



Examination of provisions of Bail Under the POCSO Act in India:

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POCSO Act is an essential act that enacted with the objective to provide protection to the children from sexual assault and also make sure that the accused, should not get away with the accusation easily. This kind of serious matter where the child being the victim and also strong provision involved its very difficult to seek bail.

Provisions under the POCSO Act

- Penetrative sexual assault: according to section 3 of the POCSO Act defines penetrative sexual assault. And section 4 of the act discussed about the punishment. Which was more stringent after the amendment of 2019.

Penalty:

Imprisonment for ten years, but which may extend to imprisonment for life and liable to fine.

Penetrative sexual assault on child below the age of sixteen years, punished with imprisonment which may extend to imprisonment for life, and liable to fine (Section 4).¹

Aggravated penetrative sexual assault: according to section 5 of the POCSO Act, Aggravated penetrative sexual assault on a child commits by a police officer, the limit of the police station where he is appointed. Premises of a station house and course of his duty. Aggravated penetrative sexual assault on a child commits by a member of the armed force within their limits. Under the command of the armed forces and course of his duty. Aggravated penetrative sexual assault on a child commits by a public servant. Management, by the Staff of the jail, protection

¹ **Section 4 :Punishment for penetrative sexual assault:**

“(1) Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than 2[ten years] but which may extend to imprisonment for life, and shall also be liable to fine.

3[(2) Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine.

(1) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.”

home, observation home, hospital staff, educational institution , considered aggravated penetrative sexual assault and punishable under section 6 of the POCSO Act.

Penalty:

Rigorous imprisonment for twenty years, which may extent to imprisonment for life, which shall mean imprisonment for the remainder of natural life, and liable to fine or death.

The fine imposed to sub section (1) that is just and reasonable that paid to the victim to meet medical and rehabilitation of such victim.

(Section 6).2

Sexual assault : according to section 7 of the said act, “Whoever, with sexual intent, touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault”

Sexual harassment: a person commits sexual harassment on a child with sexual intent, utter any word, gesture, show any object or media for the pornographic purposes or entice a child for pornographic purposes.

Penalty: 3 years imprisonment, which may extend to 5 years and a fine (Section 8)3.

Aggravated Sexual assault: According to section 9 of the said act contains provision for aggravated Sexual assault on the child.

Penalty: Imprisonment for 5 years which may extend to 7 years and liable to fine. (Section 10)4

Use of child for pornographic purposes: according to this act a person using a child for pornographic purposes, that includes

Representation of sexual organ ,

Using of a child to engaged in real or simulated sexual acts, Obscene representation of a child

Penalty: For First imprisonment for 5 years in prison and a fine, for second imprisonment for 7 years in prison and a fine in the event of a subsequent conviction (Section 14 (1)).

² Section 6. Punishment for aggravated penetrative sexual assault:

“(1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death.

(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.”

³ Section 8. Punishment for sexual assault.—Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine

⁴ section 10. Punishment for aggravated sexual assault.—Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

Bail under the POCSO Act

Placing reliance on *Deepak Yadav v. State of Uttar Pradesh*⁵, the Court noted the considerations for a Court while granting bail to an accused that are as follows: ----

Whether there is a basis for a reasonable suspicion that the accused committed the offense, even if just prima facie;

The type and seriousness of the charge;

The severity of the penalty in case of a conviction;

The accused's potential to abscond or flee if released on bail;

The accused's character, behaviour, means, position, and standing in society;

The likelihood that the offense will be repeated; the reasonable fear that the witnesses will be persuaded;

And, of course, the risk that justice will be obstructed by the granting of bail.

In addition to those previously mentioned factors, the Court established the following factors that should be taken into account when deciding whether to issue bail to an accused party in cases involving sexual offenses, particularly those involving the POCSO Act: The following factors must be taken into consideration:

The victim's age; the accused's age difference from the victim;

The severity of the offense;

The victim and accused's relationship;

The accused's and the victim's proximity to each other; and whether the accused is willing to live somewhere else till pendency of trial.

Offences under the POCSO Act are non-bailable. Here I discuss some key points and circumstances where the accused person were also granted bail those are the followings:

In (*Amarjeet Panday vs. State of NCT of Delhi*)⁶ case there was material difference in victim's statement that recorded under section 161, 164 of Cr.P.C. The accused bail was granted.

⁵ (2022) 8 SCC 559

⁶ 2340/2017

In (Bhusan Malik Vs. State (Government of NCT of Delhi))⁷ case delay in lodging complaint and substantial improvement in the victim's statement it gives the accused benefit and the bail was granted.

In (Jatin Sethi vs. State (NCT of Delhi))⁸, case there is a friendly relationship between the accused and the prosecutor, no evidence of incrimination against the petitioner has been provided by witness, the investigation is finished, and the charge sheet has already been submitted. Accused bail was granted.

In (Manoj Kumar vs. State)⁹, case accused and the victim got married , the prosecution in her statement that recorded under section 164 of Cr.P.C and also the victim blessed with a daughter from the accused. The accused bail was granted.

In (Shashank vs. State (Govt. Of Nct Of Delhi))¹⁰ case victim is 17 years and 11 months old. The victim and the accused had three four months of friendship, and also was in touch on social media with the accused even they were in touch on the date of the incident. FIR was merely registered on pressure of the family of victim. The accused was granted bail.

In (Sanjay Mahawal vs. State of Nct of Delhi)¹¹, case Since the accused is in custody for more than four years, whereas section 35 of the Act postulates the trial to be concluded within one year from the date of court taking cognizance, the accused bail was granted.

In (Paramdeep vs. State (Govt. of Nct of Delhi))¹², case victim is already 21 years old, there is no evidence to support anything other than the victim's plain statement, the prosecutrix has previously examined and cross-examined the case, and there is therefore no chance that the victim was coerced, neither forensic nor medical reports support a forced relationship with the victim, the accused bail was granted.

⁷ 1545/2018

⁸ Bail Application No 1995/2018

⁹ Bail Application No 2552/2019

¹⁰ Bail Application No. 692/2019

¹¹ Bail Application No .18/2020 with CRL.M. (BAIL) 16/2020

¹² Bail Application No. 656/201

In (Rajeev Chauhan Vs. The State Govt. of Nct of Delhi)¹³, the prosecutrix also stated that there was a quarrel between her family on one side and the defendant's family on the other, which had not been investigated by the police at all. In her statement U/S 164 Cr.P.C before the Magistrate the prosecutrix informed the Court that “Whatever she stated was told by the police and neighbours”, the accused was granted bail.

It very much tuff or difficult to get bail in POCSO Act because its strict legal frame work but we focus on those factors the court can grant bail by given some condition.

The acquisition against a person on sexual abuse of a child not always correct it is a lengthy process to determine whether actually the offence has been committed, lacking innocent person may be convicted. It is the discretion of the court after detail investigation and corroboration of proper evidence to determine whether the bail should be granted bail or not.

Unveiling The Complexity

In sentencing, the judge's task is to determine the type and quantum of sentence appropriate to the facts of the case, and this judgment must be made in accordance with the relevant statutory provisions and appellate principles.¹⁴

Aggravating circumstances, relate to any factor or circumstances that have the potential to accelerate the severity of a wrongdoing or offense. In the criminal trial, aggravating circumstances maybe involved violence or use of weapon, involvement of child and other vulnerable section of the society.

Mitigating circumstances, relate to any factor or circumstances that have the potential to reduce the severity of a wrong doing or offense. In criminal trial, Mitigating factors may be involved upbringing of a person, socio-economic condition, mental illness etc.

Handling the intricacies of these cases requires a nuanced approach that takes into account the unique circumstances of each situation. Factors such as societal attitudes towards sexual violence, cultural norms, access to support services, and systemic barriers to reporting and prosecuting abuse further complicate the evaluation and resolution of POCSO cases. Therefore, a comprehensive understanding of both aggravating and mitigating factors is crucial for policymakers, law enforcement officials, legal practitioners, and mental health professionals involved in addressing child sexual abuse.

Analyzing aggravating and mitigating factors in offenders of the POCSO Act

When examining the aggravating and mitigating factors present in offenders of the POCSO (Protection of Children from Sexual Offences) Act, it's crucial to delve into the complexities of each case. Aggravating factors can exacerbate the severity of the offense and influence sentencing decisions. These may include the age of the victim,

¹³ Bail Application No. 284/2018

¹⁴ Austin Lovgrove, The Framework of Judicial Sentencing 1-2 (1997).

the degree of violence or coercion involved, any use of manipulation or grooming tactics by the offender, and any prior criminal history.

The age of the victim is a significant aggravating factor, as the vulnerability of children makes them particularly susceptible to exploitation and harm. Additionally, the level of violence or coercion employed by the offender can intensify the trauma experienced by the victim and may indicate a higher level of culpability.

Furthermore, the presence of manipulation or grooming tactics used by the offender can demonstrate a calculated effort to exploit and victimize the child, warranting harsher penalties. Offenders with a history of prior sexual offenses or criminal behaviour may also face increased scrutiny and potentially harsher sentencing due to the heightened risk they pose to society.

On the other hand, mitigating factors can provide context and insight into the circumstances surrounding the offense and the offender's behaviour. These factors may include the offender's background, upbringing, mental health, remorse, cooperation with authorities, and efforts towards rehabilitation.

Understanding the nuances of each case and carefully considering both aggravating and mitigating factors is essential in ensuring a fair and just legal process. Sentencing decisions should aim to balance accountability and rehabilitation while prioritizing the protection and well-being of victims. Additionally, providing appropriate support and resources for both victims and offenders is crucial in addressing the complex issues surrounding sexual offenses against children and working towards prevention and healing within communities.

In State of Madhya Pradesh v. Surendra Singh¹⁵

The court stated that each court has the responsibility to impose a fair sentence, having regard to the nature of the offence and its manner in which it was carried out or committed. Each court is liable for imposing a fair sentence. The sentencing court, which is expected to impose an appropriate sanction in accordance with the gravity of the crime, shall take into account all relevant facts and circumstances relating to the question of a sentence.

The court observed that no mechanical reduction in sentence can take place unless all relevant factors have been taken into account, and the Court has found that there was a gross injustice, hardship or a clearly capricious award of an unreasonable sentence. In addition to that, the Court of First Instance declared that there was a need to reconsider the scale of the sentence imposed on the applicant.¹⁶

Mandatory Reporting and Victim Compensation

Child abuse is undoubtedly a serious issue that hinders the growth and well-being of society. In India, the prevalence of child abuse is alarming, with a child becoming a victim every second. Despite the country's efforts to progress in various aspects, the fear of societal judgment often silences victims and prevents them from reporting such heinous crimes.

In some communities, discussing child abuse is considered taboo, making it even more challenging for victims to

¹⁵ (2015) 1 SCC 222

¹⁶ <https://www.scconline.com/blog/post/2021/02/20/pocso-act/>

come forward and seek justice. The lack of awareness and education further exacerbates this issue, as many individuals may not even recognize the signs of abuse or know how to report it.

Addressing and preventing child abuse requires a collective effort from government authorities, community leaders, and individuals. It is crucial to create a safe and supportive environment where victims feel empowered to speak up and where perpetrators are held accountable for their actions. By breaking the silence and advocating for change, we can work towards a society where every child is protected and nurtured in a safe environment.

The mandatory reporting is mentioned in section 19,20 and 21 of the POCSO Act ,2012.¹⁷

Supreme Court's View on Mandatory Reporting

The significance of reporting child sexual abuse has been emphasized by the Supreme Court, which has consistently held that failing to report such cases is a serious crime. The Supreme Court has occasionally imposed extra responsibilities on professionals—like doctors and teachers requiring them to report the proper authorities of any child sexual abuse cases.

¹⁷ section 19. Reporting of offences.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to,—

- (a) the Special Juvenile Police Unit; or
- (b) the local police.

(2) Every report given under sub-section (1) shall be—

- (a) ascribed an entry number and recorded in writing;
- (b) be read over to the informant;
- (c) shall be entered in a book to be kept by the Police Unit.

(3) Where the report under sub-section (1) is given by a child, the same shall be recorded under subsection (2) in a simple language so that the child understands contents being recorded.

(4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same.

(5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection including admitting the child into shelter home or to the nearest hospital within twenty-four hours of the report, as may be prescribed.

(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.

(7) No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub-section (1).

Section 20: Obligation of media, studio and photographic facilities to report cases.

Any personnel of the media or hotel or lodge or hospital or club or studio or photographic facilities, by whatever name called, irrespective of the number of persons employed therein, shall, on coming across any material or object which is sexually exploitative of the child (including pornographic, sexually-related or making obscene representation of a child or children) through the use of any medium, shall provide such information to the Special Juvenile Police Unit, or to the local police, as the case may be.

Section 21: Punishment for failure to report or record a case.

(1) Any person, who fails to report the commission of an offence under sub-section (1) of section 19 or section 20 or who fails to record such offence under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

(2) Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.

(3) The provisions of sub-section (1) shall not apply to a child under this Act.

Mandatory Reporting In the context of Indian Society

In many rural areas, the reporting of child sexual abuse remains hindered by various factors, contributing to a pervasive stigma surrounding the issue. The prevalent fear among parents that disclosing such abuse could adversely affect their child's future often leads to cases going unreported. Additionally, a lack of awareness and understanding about the gravity of child sexual abuse further compounds the problem, making it challenging for individuals to recognize and address the issue effectively.

Educational campaigns and community outreach programs can play a vital role in dispelling misconceptions and increasing awareness about child sexual abuse. By providing parents and caregivers with the necessary knowledge and resources, they can be empowered to overcome the barriers preventing them from reporting such incidents.

Creating a supportive environment that promotes open communication and offers assistance to families affected by abuse is crucial in breaking the cycle of silence and stigma surrounding this sensitive topic.

The need of Mandatory Reporting

Child sexual abuses are mostly done by the closed family member or happens in common settings. In India parents are afraid to report case because of the societal stigma. Most of the cases are unreported.

Reporting the case means it gives the victim a protection, where she/ he will get justice from. Though it may come slowly but justice will be served to the victims. Reporting of sexual abuse cases also reflex a prominent picture to the Government about the severity of the crime and how much crime happen daily. Depending on these factors the police, courts and the judiciary system other section will proceed further.

POCSO Act has a very strong legal framework that helps the victims to get the justice when they are needed. But reporting of the case is mandatory. Without this such a crime can't be traced.

Victim Compensation

Every victim is bound have compensation, that compensation is a monetary relief. In the child sexual abuse cases victim compensation plays a very vital role. In this cases it ruin the life of the child and also have a long term effects on its victim. The aim of victim compensation is to provide them financial support that can help them to deal with their mental, physical trauma that inflicted upon them because of the act.

Definition of victim

Victim is a person or child who have suffered a harm or injury or loss including physical or mental injury. It is an act for which an accused person is charged. It is also a violation of that individual's fundamental rights.

Compensation

Compensation refers to the monetary relief or, reward to an individual who is entitled to receive in a form a loss, suffering or injury. It's neutralized the loss and suffering or injury that the victim experiences as a result of being victimized.

Victim compensation under the POCSO act

Under the POCSO act victim compensation is an important element. The compensation accomplished several goals like expenses relating to medical expenses, counselling and other expenses and that is essential for the wellbeing of a child.

The amount of compensation is rewarded to the victim it determined by various aspects like the severity of the offences and the extent of the loss or injury and also socio-economic condition of the child.

Data Challenges Under the POCSO Act, 2012

Statistical Insights

POCSO Act have a very strong legal framework but still child abuse is increasing day by day. According to NCRB Report, on crimes against children. On 2019, the number of cases total 1.5 lakhs.

The number increased from 1,29,032 cases in 2017, to 1,41,764 cases 2018 and that further increased to 1,48, 185 cases.

The National Crime Records Bureau Data, 2020 – 2021

The National Crime Records Bureau (NCRB) has released its data, which shows that from 2020 to 2021, there was a 16.2% increase in crimes against children in India. Based on the data, there were 19,055 recorded occurrences of crime against minors in 2021, which is a 26.7% increase from 15,043 cases in 2020. Under the "Crimes against Children" category, kidnapping and abduction accounted for the majority of the cases (56.6%), with cases under the Protection of Children from Sexual Offences (POCSO) Act, 2012 (30.8%). There were 53,874 POCSO cases reported nationwide in 2021; Uttar Pradesh reported the largest number of POCSO- related occurrences (7,129 cases), followed by Maharashtra (6,200 cases) and Kerala (6,070 cases).

In comparison, 47,221 POCSO incidents were recorded in 2020, whereas 47,335 cases were recorded in 2019. Interestingly, Sikkim has the highest rate of child sexual offences 48.6% followed by Kerala (28.1%), Meghalaya (27.8%), Haryana (24.7%), and Mizoram (24.6%). 442 victims below eighteen years of age, including 18 females under the age of six and 64 under the age of twelve, were the victims of the crime in Rajasthan out of 6,337

POCSO instances. In all states and Union Territories, there were 1,49,404 documented incidences of crime against children last year, compared to 1,28,531 the year before.

The highest number of crimes against minors reported was 19,173 in Madhya Pradesh, followed by 17,261 in Maharashtra and 16,838 in Uttar Pradesh. With 7,118 complaints, Delhi topped the list of Union Territories for child abuse.¹⁸

Estimated number of years required to complete the trials of cases pending under POCSO as of January 2022 (based on the absolute number of cases pending and disposed of)

The number years required to complete the pending case of January 2022 that varies from 1 year in Karnataka to more than 30 years in Himachal Pradesh and Delhi . the number of years required to clear backlog POCSO cases has either remained unchanged or reduced. In the remaining states the required of years to clear the backlog has increased.

Conclusion:

Hypothesis given in the beginning of the research paper, after a thorough discussion on this paper, it has been proved that the hypothesis is hence proved.

The POCSO Act, 2012 represent as a noteworthy milestone in addressing these heinous crimes of child abuse. The strong legal frame-work of the POCSO Act make an huge impact to the society and also give a ray of hope to the victims and their families. Its provide them justice and protection. However, it also needs cooperation from all the sector from society, law enforcement, government etc. to secure rights of the child.

The challenges and the shortcomings in the implementation of the POCSO act it remains as a key tool in combating child sexual abuse.

Efforts should be taken to prevent suffering must include raising awareness among all the sector of the society about the current situation.as well as the urgent need for an overhaul of the court system. Recent legislation providing a strong legal frame work for addressing sexual offences involving children. Moreover, enhanced adherence to existing laws is vital. Mere establishment of laws is insufficient without stringent enforcement and clearly defined responsibilities.

Additionally, parents, guardians, educators and other members of the society plays a very crucial role in protecting children from sexual exploitation and abuse. Children as innocent individual represent the future of social progress in a nation, underscoring the importance of their wellbeing in shaping tomorrow's leaders.

Suggestions and recommendations:

- 7 Minimal amount of witness testimony is desirable that can help the victim in POCSO Cases.

¹⁸ <https://www.indiatracker.in/story/ncrb-pocso-cases-increased-by-30.8-in-last-five-years> (last accessed 19 .5.24 at 8.28 a.m.)

- 8 Medical examination also have to be child friendly, this kind of serious issue held with care.
- 9 Sex education is necessary and needed for the children. Include sex education as a part of the education and teach this subject in school. Teach them about the human body, and how to understand the abuse mostly good and bad touch.
- 10 Protection programme and public awareness programme is necessary to aware public and the victim. Mostly in the rural areas where the light of education has not yet reached. Programmes like educational campaigns, social awareness, community outreach programme, must initiate to abolish these social evil.
- 11 Support service, make available mostly for the under privileged child. Counselling is very important for the victim child.
- 12 Investigation and the law enforcement agencies have to provide timely investigation.
- 13 Strengthening administrative body and the process have to be simple and not confusing.
- 14 Quick punishment may help the victim to recover from the traumatic movement.
- 15 Authentication of the report. There are so many false cases so the authentication of the cases must be proved by the agencies.

