



## REVIEW PAPER

# The POCSO Act: strengths and challenges

Goswami O<sup>1</sup>, Mahanta P<sup>2</sup>

### Address for correspondence

<sup>1</sup>Assistant Professor (Corresponding author)

Email: droligoswami@gmail.com

Mobile: +91 94356 92590

Forensic Medicine and Toxicology  
ESI Medical College and Hospital,  
Guwahati, Assam

<sup>2</sup>Professor

Email: drpmahanta@gmail.com

Forensic Medicine and Toxicology  
Nalbari Medical College and Hospital,  
Guwahati, Assam

Received: 20-04-2025

Revised: 30-04-2025

Editorial approval: 10-05-2025

Checked for plagiarism: Yes

Peer-reviewed article: Yes

Editor approved: Prof. AJ Patowary

### ABSTRACT

This review paper examines the Protection of Children from Sexual Offences (POCSO) Act in India, focusing on its strengths and challenges. Child sexual abuse (CSA) is a serious violation of children's rights with enduring consequences. It provides historical context by citing India's ratification of the UN Convention on the Rights of the Child and major studies documenting the prevalence of CSA. The paper also describes the legislative response to high-profile cases, culminating in the enactment of the POCSO Act in 2012 to comprehensively address these concerns. The POCSO Act creates a detailed system to protect children from sexual crimes, including clear definitions, strict punishments, faster investigation processes, and ways to keep victims' identities safe. Despite these advancements, the paper identifies ongoing challenges, including the misapplication of consent in romantic relationships involving minors, the presumption of guilt, complications in medical reporting, high rates of victim refusal, and the potential misuse of the Act in custody disputes. The paper further addresses the significance of accurate age estimation and the necessity of long-term rehabilitation for survivors, as well as the implications of mandatory reporting requirements that may inadvertently traumatise victims. The conclusion points out the essential role of the Act in safeguarding children's rights and advocates for a reassessment of its provisions concerning underage and accused individuals, as well as considerations of mental age.

**Keywords:** POCSO Act; sexual offence; children's right; India.

**Cite this article:** Goswami O, Mahanta P. The POCSO Act: strengths and challenges. *Int J Health Res Medico Leg Prae* 2026 Jan-June;12(1):42-47. Doi:

## INTRODUCTION

**Child sexual abuse (CSA)** constitutes a clear violation of children's rights and is associated with lifelong, severe consequences. CSA frequently co-occurs with other forms of child maltreatment, which complicates the diagnostic process.

## HISTORICAL CONTEXT: NATIONAL AND INTERNATIONAL PERSPECTIVE

The **United Nations Convention on the Rights of the Child (CRC or UNCRC)** is a human rights treaty that establishes the civil, political, economic, social, health, and cultural rights of children. The United Nations General Assembly adopted the Convention and opened

it for signature on November 20, 1989. The Convention entered into force on September 2, 1990. India ratified the UNCRC on December 11, 1992, agreeing in principle to all articles except for certain reservations concerning child labour.<sup>1</sup>

The first systematic study on CSA in India was conducted in 1998 by Recovery and Healing from Incest, an Indian non-governmental organisation (NGO), with 765 participants reporting abuse during childhood or adolescence.<sup>2</sup> Subsequent surveys conducted by UNICEF (2005–2013), Save the Children, and the Tulir Centre for Healing and Prevention of CSA (2005) also documented significant instances of abuse.<sup>3</sup> Furthermore, a 2007

study by the Ministry of Women and Child Development, spanning 13 states, found that 21% of participants had experienced extreme forms of CSA.<sup>3</sup>

The 2012 gang rape incident in Delhi significantly heightened public awareness of sexual violence in India, resulting in widespread outrage and demands for stronger legal protections. In response, the government enacted the Criminal Law (Amendment) Act, 2013, which imposed stricter penalties for sexual offences, including rape and acid attacks. However, these reforms did not sufficiently address the unique vulnerabilities of children affected by sexual abuse. This gap highlighted the need for a dedicated legal framework, reinforcing the importance of the Protection of Children from Sexual Offences Act, 2012, in providing comprehensive, child-specific protections.<sup>4</sup>

Recognising the need for a specialised, comprehensive, and child-friendly legal framework to protect children from sexual offences, ensure proper investigation and trial, and provide stronger safeguards for victims, the Government of India enacted the POCSO Act on November 14, 2012.<sup>5</sup>

Despite existing legal protection, crimes against children have increased substantially recently. The National Crime Records Bureau (NCRB) reported nearly 150,000 cases in 2019, reflecting a 10% increase from 2018 and a 5% increase from 2017, rising from 129,032 cases in 2017 to 148,185 in 2019. Notably, cases registered under the POCSO Act surged, with a 22% increase in 2018 and a 19% increase in 2019, accounting for 32% of all crimes against children. Uttar Pradesh and Maharashtra recorded the highest numbers of POCSO cases. Child rape constituted approximately 55% of POCSO crimes, predominantly affecting female victims. However, the number of male child victims of penetrative sexual assault also increased, with a 25% rise from 2017 to 2018 and a further 17% increase in 2019.<sup>6</sup>

In response to the increasing incidence of child sexual abuse in India, the Ministry of Women and Child Development introduced the

Protection of Children from Sexual Offences (Amendment) Bill, 2019, which was enacted in January 2019. This amendment strengthened the POCSO Act by instituting harsher penalties for offences involving children, including the death penalty for aggravated sexual assault. The amendment also addressed the storage and distribution of pornographic material, thereby enhancing deterrence and promoting a safer environment for children. It received presidential assent on August 5, 2019, and came into effect on August 16, 2019.

#### LEGAL PROVISIONS FOR CHILD SEXUAL ABUSE BEFORE POCSO ACT

1. The Juvenile Justice Act of 1986, which underwent amendments in 2000 and 2015, was enacted after the UN adopted the Beijing Rules. Initially, it classified girls under 18 and boys under 16 as juveniles, but the 2000 amendment equalised the classification by defining all children under 18 as juveniles. It acknowledged juveniles in conflict with the law and children in need of care. Subsequent amendments in 2006 and 2011 added further clarity. The 2015 amendment introduced new terms like 'orphaned', 'abandoned', and 'surrendered', along with classifications of offences. Notably, it allowed the Juvenile Justice Board (JJB) to refer cases of heinous crimes by 16-18-year-olds to the Children's Court.<sup>7</sup>
2. The **Prevention of Child Marriage Act, 2006**, aims to prohibit marriages where either party is below 18 years for females and 21 years for males, replacing the Child Marriage Restraint Act, 1929. It includes provisions to prevent child marriages, protect the rights of affected children, provide relief to victims, and impose penalties on those facilitating such marriages. The Act seeks to deter child marriage and ensure the welfare of children.<sup>8</sup>
3. **Indian Penal Code 1860**: Section 375, Section 354, Section 377 and Section 372

were present. These IPCs tried children and adults alike.<sup>9</sup>

4. **The IT Act 2000:** This Act partially addressed early online risks concerning children. Section 67 B specially dealt with the online abuse of children.<sup>10</sup>
5. **The Goa Children's Act 2003:** The state of Goa was the first in India to bring in a child-specific law. Section 8 of this Act specifically defined and prescribed punishments for sexual assault, grave sexual assault, incest, etc.<sup>11</sup>
6. **The Commissions for Protection of Child Rights Act (CPCR), 2005:** Mandated the establishment of the National Commission for Protection of Child Rights (NCPCR) and the State Commission for Protection of Child Rights (SCPCR) to protect child rights across the country.<sup>12</sup>

Despite the existence of existing laws, children in India continued to face significant challenges, particularly due to their prosecution under adult-orientated legislation. This pointed out the urgent need for a comprehensive, child-friendly, and gender-neutral legal system, which led to the establishment of the POCSO Act 2012. The Act aims to address issues of compensation and rehabilitation for child victims.

#### STRUCTURAL AND PROCEDURAL FEATURES OF THE POCSO ACT<sup>5,13</sup>

1. **Legal framework:** The Act establishes a comprehensive legal structure for the protection of children from sexual offences. It defines multiple forms of sexual offence, including child pornography, and prescribes stringent punishments. The Act provides explicit definitions for sexual assault, sexual harassment, penetrative sexual assault, aggravated penetrative sexual assault, child pornography, and the use of children for pornographic purposes. It also mandates that punishments be imposed within a specified time frame.
2. **Framework for reporting and investigation:** The Act mandates the reporting of offences (Section 19), establishes special courts (Section 28), and prescribes child-friendly procedures throughout the process (Sections 24 and 33), including medical examinations (Section 27). It also provides for the creation of juvenile police units and child welfare committees, as well as the use of video conferencing. Cases must be resolved within 1 year of registration. The Act also includes provisions for punishing false reporting.
3. **Protection of identity:** Section 23 of the Act prohibits the disclosure of the survivor's name, school address, or home address or any information that could reveal the identity of the victim.
4. **Compensation and rehabilitation:** Section 39 provides for rehabilitation and compensation, with safeguards to prevent further victimisation of the survivor during the legal process.

#### Challenges

1. **Victimisation in consensual relationships:** The law does not recognise consensual romantic relationships between individuals under 18, often categorising girls as victims and boys as offenders. Studies indicate that a significant proportion of reported cases involve consensual relationships.<sup>14-16</sup>
2. **Presumption of Guilt:** The Act places the burden of proof on the accused, challenging the principle of presumption of innocence. The Gauhati High Court clarified that the prosecution must first establish foundational facts before this presumption applies.<sup>17</sup>
3. **Importance of medical reports:** Timely and scientifically rigorous medical examinations are essential, as insufficient evidence can result in acquittals. Comprehensive documentation is critical for securing convictions.<sup>18</sup>

4. **Neglect of accused examination:** While medical examinations of survivors are prioritised, accused individuals often do not undergo thorough examinations, resulting in the loss of crucial evidence.
5. **Refusal of medical examination:** High rates of refusal for medical examinations among older juveniles are frequently attributed to social stigma and fear, particularly in cases involving romantic relationships. Additional factors include child marriage and apprehension regarding examination procedures. Guardians often refuse consent due to concerns about the procedure and associated stigma.<sup>19</sup>
6. **Misuse of the POCSO Act:** The Act is sometimes exploited in custody disputes, leading to an increase in false accusations against fathers. In *N. Chandramohan v. The State* and *Suhara and Others v. Muhammad Jaleel*, courts observed a significant rise in fictitious cases filed against fathers under the POCSO Act.<sup>20</sup>
7. **Age estimation:** Both the POCSO Act and the Juvenile Justice Act outline procedures for age determination, with the Supreme Court emphasising the use of medical examinations when documentary evidence is unreliable. In *Vinod Katara v. State of UP*,<sup>21</sup> the Court clarified that sessions courts may order medical examinations, such as ossification tests, to determine the age of the accused. In 2023, the Court further stated that a “school transfer certificate is not acceptable for age determination of victims in the POCSO Act”.<sup>22</sup>
8. **Long-term rehabilitation:** While interim compensation provisions exist for child survivors, male and transgender victims continue to face significant disparities. Judicial decisions point out the urgent need for more effective implementation of compensation frameworks.  
Section 33(8) of the POCSO Act, 2012, and Rule 9(1) authorise Special Courts to grant interim compensation to child abuse survivors for trauma and rehabilitation. However, challenges related to long-term rehabilitation persist. Concerns regarding gender bias in compensation have been identified, with male and transgender victims reportedly receiving less financial support than female victims. Reliance on non-governmental organisations for claim processing further complicates access to compensation.<sup>23</sup> Judicial decisions, including *Karnataka State Legal Services Authority v. State of Karnataka*<sup>24</sup> and *Nipun Saxena v. Union of India*,<sup>25</sup> offer guidance on victim compensation, but procedural delays and implementation gaps continue to hinder the effective delivery of relief.
9. **Mandatory reporting issues:** Although intended to protect children, mandatory reporting can cause trauma to victims and create ethical dilemmas for professionals. Section 19(1) of the Act requires reporting of child sexual abuse cases, but this process may inadvertently harm victims’ emotional well-being and social lives. Professionals such as doctors and teachers face ethical challenges, particularly in cases involving underage medical termination of pregnancy. Effective mandatory reporting systems in countries like the US, Canada, and Australia include clear procedures, training, and protections for reporters. Adopting similar measures in India could enhance the effectiveness of the POCSO Act and reduce distress for those involved.<sup>26</sup>
10. **Consideration of mental age:** There are ongoing calls to incorporate mental age into the POCSO Act, particularly in light of legal challenges that reveal inconsistencies in the recognition of victims based on cognitive maturity.  
Activists advocate for the inclusion of mental age in the legal definitions under the POCSO Act to enhance survivor protection. In *Eera v. State of NCT of Delhi*, the Supreme Court ruled that an adult with a mental age below 18 cannot be considered a victim under POCSO. The case involved a 38-year-old woman with a mental age of 6–8 years, seeking the

application of POCSO provisions for appropriate legal safeguards and compensation. The Supreme Court, however, dismissed the appeal, stating that the Act's language should not be interpreted beyond its explicit scope.<sup>27</sup>

## CONCLUSION

The POCSO Act constitutes a significant legislative measure aimed at ensuring protection and justice for victims of child sexual abuse. In

addition to physical safety, the Act addresses the psychological well-being of affected children. However, concerns persist in cases where the accused is also a minor; particularly in situations involving consensual romantic relationships between minors. Further, challenges such as delayed medical examinations and inadequate consideration of victims' mental age require ongoing critical evaluation.

## REFERENCES

1. A familiar face: violence in the lives of children and adolescents – UNICEF DATA [Internet]. [cited 2026 June 16]. Available from: <https://data.unicef.org/resources/a-familiar-face/>
2. Breaking the silence. human rights watch [Internet]. 2013 February 7 [cited 2026 June 16]. Available from: <https://www.hrw.org/report/2013/02/07/breaking-silence/child-sexual-abuse-india>
3. Save the children's resource centre [Internet]. [cited 2026 June 16]. Study on Child Abuse: India 2007. Available from: <https://resourcecentre.savethechildren.net/document/study-child-abuse-india-2007/>
4. ResearchGate [Internet]. 2026 [cited 2026 June 18]. (PDF) The POCSO Act, 2012: A socio-legal analysis of its impact on child protection in India. [cited 2026 June 16]. Available from: [https://www.researchgate.net/publication/406223851\\_The\\_Pocso\\_Act\\_2012\\_A\\_Socio-legal\\_Analysis\\_Of\\_Its\\_Impact\\_On\\_Child\\_Protection\\_In\\_India](https://www.researchgate.net/publication/406223851_The_Pocso_Act_2012_A_Socio-legal_Analysis_Of_Its_Impact_On_Child_Protection_In_India)
5. 2466GI.p65 [Internet]. [cited 2026 June 16]. [cited 2026 June 16]. Available from: [https://missionvatsalya.wcd.gov.in/public/pdf/children-related-law/Protection%20of%20Children%20From%20Sexual%20Offences%20\(Amendment\)%20Act,%202019.pdf](https://missionvatsalya.wcd.gov.in/public/pdf/children-related-law/Protection%20of%20Children%20From%20Sexual%20Offences%20(Amendment)%20Act,%202019.pdf)
6. Status-of-POCSO-Cases-2017-2019.pdf [Internet]. [cited 2026 June 17]. Available from: <https://satyarthi.org.in/wp-content/uploads/2021/03/Status-of-POCSO-Cases-2017-2019.pdf>
7. 3980GI.p65 [Internet]. [cited 2026 June 16]. [cited 2026 June 16]. Available from: <https://cara.wcd.gov.in/pdf/jj%20act%202015.pdf>
8. child\_marriage\_prohibition\_act.pdf [Internet]. [cited 2026 June 16]. [cited 2026 June 16]. Available from: [https://www.indiacode.nic.in/bitstream/123456789/6843/1/child\\_marriage\\_prohibition\\_act.pdf?referrer=grok.com](https://www.indiacode.nic.in/bitstream/123456789/6843/1/child_marriage_prohibition_act.pdf?referrer=grok.com)
9. indian-penal-code.pdf [Internet]. [cited 2026 June 16]. Available from: <https://www.ncib.in/pdf/indian-penal-code.pdf>
10. it\_amendment\_act2008.pdf [Internet]. [cited 2026 June 16]. Available from: [https://www.indiacode.nic.in/bitstream/123456789/15386/1/it\\_amendment\\_act2008.pdf](https://www.indiacode.nic.in/bitstream/123456789/15386/1/it_amendment_act2008.pdf)
11. Microsoft Word - 19-Children's Act, 2003.doc [Internet]. [cited 2026 June 16]. Available from: <https://citizen.goapolice.gov.in/documents/10184/1794152/childrens.pdf/390f738b-fe8f-4582-a463-7a35e832af37>
12. The Commissions for Protection of Child Rights Act, 2005.pdf [Internet]. [cited 2026 June 16]. Available from: <https://missionvatsalya.wcd.gov.in/public/pdf/children-related->

- law/The%20Commissions%20for%20Protection%20of%20Child%20Rights%20Act,%202005.pdf
13. POCSO: Analysis through a grey lens [Internet]. 2024 September 30 [cited 2026 June 16]. Available from: <https://www.lawctopus.com/academike/pocso-analysis-through-a-grey-lens/>
  14. Shukla S, Tiwari P, Datta A, Agaarwal S, Goswami D, Galoria DD. Legal complexities of adolescent relationships: a study of protection of child sexual offence cases in India. *Cureus*. 2024 May 17;16(5):e60475.
  15. Bhoi SB, Shirsat KB, Meshram SK, Waghmare SA, Rizwan. Profile of sexual offences: a 4-year retrospective study at tertiary care hospital of Western Maharashtra [Internet]. 2025 Jul 19.
  16. PRS Legislative Research [Internet]. [cited 2026 June 16]. Law prohibiting sexual offences against children sparks controversy over age of consent. Available from: <https://prsindia.org/theprsblog/law-prohibiting-sexual-offences-against-children-sparks-controversy-over-age-of-consent?page=2&per-page=1>
  17. Desk CE. <https://www.casemine.com> [Internet]. 2020 [cited 2026 June 18]. Presumption of Guilt and Reverse Burden of Proof Under POCSO Act: Comprehensive Analysis of *Bhupen Kalita v. State of Assam*. [cited 2026 June 16]. Available from: <https://www.casemine.com/commentary/in/presumption-of-guilt-and-reverse-burden-of-proof-under-pocso-act%3A-comprehensive-analysis-of-bhupen-kalita-v.-state-of-assam/view>
  18. 15026-role-of-medical-and-forensic-evidence-in-poc.pdf [Internet]. [cited 2026 June 18]. Available from: <https://www.airo.co.in/publications/15026-role-of-medical-and-forensic-evidence-in-poc.pdf>
  19. Goswami O, Mahanta P, Sharma NC, Basumatari B, Baruah RR, Das A. An empirical study of informed refusal by sexual assault survivors under the Protection of Children from Sexual Offences (POCSO) Act at a tertiary care center in Northeast India. *Cureus*. 17(6):e86709.
  20. Manupatra Academy [Internet]. [cited 2026 June 18]. Available from: <https://www.manupatracademy.com/>
  21. *Vinod Katara vs The State of Uttar Pradesh* on September 12, 2022 [Internet]. [cited 2026 June 18]. Available from: <https://indiankanoon.org/doc/99399518/>
  22. *P. Yuvaprakash vs State Rep. By inspector of police* on July 18, 2023 [Internet]. [cited 2026 June 18]. Available from: <https://indiankanoon.org/doc/40473110/>
  23. Ahmed P, Baruah DA. Reviewing The adequacy of victim compensation under the POCSO Act, 2012, and rules, 2020. *Int J Environ Sci*. 2025 Jul 17;1701–11.
  24. *Karnataka State Legal Services ... vs State of Karnataka* on February 28, 2025 [Internet]. [cited 2026 June 18]. Available from: <https://indiankanoon.org/doc/74070150/>
  25. *Nipun Saxena vs Union Of India* on December 11, 2018 [Internet]. [cited 2026 June 18]. Available from: <https://indiankanoon.org/doc/143288964/>
  26. Sadiq SS, Rai P. Analysing the role of mandatory reporting under the POCSO Act: implications for legal and social systems. 2025;6(6):11336–9.
  27. *Ms Eera Through Dr Manjula ... vs State (Govt of NCT Of Delhi)* on July 21, 2017 [Internet]. [cited 2026 June 18]. Available from: <https://indiankanoon.org/doc/69624144/>