

Legislative and Legal Study about POCSO Act, 2012

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Maharashtra)Best Citation - Shubham Kumar Jha, *Legislative and Legal Study about POCSO Act, 2012*, 2 (2) LIU & 33 (2021)**Abstract**

A very famous quote said by Nelson Mandela, “There can be no keener revelation of a society’s soul than the way in which it treats its children.” Basically, we all know children are the future of our human mankind, we have to treat and teach them in the best way for future as much as we can. But there are also many ill peoples living in the society who are always ready for damaging the beauty of mankind. After many incidents of child sexual abuse reported in the world and also in India, then the demand of the a separate law for children’s increased in many countries as well as in India, and in 2012 the government of India has taken these types of offences seriously and enacted a new act, POCSO Act, 2012. So, in this following article we are going to study about the need of POCSO Act and how this act came into existence. Also, we do a complete legislative and legal study of this act and related laws. We are also going to study few cases after which the legislators drafted and enacted this POCSO Act, 2012.

Keywords: Legislative, legal, POCSO Act, Children**I. Introduction**

Nowadays, if you read any newspaper, you can see child sexual abuse occurring everywhere, from every corner of India. We heard this news of child sexual abuse, and this is quite rampant. There was a study done by the Ministry of Women and Child Development in the year 2007, and they came across a huge startling facts about child sexual abuse.

According to that survey report, 53.2% children have reported of having faced sexual abuse. And the most surprising fact was that, when the children were interviewed about this, then the report shows that the 52.94% were boys and 47.06% were girls who faced the abuse. Also the report shows that, it is a myth that rape or sexual abuse is only done by some stranger or any other person, otherwise the report says that in most of the cases the sexual act done on the child is someone who is very well known to child, or he/she is very close to that child family.

Before this POCSO Act 2012 came into force, the crimes related to child sex abuse were dealt under Indian Penal Code under sections 354, 375 and 377. But later on, the legislators and the Supreme Court agreed that the Indian Penal Code is not enough to protect the children and criminalize non – conventional sexual abuses like child trafficking, pornography, sale of children etc. Therefore, in the year 2012 the government after the suggestion of Supreme Court enacted a new act for child sexual abuse, i.e., “Protection of Children from Sexual Offences, 2012.”

II. Salient Features of POCSO Act, 2012

- This POCSO Act is applicable to everyone without taking gender into consideration and provides the protection to the children who are under the age of 18 years against sexual offences.
- The best part of this act is that this act is gender-neutral but the most important thing is that, at the same time it ensures to cover all the aspects that only a specified group of gender could face.
- This act contains variety of definitions of different kinds of sexual offences or abuse, like the act include the definition of penetrative and non-penetrative assault as well as sexual harassment and pornography. And also it deems a sexual assault to be “aggravated” under certain circumstances like when the victim/abused child

is mentally ill or when the abuse/offence is committed by a person in position of trust or authority.

- Also one of the admiring features of this act is that the age of consensual sex has been raised by this act from 16 years as per the Indian Penal Code, 1860 to 18 years.
- Also, according to this act, the burden of proof lies on the accused.
- There are provisions in this act, where punishment has been provided for false complaints or false information with malicious intent.
- There are strict punishments for those peoples who are involved in trafficking of children for sexual purposes.

III. Loopholes in Indian Penal Code

There are loopholes in Indian Penal Code due to which effective protection could not be provided to the children. As we can clearly see that Section 354 of the Indian Penal Code lacks a statutory definition of “modesty” and does not protect the “modesty” of a male child. Outraging the modesty of a women is a compoundable offence and carries a very weak penalty. Also, the Section 375 of the Indian Penal Code doesn’t protect the male victims or anyone from sexual acts of penetration other than “traditional” peno -vaginal intercourse. And lastly, we can clearly observe that, the term “unnatural-offences” is not at all defined in Section 377 of the Indian Penal Code. It is not designed to criminalize sexual abuse of children but only applies to victims penetrated by their attacker’s sex act. Hence, all these loopholes are the major need for a new act which specially protect the children of our society from sexual abuse.

IV. Reasons for Enactment of the POCSO Act

The topic of children protection is on the hike from the year 2010 – 2012, and almost in every session of the parliament this topic was also discussed by few MLAs and MPs. And finally in the year 2012, after the Nirbhaya Case judgement

delivered by the Supreme Court, the demand of a separate act was on the peak, and then the legislators drafted and enacted a new Act, which we know today is POCSO Act, 2012.

The following are the main reasons for enactment of this POCSO Act:-

- 1) The most prior and critical reason is to protect the children from the offences of sexual assault, sexual harassment, and pornography. This was made punishable according to this act in various sections like in Section 3, section 6 and in Section 13.
- 2) Also, there is a need to establish special courts for trial of offences connected with child sexual abuse crimes. Because as we know the procedures of the normal courts, very rigid and time consuming, but in these special courts the environment is developed by taking the children into consideration, so that they can freely speak about whatever happened with him. The legislators also take this in consideration and added the Sections 2(I) and Section 19 in the Act which deals with the procedure in special court for such offences.
- 3) There is one more reason for the enactment of this act according to Supreme Law of India, i.e., Constitution of India. To comply with Article 15 of the Constitution of India which mandates the states to protect the children of this nation. The legislators also mentioned this important point in the preamble of this act.
- 4) And lastly, India is also a member of United Nations, and 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 material.

So, all those above important findings and facts are the main reason for the enactment of this POCSO Act, 2012. There is also one more and most important demand which was considered by the legislators and the Supreme Court and included under this act was that all the offences covered under this act are non-bailable. This was a unique and necessary thing which was really needed for all those accused of this act, due to this they definitely learn a strict lesson.

V. Cases Due to which POCSO Act came into existence

1) Ghanashyam Misra v. The State, 1956⁷³

The Orissa High Court enhanced the sentence of Ghanashyam Misra, a school teacher who raped a 10 year old girl in the school premises to seven years and also ordered the accused to pay a compensation to the father and the child, recognizing that the offence was committed by a person in a position of trust and authority for the child.

2) Gorakh Daji Ghadge v. State of Maharashtra, 1980⁷⁴

The father was accused of raping his 13-year-old daughter at home. The Bombay High Court prescribed stringent punishment because the victim was the daughter of the accused.

3) Bharwada Bhoginbhai Hirjibhai v. State of Gujrat, 1983⁷⁵

A middle aged man confined and raped two friends of his daughter aged around 10, who had come to his house to meet his daughter. The Trial Court convicted the accused for rape, violating modesty and wrongful confinement.

VI. Conclusion

After considering all the above facts and cases, the legislators enacted this marvellous act for protecting the children of the country from all those malicious act done by all those bad and sick peoples of the society. This act is a classy example throughout the world because this act also considers boys as victims of sexual harassment or of sexual activities done on them during their childhood by anyone. After this act came in to enforcement in the society, many cases from all around the country has been reported so rapidly which depicts everyone that how much the society need this kind of act which provides punishment to the bad elements of the society who did any malicious act on children. In last, the only words we can say about this act was that, the punishment given by the courts to the accused in this act was good as compared to other acts exists in India for other serious crimes. This act definitely helps Indian Judicial System in their punishment delivering process and inspires them always in a positive way.

VII. Reference

- Ghanashyam Misra v. The State AIR 1957 Ori 78
- Gorakh Daji Ghadge v. State of Maharashtra 1980 CriLJ 1380
- Bharwada Bhoginbhai Hirjibhai v. State of Gujarat AIR 1983 SCR (3) 280
- Indian Penal Code, 1860

⁷³ Ghanashyam Misra v. The State AIR 1957 Ori 78

⁷⁴ Gorakh Daji Ghadge v. State of Maharashtra 1980 CriLJ 1380

⁷⁵ Bharwada Bhoginbhai Hirjibhai v. State of Gujarat AIR 1983 SCR (3) 280

- Section 354 of IPC.
- Section 375 of IPC.
- Section 377 of IPC.
- Protection of Children from Sexual Offences Act, 2012
- Section 3, 6 and 13 of POCSO Act, 2012 talks about punishment for offences of sexual assault, sexual harassment and pornography.
- Section 2(I) and 19 of POCSO Act, 2012 deals with procedure of special courts.
- Article 15 of the Constitution of India mandates to the states to protect the children of the nation.
- <https://www.thenewsminute.com/article/what-pocso-act-and-how-it-used-guide-143310>
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