



The POCSO ACT AND THE ANALYSIS OF NCRB REPORTS

By Purnima Janghu
B.A. LL.B (Hons), LLM
Pursuing PHD at MDU, Rohtak

By Pranjali
B.A. LLB (Hons), LLM

ABSTRACT

We live in a world which is continuously developing in every aspect whether it be infrastructure, technology, population, pollution or crime. It is a matter of great concern that despite the various measures adopted by government's to prevent the crimes, it is increasing with an alarming rate. This demon of crime have extended its roots to such an extent that it has not even spared the children. Although there are number of crimes that has been committed against the children but the most heinous one is the sexual abuse. Child sexual abuse could be understood as the involvement of children in sexual activities for sexual pleasures or commercial benefits or both. Such an abuse not only effects the physical and mental health of the child but shocks the conscience of the whole society. Being violative of the right to live with dignity, the concept of sexual abuse is not of recent development and it is in existence from times immemorial. As far as girl child is concerned, Indian society being patriarchal in nature considered the girl child as the symbol of the honour and the family remain protective towards them and the notion of purity is attached with their virginity. So the fear of the girls being

sexually abused is always there but in respect to boys, there was no such fear due to the idea of masculinity associated with them. However, with time it came to be established by the increasing incidences of sexual abuse against boys that sexual abuse is a gender neutral crime and to cope with such offence, some special law is required. Thus, the POCSO Act was enacted in the year 2012 with the sole object to protect the children from various kind of sexual offences and to lay down a gender neutral law.

1. INTRODUCTION

Childhood is the most beautiful time of the human life. It is the time within which the child develops and learns to socialize with others and enjoys these early years without shouldering any responsibilities. However, the child remains completely dependent on the adult ones for their survival and safety. Thus, it becomes the responsibility of not only the parents/guardians but of the society as a whole to protect the children and provide safe and healthy environment for their development because children, being the innocent creatures, constitute the most vulnerable group which is exposed to various kinds of abuse over time and again. These days, abuse of children has become a globally prevalent phenomenon. It usually means emotional, physical, economic and sexual exploitation of any person who is u/18 years of age.¹ Such an abuse adversely effect the health as well as the overall well-being and development of the child. Out of all these different kinds of abuse so faced by the children, the most heinous one is the sexual abuse which has become a matter of great attention and concern due to the alarming

¹ Chatterjee S.K, Offences against children and Juvenile Offences,163 (2013).



increase in incidences. Today, not only the girl child but also the boys are facing this issue which shows that sexual abuse is a gender neutral crime and is not limited to any gender. This is evident from the reports of NCRB. The report published by NCRB in 2020 indicates that out of total 28,327 child victims of Penetrative sexual assault under POCSO Act, 269 are boys². Although the no. of male child victims as per the NCRB data is quite low in comparison to girl child but it cannot be said that only girl child are the victims of sexual abuse. Thus, the need was felt to legislate a gender neutral law and, hence, the Parliament enacted the POCSO Act in 2012.

2. WHAT ACTUALLY IS THE CHILD SEXUAL ABUSE

Child Sexual Abuse means involving the child in sexual activities. Such involvement can be for the purposes of sexual gratification or commercial gain or both. According to the POCSO Act, 2012, such sexual abuse can be divided into two different categories i.e. Penetrative sexual abuse and Non Penetrative sexual abuse.

Penetrative sexual abuse involves the acts of penetration and includes the following act:

- Acts of penetration.
- Manipulation of any part of body of the child to cause penetration.
- Applying mouth to urethra, vagina, penis or anus of a child.

On the other hand, Non-Penetrative sexual abuse does not involves the acts of penetration. It includes the following acts:

- Physical contact without involving the acts of penetration.
- Sexual harassment (exposing child to pornographic materials, forcing the child to show his body or any body part or follows or contacts or watches a child).
- Indecent representation of child or using a child for pornographic purposes.

3. FACTORS RESPONSIBLE FOR SEXUAL ABUSE OF CHILDREN

The following are some of the factors that are responsible for child sexual abuse :-

- Lack of sexual awareness.
- Non friendly atmosphere at homes.
- Disabilities (physical or mental) in case of disabled children.
- Lack of parental care.
- Unwillingness of the parents/guardians to listen and believe their children.
- Gender taboo believing only the girls can be the victims of sexual abuse.
- Children on streets lacking parental care.
- Poverty.
- Illiteracy.
- Breakdown of morals and values.
- Easy exposure to pornographic materials.

4. THE POCSO ACT :- A SPECIAL LEGISLATION

The POCSO Act is a special legislation enacted by the Parliament in 2012 with the aim of protecting children from the increasing incidences of sexual abuse including sexual harassment, child pornography, sexual assault etc. and to fulfill the mandatory obligation of India as a

² National Crime Records Bureau, Chapter 4A, Crime Against Children. Crime in India 2020 Statistics,

pp.(352-353).New Delhi : Ministry of Home Affairs (2020).



signatory to UNCRC,1989. The Act recognizes the need of special mechanism to deal with the problem due to the reason of negative effect of traditional investigation and trial procedures on the child victims. Therefore, apart from penalizing the various categories of sexual abuse, the Act also seeks to ensure the well-being and protection of the child victim by establishing Special courts and by providing child friendly procedures. The Act consists of total 46 Sections divided into IX Chapters.

4.1. OBJECTS OF THE ACT -

The following are the objects of the POCSO Act:

- To provide protection to the children from sexual offences.
- To define various sexual offences such as PSA, sexual assault, sexual harassment, using a child for the purposes of pornography and to prescribe punishments therefor.
- To introduce and define new category of sexual offence i.e. aggravated Penetrative sexual assault and aggravated sexual assault.
- To ensure speedy trial of such offences.
- To provide child friendly procedures to be adopted by the police for reporting of the cases and investigation thereof.
- To provide child friendly procedures to be adopted by the Court during trial.

4.2. SALENT FEATRURES OF THE ACT

The following are the important features of the POCSO Act –

- It is a gender neutral law.
- It works on the presumption of guilty unless proved innocent thereby putting the burden of proof on the accused.
- It also provides punishment for reporting of

false complaints or information and therefore, prevents the law from being misused.

- It ensures the mandatory reporting of the abuse and provides punishment for the failure to report.
- It defines and penalizes various types of sexual offences committed against children.
- It ensures speedy trial of the offences.
- It doesn't recognize the consensual sexual relations and any person who engages or involves the child u/18 years of age whether with or without his/her consent, shall be punished.
- It also provides for the establishment of Special Courts.
- It also prescribes the special procedures which are to be followed by the Police during investigation and the Court during trial.
- It ensures the protection of the identity of child.
- The main focus is to ensure the best interests of the child.

4.3. OFFENCES COVERED UNDER THE ACT

The following are the offences that are covered under the POCSO Act :-

- Penetrative sexual assault
- Aggravated penetrative sexual assault
- Sexual assault
- Aggravated sexual assault
- Sexual harassment
- Using child for purposes of pornography
- Storing of pornographic materials that involves children.
- Abetting offence under the act.
- Attempt to commit any offence under the act.
- Failure in reporting or recording a case.
- Giving of false complaint or information.



4.4. SKIN TO SKIN CONTROVERSY UNDER THE ACT

The controversy had arise in the year 2020 after the disputing judgments given by the Bombay H.C. In the case of **Satish v. State of Maharashtra**,³ the appeal was preferred by the appellant-accused who was convicted u/s..354, 363, 342 of IPC and Sec.8 of the POCSOA by the Special court. The facts were that the FIR was lodged by the mother of the prosecutrix aged about 12 years stating therein that the appellant-accused took the prosecutrix to his home and pressed her breasts and tried to remove her salwar when informant reached the house of appellant and rescued the prosecutrix. The Ques. Before the Hon'ble H.C. is that whether the pressing of breasts and an attempt to remove the salwar of the victim falls within the ambit of Sec.7 of POCSOA which defines Sexual Assault and as such is punishable u/s.8 of the POCSOA. The H.C. held that the main ingredient of Sec.7 is the physical contact without penetration done with sexual intent. In the absence of any specific details as to whether the appellant-accused has pressed the breasts after removing the top or by putting his hands inside the top, the act of pressing the breasts of the child doesn't fall within Sec.7 of the POCSOA and such an act comes u/s.354 of IPC. Since, there is no skin to skin contact (direct physical contact) with sexual intent, the offence is not established u/s.7 and 8 of POCSOA and hence, the Court

acquitted the appellant u/s. 8 of POCSO and convicted him u/s.354 of IPC. In **Libnus v. State of Maharashtra**⁴ the appeal was preferred by the appellant-accused who was convicted u/s..354A (1)(i) and 448 of IPC and Sec.8, 10, 12 r/w Sec.9 (m) and 11 (1) of the POCSOA by the Special court. The facts were that a FIR was lodged by the mother of the prosecutrix aged about 5years stating therein that when she returned to her home after work, she found that the appellant-accused was holding the hand of the prosecutrix and she was pulling her pant upwards from the other hand and the zip of the accused was also open. When she raised alarm and started shouting, neighbors gathered there and the appellant-accused ran away from the spot. The H.C. held that the main ingredient of Sec.7 is the physical contact without penetration done with sexual intent. The act of holding the hand of the prosecutrix and opened zip of the pants of the appellant-accused doesn't fall within the ambit of aggravated sexual assault and as such an act would fall within the ambit of Sec.354A (1)(i) of IPC. Hence, the conviction u/s.8 and 10 is not maintainable and the appellant-accused be convicted for an offence u/s.354A (1)(i) and 448 of IPC r/w sec.12 of the POCSOA.

This view of Bombay H.C. had resulted into filing the no. of appeals before the S.C. While hearing 5 appeals i.e. **Attorney General for India v. Union of India**⁵ in the year 2021, the S.C. held that While Interpreting the Statutes, the Courts must look into the intent of the legislature and it is the duty of the Courts to

³ Criminal appeal No.161 of 2020, available at <http://indiankanoon.org/doc/158325618/> accessed 20 February 2022

⁴ Criminal appeal No.445 of 2020, available at <http://indiankanoon.org/doc/106697401/> accessed 20 February 2022

⁵ Criminal Appeals No.1410-1414 of 2021, available at <http://indiankanoon.org/doc/123392914/>



accept that interpretation which promotes the object of legislation and avoid its abuse. So far as the POCSOA is concerned, the Act is enacted with the noble object of protecting the children from sexual exploitation and abuse. Here, Sec.7 which defines Sexual Assault, appears in two parts i.e. The act of touching the sexual body parts of the child with sexual intent and any other act which is done with sexual intention and involves the physical contact without penetration. The main ingredient of Sec. 7 is the “sexual intent” and not the physical direct contact i.e. skin to skin contact with the child. Therefore, what is required to constitute an offence of Sexual Assault u/s.7 is sexual intent and not the skin to skin contact. On the other hand, if the restricted interpretation of “skin to skin contact” is conferred on the words “touch” or “physical contact” used in Sec.7 that would result in absurd interpretation and frustrates the very purpose of the Act in the sense that touching the sexual or non-sexual body parts of the child with gloves, cloth, condom or in any other way that would not result into skin to contact would not amount to an offence u/s.7. The S.C. held that the H.C. erred in holding that in absence of skin to skin contact with sexual intent, no offence is committed u/s.7 of the POCSOA and set aside the acquittal u/s.8 in Satish Case while restoring the judgment of Special Court.

5. DETAILED ANALYSIS OF NCRB REPORTS⁶

5.1. TOTAL NO OF CASES REGISTERED UNDER THE POCSO ACT

According to the statistics of NCRB, a total of 3,13,81,326 cognizable crimes were reported from 2015-2020 out of which a total

of 7,48,642 were related to crime against children. Out of these 7,48,642 incidences/crimes so reported, total 2,17,926 cases were reported/registered under the POCSO Act. The tabular representation of the statistics from 2015 to 2020 is as follows:

S r . N o	Y e a r	Total cognizabl e crimes reported	Total cases relating to crime against children	Total cases registered under POCSO Act
	20 15	47,10,676	94,172	14,913
	20 16	48,31,515	1,06,958	36,022
	20 17	50,07,044	1,29,032	32,608
	20 18	50,74,634	1,41,764	39,827
	20 19	51,56,172	1,48,185	47,335
	20 20	66,01,285	1,28,531	47,221
	Total	3,13,81,326	7,48,642	2,17,926

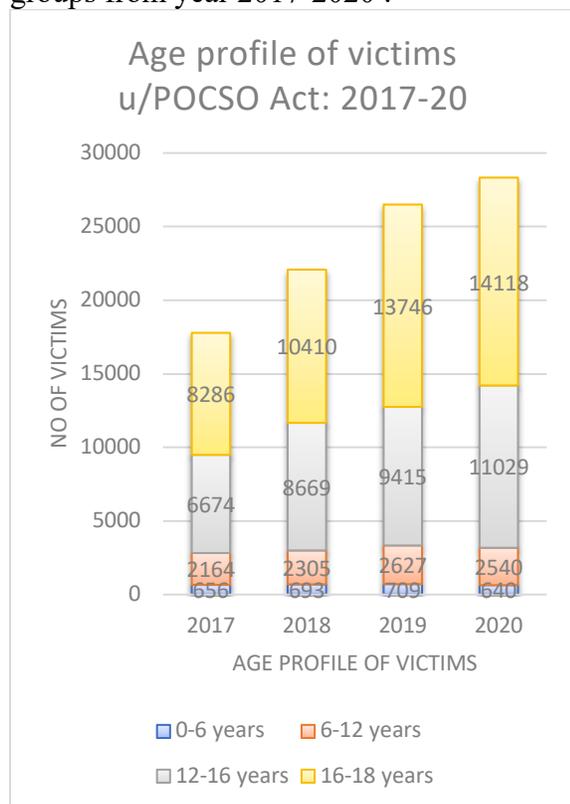
5.2. AGE PROFILE OF VICTIMS

According to the statistics of NCRB from 2017-2020, the maximum no. of child victims of penetrative and aggravated penetrative sexual assault belongs to the age group of 16-18 years and the least no. of child victims are below 6 years of age. To understand the age profile of the victims, the victims are classified in 4 age groups according to their age so as to find out children in which age group faces more sexual abuse. The following is the data indicating no. of victims in different age

⁶ <https://ncrb.gov.in> accessed 22 February 2022



groups from year 2017-2020 :

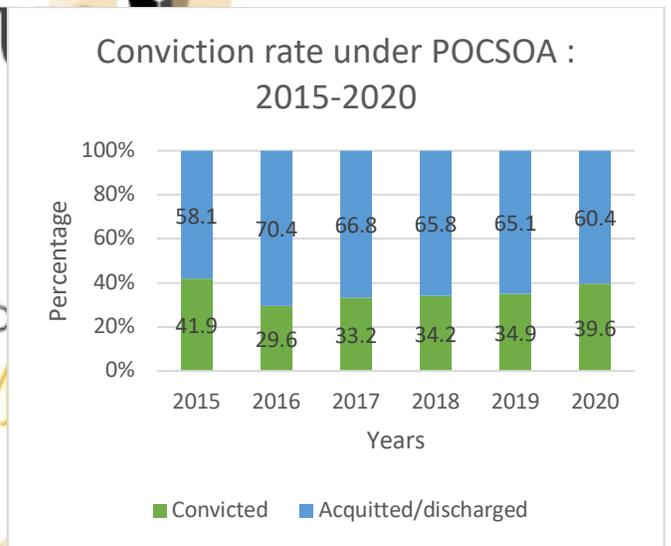
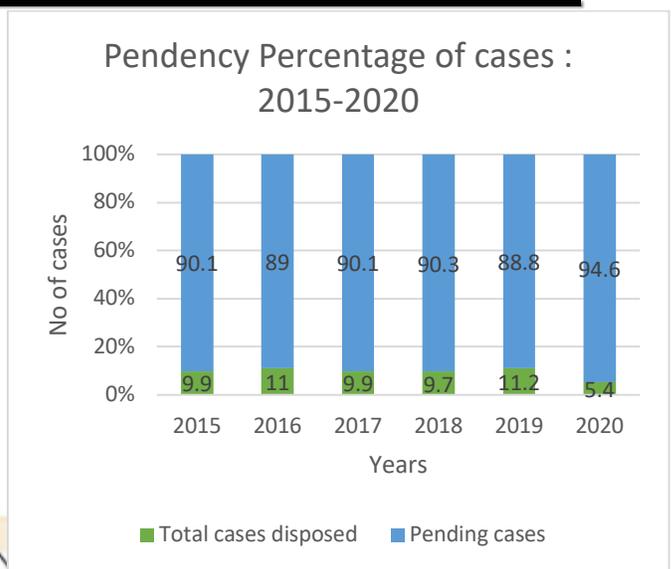
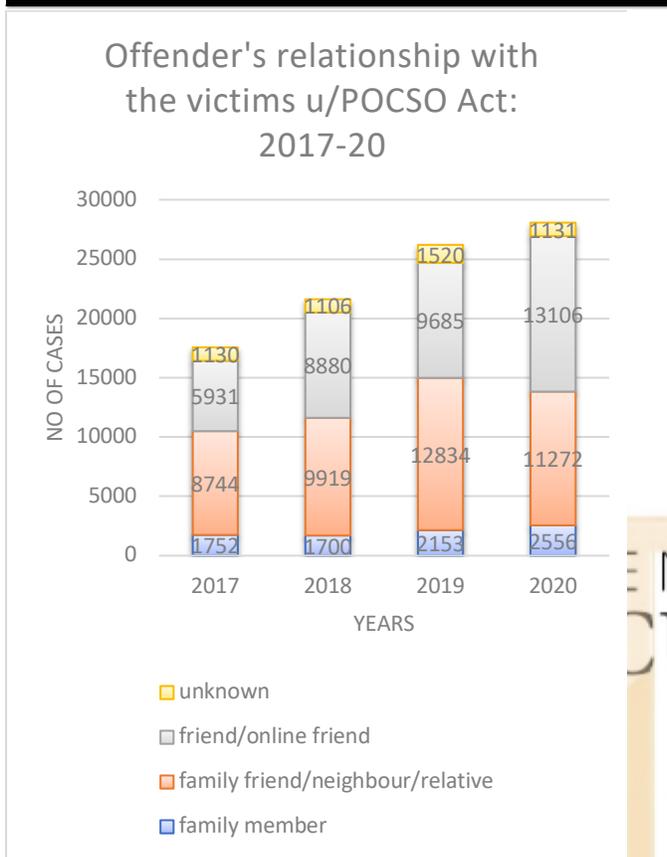


5.3. GENDER PROFILE OF VICTIMS

Today, not only the girl child but also the boys are facing the problem of sexual exploitation and abuse which indicates that sexual abuse is a gender neutral crime and is not limited to any particular gender. The same is evident from the statistics published by the NCRB in “Crime In India”. To understand the gender profile of the victims of Penetrative and aggravated Penetrative Sexual Assault under POCSO Act and for the sake of convenience, the victims are classified in 2 categories according to their gender. The following is the data from the year of 2017-2020 indicating no. of boy and girl victims:

5.4. OFFENDER’S RELATIONSHIP WITH THE VICTIMS

In mostly cases, the offender is known to the victim or his/her family as the known persons are treated as being trustworthy by the victim or his/her family members and has easy access to the child. Such known persons take advantage of their trustworthy situation to satisfy their lust without being coming into the eyes of others. They easily hide their intentions and their dirty acts and deeds by manipulating the mind of the child and this is the only reason due to which many cases went unreported. Such incidences left scars on the soul and mental well-being of the child for the lifetime and the culprit keep on living his normal life. But the cases which were reported, need to be studied properly in order to know the percentage of cases in which the offender is related/known to the victim or his/her family members. The following is the data from the year of 2017-2020 indicating the relationship of offender with the victims of Penetrative and aggravated Penetrative Sexual Assault :



5.5. CONVICTION RATE AND PENDENCY PERCENTAGE OF CASES

Even after the enactment of the POCSO Act, the incidences of Child sexual abuse is increasing at an alarming rate which shows that there is lack of proper implementation of the act. As a result of which the acquittal rates under the POCSO Act are higher than the conviction rate. The following is the data from the year of 2015-2020 indicating conviction rate and pendency percentage of cases under the POCSO Act :

6. REASONS FOR LOW CONVICTION RATE UNDER THE POCSO ACT

It is evident from the above data that the acquittal rate under the POCSO Act is higher than the conviction rate. There are various reasons behind the low conviction rate and some of them are as follows :

1. Hostile Witness



2. Lack of sufficient evidence.
3. Failure on the part of the Court and the Public Prosecutor in appreciating the evidence.
4. Lack of training to the investigating agencies, public prosecutors and the judges
5. Non Child-friendly atmosphere of the Court.
6. Poor implementation of the Act.
7. Huge pendency of cases.

7. SUGGESTIONS TO IMPROVE THE CONVICTION RATE

Following are few suggestions which can help in reducing the acquittal rate and improving the conviction rate :

1. Training to police officials in relation to investigation of such sensible cases.
2. Training to Judges and Public Prosecutors.
3. Creating Child friendly atmosphere during the investigation and trial.
4. Ensuring time bound trials.
5. Strengthening Victim protection Mechanisms.
6. Protection to witnesses.
7. Video-recording of the Child Statement .

8. CONCLUSION

As Mahatma Gandhi had rightly observed that “If we are to have real peace, We must begin with the Children.” Children are the future of the whole humanity and in order to ensure and protect the survival of mankind, it is necessary to ensure that children develop in a safe and healthy environment. Exposure to any kind of violence, abuse or exploitation in such a tender age may have a very dangerous effect on their innocent soul and may result into the breakdown of their entire

personality due to the ill-effects of such abuse on their physical and mental health. Although the children are unable to protect themselves by their own and depends on the adult members of the society for their safety and survival, it becomes the responsibility of the adult members of the society to adequately support the child and protect them. But it is a matter of grave concern that these adult members of the society who are in fact, vested with the responsibility of protecting and taking care of the children turns to be the abusers and such persons left no chance to abuse these innocent creatures. Children are thus, subjected to various kinds of abuse and exploitation that includes neglect, physical, emotional, mental, sexual abuse and economic exploitation and there are various types of offences that has been committed against them such as child marriage, child labour, infanticide, foeticide, abandonment, kidnapping, human trafficking, selling and purchasing of minors for prostitution or begging, kidnapping, child rape and sodomy, sexual assault, sexual harassment, use of child for pornographic purposes etc. Although, all forms of abuse have detrimental effect on children but there are some offences that may have fatal effect and left the children in great agony and pain for the rest of their lives. One of such heinous crime that may have such fatal effect is the sexual abuse of children. To tackle this evil of sexual abuse of children, the POCSOA was enacted in the year. However, despite the strong provisions, the Act has failed in preventing the sexual offences against children due to its weak implementation. This is evident from the fact that from 2015-2020, a total of 2,17,926 cases were registered under the POCSO Act, 2012. According to the NCRB Statistics, the highest no. of crimes against children under POCSO Act is



reported in 2019 so far. The increasing rate of such offences against the children shows the cruel mentality of the society and the lack of deterrence and fear in the minds of people. Despite the fact that the Act has been amended by the POCSO (Amendment) Act in 2019 in order to enhance the punishments prescribed under the POCSO Act so as to create more deterrent effect, such incidences are increasing with alarming rate showing that the Act has failed in achieving its object of protecting the children.

