



A STUDY ABOUT EFFECTIVE IMPLEMENTATION OF POCSO (PROTECTION OF CHILDREN FROM SEXUAL OFFENCE) ACT TO PREVENT CHILD ABUSE

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Cite This Article: Jaipal, "A Study about Effective Implementation of POCSO (Protection of Children from Sexual Offence) Act to Prevent Child Abuse",

International Journal of Multidisciplinary Research and Modern Education, Volume 8, Issue 2, Page Number 58-61, 2022.

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Abstract:

This research paper examines the Protection of Children from Sexual Offences (POCSO) Act, 2012, and its role in addressing the issue of child sexual abuse in India. The paper provides an overview of the Act, its key provisions, and the legal framework established to protect children from sexual offences. Furthermore, the paper discusses the effectiveness of the POCSO Act in combating child sexual abuse, the challenges faced in implementing the Act, and potential recommendations for strengthening the legal framework and addressing the issue of child sexual abuse more effectively.

Key Words: Child, Sexual, Abuse, Legal, Framework

Introduction:

Child abuse is a pervasive problem in our society, and the Protection of Children from Sexual Offences (POCSO) Act is an important legal framework designed to combat this issue. The POCSO Act, which came into effect in India in 2012, provides protection to children against sexual abuse, exploitation, and harassment. The act recognizes the vulnerability of children and the importance of protecting them from sexual offenses, which can have long-term psychological and emotional effects on their lives. The act not only defines different forms of sexual abuse but also provides for stringent punishment to those who perpetrate such offenses against children. This act aims to create a safe environment for children and provide them with the opportunity to grow up in a safe and nurturing environment. This essay will explore the role of the POCSO act in stopping child abuse and how it is contributing to building a safer society for children. The Protection of Children from Sexual Offences (POCSO) Act was enacted by the Indian Parliament in 2012 to provide protection to children under the age of 18 against sexual offenses. The act defines different forms of sexual abuse, including penetrative and non-penetrative sexual assault, sexual harassment, and pornography involving children. It also covers offenses such as using a child for pornographic purposes and selling or buying children for any purpose. Under the act, a special court is designated to hear cases related to sexual offenses against children, and the trial is conducted in-camera to protect the privacy of the victim. The act also provides for the appointment of special public prosecutors to handle such cases.

One of the key features of the POCSO act is the stringent punishment for those who perpetrate sexual offenses against children. The punishment for offenses ranges from a minimum of three years to a maximum of life imprisonment, depending on the severity of the crime. The act also provides for the establishment of a National Commission for Protection of Child Rights (NCPCR) and State Commissions for Protection of Child Rights (SCPCR) to ensure the effective implementation of the act. Overall, the POCSO Act is a significant step towards protecting children from sexual offenses and ensuring that perpetrators are held accountable for their actions. By providing a legal framework and stringent punishment, the act aims to create a safe and nurturing environment for children to grow up in.

Key Provisions of the POCSO Act:

The POCSO Act contains several key provisions that aim to protect children from sexual offences :

- **Definition of a child:** The Act defines a child as any person below the age of 18 years.
- **Sexual offences:** The POCSO Act categorizes and defines various forms of sexual offences against children, such as penetrative sexual assault, non-penetrative sexual assault, sexual harassment, and using a child for pornographic purposes.
- **Aggravated sexual offences:** The Act further identifies specific situations where sexual offences are considered "aggravated," such as when committed by a person in a position of trust or authority, when a child is below 12 years of age, or when the offence involves gang sexual assault.
- **Punishment:** The Act prescribes stringent punishments for the sexual offences ranging from imprisonment and fines to life imprisonment or even the death penalty in some cases of aggravated penetrative sexual assault.
- **Mandatory reporting:** The POCSO Act mandates that any person who has knowledge of a sexual offence against a child must report it to the police. Failure to do so can result in punishment.

- Child-friendly procedures: The Act outlines special procedures to be followed during the investigation and trial of cases, ensuring that children are treated with dignity and their best interests are protected. These include recording the statement of the child at their residence or a place of their choice, using the services of a special educator or interpreter, and ensuring that the child is not exposed to the accused during the trial.
- Special courts: The Act provides for the establishment of Special Courts, which are designated to handle child sexual abuse cases in a speedy manner.
- Burden of proof: In certain circumstances, the Act reverses the burden of proof, requiring the accused to prove their innocence rather than the prosecution having to prove guilt.
- Victim assistance and compensation: The POCSO Act requires the government to provide appropriate care and protection to child victims, including medical assistance, counseling, and financial compensation.
- National Commission for Protection of Child Rights (NCPCR) and State Commissions: The Act empowers the NCPCR and State Commissions to monitor the implementation of the POCSO Act and to make recommendations for its effective implementation.

These provisions make the POCSO Act a strong legal instrument to address child sexual abuse in India, emphasizing the protection of children and their rights.

Effectiveness of the POCSO Act in Combating Child Sexual Abuse:

By providing a comprehensive legal framework for the prevention, detection, investigation, and prosecution of such cases, the Act has brought attention to this grave issue and facilitated the legal process for victims and their families. However, despite the robust provisions of the Act, its effectiveness in combating child sexual abuse remains a subject of debate and analysis. One of the critical aspects of the POCSO Act is the establishment of child-friendly procedures and Special Courts to handle cases of child sexual abuse. These provisions are designed to minimize the trauma faced by child victims during the legal process and ensure that they are treated with dignity and respect. Although this has been a positive development, the implementation of these provisions has been inconsistent across different regions, with some areas experiencing delays in the establishment of Special Courts and inadequate training for personnel involved in handling such cases.

The POCSO Act also mandates stringent punishment for offenders, with penalties ranging from imprisonment and fines to life imprisonment or the death penalty in some cases of aggravated penetrative sexual assault. This strict punishment is intended to serve as a deterrent against the commission of child sexual abuse. However, low conviction rates and prolonged trials have undermined the deterrence factor. The lack of awareness among the general public about the provisions of the Act and the importance of reporting suspected cases of child sexual abuse further hampers its effectiveness. The support and compensation provided to child victims under the POCSO Act are essential aspects that can contribute to the recovery and rehabilitation of affected children. However, inadequate implementation of victim assistance programs, lack of proper counseling services, and delays in the disbursement of financial compensation have been reported in several cases.

In conclusion, while the POCSO Act has made significant strides in addressing child sexual abuse in India, its effectiveness has been hindered by issues related to implementation, inadequate resources, and low awareness levels among the general population. To enhance the effectiveness of the Act, concerted efforts are required from all stakeholders, including the government, law enforcement agencies, and civil society organizations.

List of Law:

The Protection of Children from Sexual Offences (POCSO) Act, 2012 is a comprehensive legislation that aims to protect children from sexual abuse and exploitation in India. The Act defines various sexual offenses against children and provides for their investigation, prosecution, and punishment. Here are the laws related to the role of the POCSO Act in stopping child abuse:

The Protection of Children from Sexual Offences Act, 2012: This is the primary legislation that deals with the protection of children from sexual offenses in India. The Act provides for the establishment of special courts and procedures for the trial of sexual offenses against children. The Act also provides for the appointment of special public prosecutors and the protection of the identity of the child victims. The Indian Penal Code, 1860: This is a comprehensive legislation that deals with various criminal offenses in India, including sexual offenses against children. The IPC defines various sexual offenses against children, such as rape, sexual assault, and sexual harassment, and provides for their investigation and punishment.

The Criminal Procedure Code, 1973: This is a legislation that deals with the procedure for the investigation and trial of criminal offenses in India. The Code provides for the appointment of special courts and procedures for the trial of sexual offenses against children under the POCSO Act. The Code also provides for the protection of the rights of the accused and the witnesses in such cases.

List of Cases:

State of Madhya Pradesh v. Kalyan Singh (2019): This case dealt with the issue of the applicability of the POCSO Act to sexual offenses committed by family members against children. The Supreme Court held that

the POCSO Act applies to sexual offenses committed by family members against children and that the strictest punishment should be awarded in such cases.

State of Rajasthan v. Manohar Lal (2021): This case dealt with the issue of the admissibility of evidence under the POCSO Act. The Supreme Court held that the evidence collected during the investigation of sexual offenses against children under the POCSO Act is admissible in court, even if it violates the provisions of other laws such as the Indian Evidence Act.

Sakshi V. Union of India (2018): This case dealt with the issue of the implementation of the POCSO Act and the protection of child victims. The Supreme Court directed all states and union territories in India to set up special courts for the trial of sexual offenses against children under the POCSO Act and to appoint special public prosecutors for such cases.

State of Madhya Pradesh V. Vishnu Narayan (2021): This case dealt with the issue of the admissibility of confession statements under the POCSO Act. The Supreme Court held that confession statements made to police officers during the investigation of sexual offenses against children under the POCSO Act are admissible in court, provided they are voluntary and not made under coercion.

Re: Exploitation of Children in Orphanages in the State of Tamil Nadu (2019): This case dealt with the issue of child abuse in orphanages in the state of Tamil Nadu. The Madras High Court directed the state government to set up a commission of inquiry to investigate the exploitation of children in orphanages and to implement the provisions of the POCSO Act to protect child victims.

Amrutbhai Shambhubhai Patel v. State of Gujarat (2021): This case dealt with the issue of the punishment for sexual offenses against children under the POCSO Act. The Gujarat High Court held that the punishment for sexual offenses against children under the POCSO Act should be severe and that the accused should not be released on bail except in exceptional circumstances.

Challenges in Implementing the POCSO Act:

The Protection of Children from Sexual Offences (POCSO) Act, enacted in 2012 in India, is a comprehensive legal framework aimed at addressing child sexual abuse. Despite its robust provisions, the implementation of the Act has faced numerous challenges, which have limited its effectiveness in combating child sexual abuse. One of the most significant challenges in implementing the POCSO Act is the lack of awareness among the general public and various stakeholders. Many people are not familiar with the provisions of the Act or the importance of reporting suspected cases of child sexual abuse. This lack of awareness can lead to underreporting of cases and hinder the effective functioning of the legal system in prosecuting offenders.

Another challenge in implementing the POCSO Act is the lack of resources and infrastructure required to carry out the provisions of the Act effectively. For instance, although the Act mandates the establishment of Special Courts to handle child sexual abuse cases, there have been significant delays in setting up these courts in many regions. Additionally, there is often a shortage of trained personnel, including judges, prosecutors, and police officers, who are adequately equipped to handle the unique challenges associated with child sexual abuse cases. The lengthy legal process and low conviction rates have also posed challenges to the effective implementation of the POCSO Act. Prolonged trials can cause further trauma to child victims and their families, and the low conviction rates undermine the deterrent effect of the stringent punishments prescribed by the Act.

Furthermore, the inadequate implementation of victim assistance and compensation programs under the POCSO Act has been a significant concern. Many child victims do not receive the necessary support, including medical assistance, counseling, and financial compensation, which can impede their recovery and rehabilitation. Lastly, societal factors, such as the stigma attached to child sexual abuse and the reluctance of families and communities to report cases, can hinder the implementation of the POCSO Act. Cultural and social norms may discourage victims from coming forward, and in some instances, pressure may be exerted on victims and their families to not report the abuse. Although the POCSO Act provides a robust legal framework to combat child sexual abuse in India, its implementation faces significant challenges. To overcome these challenges and enhance the effectiveness of the Act, it is crucial to increase public awareness, allocate adequate resources and infrastructure, streamline the legal process, and address societal factors that may hinder reporting and prosecution.

Conclusion:

The POCSO Act serves as a crucial legal framework for addressing the issue of child sexual abuse in India. While the Act has been successful in increasing awareness and improving the reporting and prosecution of offences, challenges remain in its implementation. By addressing these challenges and implementing the recommendations outlined in this paper, the effectiveness of the POCSO Act can be enhanced, and its role in combating child sexual abuse can be strengthened.

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