defined as any individual who has not yet reached the age of 18 at the time an offense was committed. The primary objective of this law is to safeguard the interests of both children in conflict with the law and those requiring care and protection. It emphasizes a restorative rather than punitive approach, focusing on the child's basic needs, social reintegration, and overall development through specialized entities such as Juvenile Justice Boards, Child Care Institutions, and Observation Homes.

The 2015 Act is anchored by several core humanitarian principles designed to ensure the dignified treatment of minors. These include the fundamental presumption of innocence, the best interests of the child, and the right to privacy and confidentiality. Furthermore, the law promotes non-discrimination, the principle of a "fresh start" to prevent lifelong labeling, and the importance of family responsibility. By prioritizing natural justice and non-stigmatizing language, the Act aims to facilitate the effective rehabilitation and repatriation of children into society while maintaining their inherent worth and dignity.<sup>17</sup>

## JUDICIAL PRONOUNCEMENT

**JARNAIL SINGH V. STATE OF HARYANA, 2013 SC**, it was observed in this case that, "even though rule 12, of JJ Rule 2007 (now Sec 94 of JJ, Act 2015) is strictly appealable only to determine the age of child in conflict with law. The Court held that aforesaid provision should be basis of determining the age even for child who is victim of crime."

**TARA CHAND V. STATE OF HARYANA AND OTHERS**<sup>18</sup>, "The accused was found guilty for the offence of raping a 16 years old girl under sections 342, 363, 366(A), 376(1) IPC and section 6 of Protection of Children from Sexual Offences Act 2012 at Hisar. The accused was convicted under sections 376(2) IPC and section 4 of POCSO Act and was sentenced to 10 years imprisonment."

In the case of **Bijoy @ Guddu Das vs. State of West Bengal (2017)**<sup>19</sup> the Calcutta High Court clarified the legal framework for compensating victims under the POCSO Act. The Court ruled that Special Courts have the authority to grant interim compensation to provide immediate relief and support for a child's rehabilitation, guided by the specific parameters in Rule 7(3) of the POCSO Rules. A key distinction made by the Court is that state-funded compensation is entirely separate from any

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<sup>17</sup> Parul Chaturvedi, Introduction and Overview of the JJ Act 2015, <https://blog.iplers.in> (visited on 24 January, 2025, 04.00 pm)

<sup>18</sup> Tara Chand v. State of Haryana and others, AIR 1971 SC 1891, <https://indiakanon.org>

<sup>19</sup> Bijoy @Guddu Das v. State of West Bengal Calcutta High Court, 2017

financial penalties a convict might be ordered to pay under Section 357 of the Code of Criminal Procedure.

**Just Rights For Children’s Alliance v. Harish, SC 2024**<sup>20</sup>, in this case, Justice J.B. Pardiwala defined the three distinct categories of offenses under Section 15 of the POCSO Act. These include the failure to remove or report child sexual abuse material (CSAM) already in one's possession, the active distribution or sharing of such content, and the storage of these materials for commercial gain. A significant clarification from the Court is that the law extends to individual users who intentionally download and view CSAM, even within the privacy of their own homes; such actions are punishable under.<sup>21</sup>

**SKIN-TO-SKIN TOUCH JUDGEMENT BY NAGPUR HIGH COURT**<sup>22</sup> In a significant legal reversal, the Supreme Court of India overturned a controversial Bombay High Court ruling that had narrowly defined "sexual assault" under the **POCSO Act**. The High Court had previously argued that groping a minor over their clothing did not qualify as sexual assault because there was no "skin-to-skin contact." Based on this reasoning, the lower court had reduced the charges to "outraging a woman’s modesty" under **Section 354 of the IPC**, effectively weakening the legal protections meant for the 12-year-old victim. This decision was met with immediate appeals from the Attorney General, the National Commission for Women, and the State of Maharashtra. In its judgment, the Supreme Court set aside the High Court's order and reinstated the conviction under the POCSO Act. The apex court clarified that the fundamental element of **Section 7** is **sexual intent**, not the physical nature of the touch. By ruling that Section 7 encompasses both direct and indirect contact, the Court established that "skin-to-skin" contact is not a prerequisite for a sexual assault conviction, provided the malicious intent is evident.

**IN RE: Right to Privacy of Adolescents**, The Supreme Court strongly overruled a controversial decision by the Calcutta High Court, which had acquitted an individual under the POCSO Act, 2012, and suggested that the law be amended to decriminalize consensual sexual relations between older adolescents. Rejecting this perspective, the apex court reinstated the convictions under Sections 376(2)(n) and 376(3) of the IPC as well as Section 6 of the POCSO Act. The Court underscored that

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<sup>20</sup> AIR 2024 SC 129

<sup>21</sup> Just Right For Children’s Alliance v. S Harish SC 2024, scobsever-in.cdn.ampproject.org

<sup>22</sup> Attorney General for India v. Satish and another, AIR SC 2021

any sexual act involving a 14-year-old is fundamentally exploitative and cannot be justified by the specific nature of the relationship or the consent of the minor. To ensure better protection for child victims moving forward, the Supreme Court issued a nationwide directive to all States and Union Territories for the rigorous implementation of Section 19(6) of the POCSO Act and the Juvenile Justice Act. This mandate emphasizes the legal obligation to provide comprehensive care and safety for children involved in such cases. Additionally, the Court ordered the formation of an expert committee to directly assist victims and review the effectiveness of current support measures, ensuring a more child-centric approach to justice and rehabilitation.<sup>23</sup>

## **DRAWBACKS AND LIMITATION OF POCSO ACT, 2012**

Drawbacks are given under below:-

- While **Section 22** penalizes false complaints intended to defame or extort, children are exempt from this punishment. This creates a loophole that some adults exploit to settle personal scores or manipulate the legal system.
- The Act lacks clear guidelines when a victim or their family refuses a medical exam. A structured approach is needed: informed consent from parents for children under 12, and joint consent from both parents and the victim for those aged 12 to 18, though emergency life-saving treatment must always be prioritized over legal formalities.
- **Section 27(2)** requires a female doctor to examine female victims. However, this often conflicts with **Section 166A of the IPC**, which mandates that any available government medical officer must perform the exam immediately, creating a legal dilemma when a female physician is unavailable.
- Under current law, all sexual activity involving a minor is illegal, regardless of consent or the age of the partner. This often leads to "consensual" adolescent relationships being prosecuted as rape. Furthermore, the mandatory reporting of Medical Termination of Pregnancy (MTP) for anyone under 18 can lead to a surge in criminal cases and deter young women from seeking safe healthcare.

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<sup>23</sup> [Dristijudiciary.com/current-affairs/In-re-right to-privacy- of-adolescents](https://drishti judiciary.com/current-affairs/In-re-right-to-privacy-of-adolescents), Criminal appeal no. 1451/2024, decision on 23 May, 2025,( visited on 17 June, 2025, 01.41 pm)

- Despite the POCSO Act criminalizing child marriage and its consummation, certain personal laws in India still provide religious or social sanctions for these unions. This legal contradiction remains a significant hurdle for total eradication.
- There is a critical need to sensitize and train teachers, lawyers, and healthcare workers. Medical professionals, in particular, require specialized skills in forensic interviewing, evidence collection, and providing trauma-informed care for STIs and mental health.
- Physical evidence is often absent in child abuse cases, making forensic psychological evaluations and skilled history-taking essential. Mental health experts are vital for supporting victims during court proceedings and providing long-term therapy to address trauma and psychiatric disorders.
- Social stigma, guilt, and the fear of re-victimization by the justice system often prevent families from reporting abuse. The emotional turmoil and the invasive nature of medical and legal inquiries frequently lead to prolonged silence and continued suffering for the survivor.

## **CONCLUSION**

Because childhood is a period of extreme physical and psychological vulnerability, minors are often the most susceptible to exploitation and criminal harm. Given that India is home to approximately 472 million children—representing nearly 39% of its total population—their safety is a matter of national importance. The state holds a fundamental responsibility to ensure their holistic development and protection, which led to the enactment of the POCSO Act, 2012. This gender-neutral legislation was specifically designed to address all facets of sexual abuse, and it was further strengthened by the 2019 amendments to introduce more rigorous penalties based on the severity of the crime. Addressing child sexual abuse requires a multidisciplinary approach because it involves complex medical, social, and legal challenges. Since physical trauma is not always evident in these cases, the investigative process demands specialized techniques in forensic interviewing and medical examination. Furthermore, because of the profound psychological impact on the victim, the participation of mental health professionals is essential throughout the legal proceedings. By integrating expert support and increasing public sensitization to combat low reporting rates, the justice system can better mitigate the long-term trauma faced by children and ensure their well-being is prioritized.

## SUGGESTION

Children represent the future of the nation, making their physical and mental well-being a top priority. Because sexual offenses inflict deep psychological scars alongside physical harm, strict enforcement of the **POCSO Act, 2012**, is essential. The following suggestions aim to strengthen the prevention of these crimes:

- A child's primary world is their home. A progressive and open family atmosphere encourages children to speak up without fear or hesitation if they experience any form of harassment or discomfort.
- Low conviction rates often stem from procedural failures, such as inadequate evidence collection or poorly recorded victim statements. It is vital to employ specialized, sensitive staff who are trained specifically to handle cases involving minors.
- While sex education remains a sensitive topic in India, the rising crime rate makes it necessary to teach children about personal safety, including the concepts of "good touch" and "bad touch," from an early age.
- The entire journey through the justice system—from reporting to trial must be conducted in a child-friendly environment to minimize further trauma to the victim.
- The legislature should prioritize identifying and removing existing loopholes in child protection laws to ensure there is no room for offenders to escape justice.
- The government should launch comprehensive awareness campaigns via schools, traditional media, and social platforms to educate the public on the provisions of the POCSO Act and the Juvenile Justice Act.

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