



# EXPLORING THE INTERSECTION OF CHILD PROTECTION: AN ANALYTICAL STUDY OF THE POCSO ACT AND JUVENILE JUSTICE ACT

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**Abstract--** The objective of this paper is to explore the dynamic link between two Key legal enfranchisements in the Indian law which consists of “The POCSO (Protection of Children from Sexual Offences)” and “the JJ Act”.

Sexual abuse of children is a global problem that affects millions of kids without the question of being about a boy or a girl. The number of cases of child sexual abuse in India has considerably increased last year alone, and a number of them has been reported which has been recently implemented under “The Protection of Children from Sexual Offences (POCSO) Act of 2012”. The increasing number of cases leads to consideration of the challenges in recording and changing this law to align with modern requirements and challenges. Consequently, it is rather far-reaching legislation that provides the necessary protection against crimes such as sexual harassment, sexual misconduct, and pornography. But, then again, “the POCSO Act and its intersection with the JJ Act” and the status of the victims are crucial to effective child protection through the framework as well.

The main purpose is to clarify the labour division and the future field for the discord between the statutes concerning the fulfillment of children's rights and interests. Legal elements statute, judicial precedents, and legal scholar discourses are studied through this study to determine which of these existing mechanisms are adequate in effectively addressing the challenges embedded in child protection. Finally, the article analyzes the real dimensions of the legal provisions and procedural rules recommended under the POCSO Act and the JJ Act, particularly about the investigation, prosecution, and rehabilitation of minor offenders and child victims of sexual crime. Through the analysis of various nuances of integration of these legal instruments, the purpose of this paper is to provide principals of the law, advocates, and stakeholders the opportunity to refine child protection measures to make the holistic justice process for the disadvantaged kids in the Indian legal system more effective more.

**Keywords:** POCSO, JUVENILE JUSTICE, CHILD SEXUAL ABUSE, NCRB, IPC, SEXUAL ASSAULT, SEXUAL HARASSMENT, PORNOGRAPHY, ETC.

## INTRODUCTION

The government through the “Protection of Children from Sexual Offences (POCSO) Act was enacted in 2012” to “safeguard children and provide them legal protection against instances of sexual attacks, harassment, or misuse”. In addition, it enumerates varieties of sexual crimes and denounces them with maximum punishment like life imprisonment for notorious offenders. The Act also establishes a child-friendly procedure, i.e., for reporting, evidence recording, investigation, and hearing largely through the work of special courts. The compulsory reporting of sexual assault acts is followed which implies that any individual who is acquainted with the acts even remotely fails to report the matter to the authorities bears legal responsibility. During the investigating process, police perform an important role as child protectors, ensuring that the kid receives immediate care and protection, such as medical treatment and shelter placement. Special Courts hold in-camera trials to safeguard the child's identity and provide a child-friendly atmosphere during testifying. The Act requires that cases be resolved within a year and offers compensation for sexually abused children's medical care and rehabilitation.

Recognizing “practically every known kind of sexual abuse against children as a serious violation, the Act enlists the help of several state authorities”, including the police, court, and child protection apparatus, to ensure that victims get justice. The Act encourages victims to report abuses and seek restitution by establishing a child-friendly legal procedure, which acts as an effective deterrence to future



offenses. The Act encourages active engagement by state governments and requires the development of recommendations to aid children throughout the trial and pre-trial phases. These rules are based on the Central Government's Model rules, ensuring uniform application throughout states while addressing individual requirements.

In essence, the POCSO Act of 2012 provides a comprehensive legislative framework for combating child sexual abuse, with a focus on children's safety and well-being at all stages of the judicial process. The utmost important part of law the Juvenile Justice Act (JJA) was created to handle the main concerns about juveniles. The most important objective of the JJ Act is to ensure and give effective care, protection, and rehabilitation of children. These kinds of children are those who are prone or have been once experienced to the CSA. This Act was 1<sup>st</sup> passed in 1986 and then amended several times in 2000 and 2015 respectively. Further, the Act also describes several procedures for the protection and care of children who are in legal trouble as well as those who need protection at the utmost level like juveniles who are prone to it.

One of the main objectives of the Juvenile Justice Act is to improve juvenile welfare by creating an effective framework for their appropriate upbringing, safety, and rehabilitation. This Act places a strong emphasis on the best interest of the child premise, making sure that young offenders get respect and possibilities for reintegration into society.

One of the most important features of the Act is that it provides the creation of Juvenile Justice Boards (JJBs) at the district level which will be helpful and can be entrusted in deciding cases that involve minors in conflict in terms of sexual abuse. The creation of Juveniles is one of the main features of the JJA. These boards oversee to make sure that trials are swift and equitable while taking into consideration the unique circumstances of each young offender.

In addition, the Juvenile Justice Act provides the mechanism for the creation of special and observation homes which will help to rehabilitate and reintegrate young offenders into society to go back to the mainstream and contribute as a human resource holistically. These homes are also facilities and are designed to provide adolescent offenders with a caring atmosphere and educational, career, and counseling opportunities to aid their rehabilitation.

The JJA Act further serves the objectives and needs of children who need care and protection including those who are orphaned, abandoned, or the victims of abuse or exploitation. This Act also protects juvenile offenders who want to change themselves. It describes various steps for their protection, care, and recovery, stressing the value of family-based care wherever it is feasible which will bring the children in a friendly environment.

When we consider all things than “the Juvenile Justice Act is essential to preserving the rights and welfare of minors who are in trouble with the law as well as those who need care and protection”. This aim can be only achieved by offering several programs and measures for rehabilitation and reintegration of the child. It further also aims to provide the young future of the country an opportunity and give them the chance to live happy, productive lives as contributing members of society.

## LITERATURE REVIEW

POCSO Act,2012 comes forward as a monumental undertaking to address the abysmal problem of sexual abuse of children in India. This enactment is a matter of great concern for authorities as child sexual abuse is reaching an alarming rate and thus, this law is established to offer a comprehensive legal framework for child protection, investigation, and prosecution. On the other hand, “the Juvenile Justice (Care and Protection of Children) Act, of 2015 is another legislation” that is equally important as it aims



to strengthen child rights through care and rehabilitation and this includes the children who have conflicted with the law.

Major academic discussions on the act have significantly been centered on its legal provisions, procedural mechanisms, and its role in the increase and reporting of child sexual abuse offenses. For instance, (insert relevant studies here) have illustrated the tremendous role that the POCSO Act has played in making the process of attaining justice easier for victims, enlightening people about Children's Rights, and augmenting the response capacity of the institutions that relate to such offenses. Nevertheless, there are quite some spaces in the way, that touch the operation of the Act with others, especially the Juvenile Justice Act, as well as its holistic effectiveness, to keep all the rights of children. The overlap of the provision of the POCSO Act and the Juvenile Justice Act requires arrangements with challenges and opportunities in child protection in India. While both acts aim at the same ultimate goal of ensuring the well-being and rehabilitation, of children, tensions still may occur on the issue of how to treat and rehabilitate youthful offenders, in particular that of a sexual nature. For instance, some scholars (specify which scholars) have stressed the need for a complex approach to juvenile justice, by creating an equilibrium between the sense of responsibility and rehabilitation to make sure that repeated offenses are not committed and that the reintegration of young offenders into the society was achieved. Besides, child protection policy effectiveness under this legislation is contingent upon various factors such as the case investigations and interview techniques quality, the availability of legal aid, victim support services, and the economic and social context. The disclosures of (certain studies made) like (insert relevant studies here) point out the multi-sectoral collaboration and community engagement in the implementation of stronger child protection mechanisms and solving the underlying risk factors that are linked to child sexual abuse.

## RESEARCH METHODOLOGY

The research espouses an analytical paradigm to unravel the POCSO Act and the Juvenile Justice Act interconnectivity with a particular emphasis on elaborating on their synergies, frictions, and practical effects on the child protection system in India. The methodology encompasses the following steps:

1. Literature Review: An extended set of thorough literature reviews will be undertaken which will include, academic studies, legal precedents and, policy documents and therefore, will add to the theory framework and contextual understanding of the chosen subject.
2. Data Collection: As secondary data, sources contain statistical reports coming from the nation's National Crime Records Bureau (NCRB), and other sources, will be analyzed to assess the number of child sexual abuse cases concerning the POCSO Act. Besides doing quantitative research, which will include case studies and qualitative interviews with stakeholders, we may also acquire qualitative data to provide insightful knowledge into the grassroots implementation of these Acts and the challenges faced.
3. Statistical Analysis: A quantitative analysis of the NCRB data is devised to determine the variation in child sexual abuse cases before and after the introduction of the POCSO Act. Statistical tools like regression analysis could become extremely effective instruments in the struggle to find the factors that most influence the rate of POCSO offenses, like economic and everyday life conditions.
4. Case Studies: To drill deeper into the implementation of these two Acts, key jurisdictions in which variations have been highlighted the best practices have been highlighted and challenges met in the adjudication of child abuse cases.
5. Policy Analysis: Legal provisions and process-related provisions stipulated under the POCSO Act and the Juvenile Justice Act shall be critically examined from the point of view of how the law can



provide holistic justice to teenage persons both victims and offenders. We will be making the comparative analysis with the international best practices and standards, it will identify the potential regulatory gaps and thus policy recommendations and capacity-building initiatives will be forwarded.

6. Ethical Considerations: Ethical challenges including confidentiality, informed consent, and the protection of the participants' rights will be addressed during the research process. Seeking approval from authorized ethics committees is essential whenever it is permissible.

The multidisciplinary approach which covers the field of legal studies, logical modeling, and qualitative research methods brings together insights from different experts. The study then explores the complexities of child protection in the Indian legal system aiming to contribute to informed policy development and reform advocacy.

### EVOLUTION OF POCSO ACT AND JUVENILE JUSTICE ACT

The enactment of the POSCO-Act 2012 in 2012 for the reason that a surge was noticed in cases that had to do with child sexual abuse and the lack of strong statutory protection. Generally, the data recorded by the NCRB shows a drastic increase in crimes affecting children which range from 22,500 in 2008 to 33,000 in 2011<sup>1</sup>. Besides, in 2007 it was reported by the Ministry of Women and Child Development that there were at least worse, over 50% of the children who participated in the survey had to some level gotten abused sexually.

"In the case of **Sakshi Vs. Union of India**",<sup>2</sup> the issue of the absence of such a law relating to children came to light so there was an urgent need for such legislation. There was a need for the implementation of compact laws that could prevent children from such types of abuses. Consequently, the Supreme Court directed that the appropriate redress was created for those who commit sexual trade with adolescents. Concerning the "UN Convention on the Rights of the Child,"<sup>3</sup> the Indian government as a signatory then had to address this goal by the enactment of particular laws". The 2010 Act and its amendments were enacted in 2012, and the president sanctioned it.

In the past, His Excellency Abraham Lincoln asserted that "a child is a person who shall continue and thereby take over what all of us [humans] have done... the destiny of mankind is in the hand of that child." By this statement, he was to convey that children are the future of a country as they are the human resources for the development of the country. So, this type of thing needs to be curbed on an urgent basis.

The crisis of teenage deviance has crossed through the ages, manifesting everywhere on earth in various societies, ranging from primitive to complicated societies, whereby disintegration and conflict are unavoidable if social relationships fail. In the developing world especially those falling within the Third World bracket like India, juvenile delinquency poses a daunting scenario.

The common trend and statistical data of the illegal activities and offenses under the INDIAN PENAL CODE cases done by minors tend to be on the rise and decline phenomenon. Although the numbers

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<sup>1</sup> "Manik Tindwani, POSCO ACT: An Analysis, Law Foyer (April 12, 2024, 6:45 PM), [POCSO 2012: A Critical Analysis | LawFoyer](#)"

<sup>2</sup> "Sakshi Vs. Union of India, Writ Petition (crl.) 33 of 1997"

<sup>3</sup> "Anonymous, Sakshi v. India and Ors., Child Rights International Network (CRIN) (April 12, 2024, 6:43 PM), <https://archive.crin.org/en/library/legal-database/sakshi-v-india-and-ors.html>"



change from year to year, an overall trend of a rise in the proportion of serious crimes against the JJA filed from 2003 to 2013 is evident which shows there was a need for effective legislation.<sup>4</sup>

The challenge of delinquency among children is shown versus various causes but not limited to poverty, hunger, low self-esteem, frustration, and a sense of detachment from society with contributing socioeconomic and psychological factors. The poverty, poor education, family friction, and emotional torture, as well as substance abuse, ru-urb migrations, failure of the family system, degraded education, abuses from parents, etc, are the contributing factors.

#### FEATURES THE POCSO ACT

- Notably, aside from rape as defined by the IPC, “sexual offenses against children are recognized under the POCSO Act”. The Act defines and penalizes “sexual assault, aggravated sexual assault, penetrative sexual assault, sexual harassment, and hiring a juvenile for pornographic purposes”.
- In addition, the Act's processes are kid-friendly. When a police officer receives a complaint, they must advise the parents and kids of their legal rights. The child's statement has to be recorded in their home or another location of their choosing. If the magistrate determines that the statement suffices, there is no need for a medical examination.
- The POCSO Act expedites the trials by requiring their completion in a year. <sup>5</sup>The Act designates Special Courts only for trial purposes. The kid victim's identity is kept private. Strict penalties are prescribed for the infractions, ranging from a minimum of three years to life in prison. For sexual offenses against minors, the Act supersedes the IPC. The POCSO Act is a strong piece of law because of its provisions for expedited trials, child-friendly processes, and severe penalties.

#### FEATURES OF THE JUVENILE JUSTICE ACT

- Widest definition of the "child in need of care and protection": Under the new Act, the term now includes “children who are found working against labour laws, who are in imminent danger of getting married before reaching legal age, or who live with someone who has threatened to harm, exploit, abuse, or neglect them or violate other laws, or whose parents are unfit to care for them”.
- CWC which has been disregarded as the the final authority in cases that concern about the children in need of care and protection. Further, surpassing that the DM will handle complain and grivainces on behalf of the CWC.<sup>6</sup> Any person who has the relation either by blood or LR with the to the child may file a petition in the DM's Court. The duty of DM will be to review the case and issue any necessary orders accordingly.
- Inquiry procedure: Rather than just looking into children for whom production reports are received, the CWC will henceforth look into any kid who is brought before it. Children who have been abandoned or became orphans are now included in the process.
- A comprehensive definition of "adoption" is given: Children's rights are now acknowledged and an elaborate description of adoption has been supplied.

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<sup>4</sup> “Rohit Pradhan, Critical Analysis: Juvenile Justice (Care and Protection of Children) Act 2015, Lexforti (April 12, 2024, 6:31 PM), <https://lexforti.com/legal-news/juvenile-justice-act-2015/#H>”

<sup>5</sup> supra

<sup>6</sup> supra



### CAUSES OF CHILD ABUSE

- One of the main causes of society's ignorance about sexual assaults against minors is the taboo around talking about sex and sexuality.
- Abusers may have mental health issues and believe they are children themselves, which may lead to the horrible crime of CSA.
- The juveniles who have no one to take care of or who have certain impairments are more susceptible to CSA because to a lack of protection.<sup>7</sup>
- enticing underprivileged kids with false promises of cash, then taking advantage of them.
- Because most of the time the perpetrator is known to the kid, according to several studies and surveys, Indian culture places a high value on trust between the victim and the offender.

### CAUSES OF JUVENILE DELINQUENCY

Diverse viewpoints on the reasons behind delinquency, including explanations based on living in a slum, broken households, seeing bad films, moral deprivation, etc., fall short of giving us a whole picture of juvenile delinquency.

- A number of variables contribute to the development of delinquency.
- Not a good business.
- Mental disputes
- Unstable teens
- Unsatisfactory recreation
- Social susceptibility
- disputes based on emotions.
- physical state.
- movies.
- There have been several unwanted circumstances at home like arguments, drunkenness, the immorality activities, unemployment and poverty, step relation harassment, etc which leads pronement of CSA.<sup>8</sup>

### GENERAL PRINCIPLES FOR THE POCSO ACT OF 2012

- a) The right to life including survival- Every child has a claim to the right to life that encompasses protection from all kinds of maltreatment and languishing. These include physical, psychological, mental, and emotional abuse and cruelty. Such groups of people also have the right to the development of friendly relations with others and a reasonable living condition favorable for their health, mind, emotions, and spirit. In the situation of child abuse and other such traumas, the effort of the community should be geared towards “facilitating healthy development.”
- b) The best interests of the child - Every single child deserves the major favor of having their best interests protected as the priority. This manifests in terms of security and a space for healthy cohabitation. Therefore, the child's protection also includes not only providing him with enough attention at the pre-trial stage since he is one of the victims/witnesses but also allowing him to participate. Secondary victimization is the instance where the victim gets into trouble not to blame

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<sup>7</sup> “Anonymus, Child Sexual Abuse Laws in India – The POCSO Act, ipleaders (April 11, 2024, 7:02 AM), [POCSO Act and Child Abuse - Bail under POCSO Act \(ipleaders.in\)](#)”

<sup>8</sup> supra



the criminal behavior but put blame on the institution and the society due to their reactions towards the victim.

- c) The right to be shown dignity and compassion- addressed to child victims, the human rights standards and principles should be observed in all stages of the justice procedure: taking into account basic individual characteristics (age, gender, special mental and physical abilities) as well as other special individual circumstances, such as age, gender, disability, and maturity levels of the person, while keeping the impossibility to violate the physically, sensorily and Due to child privacy, minimizing interference in its life is very important and stating information only upon necessity is highly recommended. Such a procedure should be aimed at making the number of professionals interviewing children the least possible. Moreover, the standards of gathering and use of evidence must be very high to ensure that all processes are impartial and just. If possible, interviews, examinations, and other commensurate investigations should be accomplished by seasoned professionals, with due respect and courtesy in an atmosphere based on the welfare and better understanding of the child within child-friendly surroundings. Furthermore, all dialogues should be bilingual or in the language that the child can understand. Medical examinations should be avoided unless essential for investigation. Then, the inquiry must be conducted in a manner favouring the child and without unnecessary invasions.
- d) The right of children to be protected any sort of discrimination - The justice system and the support services of child victims and witnesses and their relatives should be relevant about age, bet, preference, understanding, gender, sexual orientation, ethnicity, culture, religion, language, social status, caste and s economy ability and capacities of the child. Specialized training will let professionals learn how to work with these differences<sup>9</sup>. Age is irrelevant to the fact a child is a witness to a justice process. Thus, a child in a criminal case should be considered a competent witness if his or her age is at least twelve and also if his or her maturity is enough.
- e) Right to special cautionary measures- Children are vulnerable to repeated victimization since they do not understand how to protect themselves; they do not have confidence in a situation in which they cannot confront an adult. One of the preventive measures to protect children from abuse could be regarding references and completing criminal history assessments of the workers, possibly parents of children, who are likely to come into contact with children, such as teachers.
- f) The right to be informed – Children who are victims or witnesses have the right to be informed about support services to which they are entitled, and they also have the right to be informed of legal proceedings organization and their potential involvement in such proceedings, these rights are of utmost importance to protect children. It is also vital they are given details about matters like the progress report on the case, session programming, the code of conduct, judgments made, and the offender's situation.
- g) The right to be listened to and to express fears, wishes, concerns along ideas - Every child should be heard regarding seriously concerning issues in which CSA and related offenses are involved. This grants them the privilege to take an active part in the different structures such as being informed to make informed decisions, to express their opinion, to have their consideration heeded, and to be the primary or joint decision-maker as the offenses are being perpetrated against them. To avoid disappointment in the child's requests and wishes that could not be met by the parental party for some right causes, these causes should be clarified to the child in a straightforward manner that

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<sup>9</sup> “Anonymus, Model Guidelines under Section 39 of The Protection of Children from Sexual Offences Act, 2012 , MINISTRY OF WOMEN AND CHILD DEVELOPMENT (April 13, 2024, 2:34 PM), [POCSO-ModelGuidelines.pdf](https://www.pocso.gov.in/ModelGuidelines.pdf) ([wcd.nic.in](http://wcd.nic.in))”



could be easily understood by children. In the national context, the extent of details that should be verified is a question of the national law but the respect for the aspects of the child's narrative that the child deems significant but which may not be able to be used as evidence is imperative.

- h) The right to effective assistance - It is necessary to provide the children with the required assistance they must reach the level needed in their legal process. Such support services can also be provided to the children, including financial aid, legal counseling, health, social, and educational services, as well as other support services that are critical for the child's healing, justice, and reintegration process.
- i) The issue of privacy rights - To this end, the privacy and identity of a child must be guarded throughout the preliminary stages and trial. Disclosure of any information concerning the scary little child who is a victim or a witness, particularly in the media, can be dangerous for the kid, having brought about heavy shame and humiliation, as well as making it difficult for kids to disclose in the future and causing deep emotional wounds. Child abuse victims and witnesses need to be protected; they deal with intrusion and exposure in unconscionable ways. Privacy can be regulated through, for instance, spotlighting the facts and information disclosure and quarantining the general public from courtrooms.
- j) The right to be protected from torment and delay during justice procedure - All the while, child victims can be tortured psychologically, or the alleged victims are ostracized and called liars by the public, it also follows that when they report a crime, await the trial set, and testify in court. While a divorce can be and sometimes is stressful to children, the hurt that children go through can be reduced.
- k) Right to compensation - Victims of children may receive compensation for relief and rehabilitation provided during the trial or after its completion. The procedures for seeking and applying compensation must be easily accessible and sensitive to children, and victims may receive compensation for financial losses, damage, medical and psychological support, and continued suffering.

#### **“General principles of care and protection of children under Juvenile Justice Act”**

General principles that should be followed under the Juvenile Justice Act (“For protection and welfare of children)

- a) “Principle of the Best Interest of the Child” – “Every decision concerning the child should be made with the child's best interests in mind, ensuring the fulfillment of their basic rights and needs, including their character, social well-being, and physical, emotional, and academic development”.<sup>10</sup>
- b) “Principle of Presumption of Innocence” - Throughout the process of justice and protection, the presumption of innocence should be upheld, from initial contact to alternative care, including aftercare of the child. Any criminal behavior by a child is done due to the influence of society and adults upon them and shall be understood within the context of survival, situational circumstances, or under the influence of adults or peer groups.
- c) “Principle of Right to Preserve Privacy and like, Confidentiality” - Each child has like, the right to privacy and confidentiality throughout the legal process. No info identifying the juvenile should be disclosed unless necessary for their protection and well-being.
- d) “Principle of Equality and Non-discrimination”-The Children should not discriminate on the basis of their sex, caste, ethnic origin, native race, or whatever degree of disability they possess. Each and every child must have an equal chance along with access and the treatment adjusted accordingly.

<sup>10</sup> “*Sri Vaishnavi.M.N.*, All About Juvenile Justice Act, ipleaders (April 13,2024, 8:00 PM) [All About Juvenile Justice Act - iPleaders](#)”





The protective measures that must be taken so that the children should not be judged or their parents, guardians, or relatives' temerity will have to be sufficient in number. These activities will serve as good steps in the holistic development of the child. From learners of different ages, the attendees in a museum span a wide range.

- e) Principle of Participation - The children should be given the chance to participate in the activities and developmental processes. Obviously, “the children capable of forming their views have the right to express themselves freely in matters of objectively affect them”. The opinion of the child should be considered important according to how old they are and how mature.
- f) The Principle of Institutionalization is the final measure for a situation where a family can't care for the child due to disability or other, there is no caretaker for the child, the government should have other measures in place for them.
- g) Diversion approach principle - Diversion allows non [re-offending] delinquents a second chance that is not the norm in the formal criminal justice system which is often too stringent, impulsive, and passive and may not be suitable for minors. The Juvenile policymakers always have the very first contact between minors and juvenile justice boards or courts. Also, in some of the cases, issues can be resolved based on the rights of the child, community protection, and victims by excluding the legal process of the juvenile court.
- h) Principles of natural justice – This principle itself stipulates that any child should be treated fairly and equitably. There shall be “no discrimination regardless of his or her race, ethnicity, color, gender, language, religion, political or other views, national origin, ethnic origin or social origin, wealth or any status”.
- i) Principle of Family Responsibility - When a juvenile is questioned by the police or taken to court for trial, his parents or legal guardians must be involved and should always remain with their child. They should be confined by police officers, investigators, or courts that they are entitled to participate in a normal proceeding and it is in their best interest to do so.
- j) Principle of Dignity and Worth - The principle of treatment of the child is that which the child holds for his dignity and worth. All juveniles are born equal and free, regardless of their origin, race, or gender, they receive the same dignified treatment as everyone and are retaliated to basic human rights. This can be properly provided by owning a sense of respect toward them and honoring them as people having inherent dignity.
- k) The Law on State Compulsory Care and Protection shall ensure the safety of every child, without being selective or taking the role of the parents away from them while justifying restrictive measures and procedures with the care and protection that is expected from the state.
- l) The principle of no use of vulgar language - The definition specifies not to use strict infamous words that may stigmatize the teens. It advises against the use of the terms like arrest, remand, charge sheet, trial, prosecution, warrant, summons, conviction, prisoner, deserter, or confinement as it serves the matter of secrecy and propagates a negative image.
- m) The fundamental principle of non-waiver of its rights - The Constitution of India doesn't allow the wavering of any rights. It shows clearly in the juvenile justice system, where Juvenile Justice Act rights cannot be waived even under the supreme authority by any juvenile, their guardian, or anybody with justification for doing so. The fact that the exercise of fundamental rights is not exercised statistically does not mean that the rights have been abandoned.
- n) Sustenance Principle and Restoration of the Parent - States should take no action of disintegrating a family without the agreement of the parents. In some conditions where the separation from a parent



can be preferred to the child's welfare, like in cases that involve physical abuse or neglect for example, the decision must be made through legal processes.

## KEY PROVISIONS OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT

The "Protection of Children from Sexual Offences 2012". POCSO Act Definition POCSO was passed to protect minors from sexual assault, sexual molestation, pornography, and related offenses. Below is a summary of offenses and penalties under the act:

### 1. Penetrative Sexual Assault and Punishment

**Section 3:** penetrative sexual assault is construed in Section 3 as follows: "a person commits an offense if he inserts any object or part of his body into a child's vagina, mouth, urethra, or anus; or he makes the child do so with him or another individual. It includes using one's body to push against a child's vagina, manipulating any part of a child's body to obtain penetration, and sexually applying the mouth".

- In **Section 4**, the penalty for penetrative sexual assault if convicted, is a minimum of 7 years imprisonment which can be extended to life imprisonment and also be fined in a certain amount. Among the range of principles, mandatory sentencing for sexual assault has been considered the main idea to strengthen the punitive aspect, which is not very effective in terms of crime prevention techniques and harm to innocent people.

### 2. Sexual Assault and Penalty

**Section 7** states sexual assault is a deliberate motion either carried out or attempted to attain the sexual motive with regards to touching the child's genitals, anus, or breasts and the same can be said if the child is made to touch those parts of the others, either physically or remotely.

**Section 8** provides that sexual abuse is punishable and the imprisonment range from 3 to 5 years or even a fine may be imposed.

**3. Sexual Harassment and Penalty** Sexual harassment as a sanction is a problem that various workplaces have to struggle with.

- **Section 11** mentions sex offenses as any sexually willing act to a minor, which may include showing an indecent manner, or using pornographic material and making sexually explicit statements.
- Under **Section 12**, a person who harasses by using indecent language, making an unwelcome gesture, or any other intimidating practice is to be imprisoned for up to 3 years along with a fine.

### 4. Aggravated Sexual Offences

- The Act accepts the forms of aggravated penetrative assault and sexual assault on the other hand respecting when it is committed by certain individuals like police officers, public servants, or armed personnel.
- Aggrieved penetrative sexual assault is covered in **Section 5**, while the punishment of imprisonment for 10 years that can be extended for life is included in Section 6 which also has a provision of paying the fine.
- **Section 9** –It is the aggravated sexual assault and its penalty under section 10 is a minimum of 5 years imprisonment which may extend to 7 years, and shall be responsible for fine.<sup>11</sup>
- The various kinds of offenses of a sexual nature and aggravated sexual assault are also covered in the law. The person convicted of a typical sexual assault shall go to prison for five years with possibly more just punishment and fines payable.

<sup>11</sup> supra



**5. “Use of Children for Pornographic Purposes”** Like in the exploitation of children for purposes of obscene levity.

- Section 13 of this Act bans the exploitation of children for sexual gratification. The exploitation's medium may be all kinds of media - children are prohibited to be engaged in sexual acts or pornographic materials are to be produced.

- According to section 14, imprisonment or fining of those who create, teach, transmit or traffic pornographic materials concerning children are provided

**6. Mandatory Reporting of Incidents** This track report is now required as one of the conditions by the a uthority.

Sections 19 and 20 deals that it is the duty of the family members and community members to inform the “Special Juvenile Police Unit” or “Local Police Unit” accordingly of any possible child sexual abusive knowledge or suspicion.

**7. Special Provision for Recording Victim's Statement (Section 24)**

- The Act ensures that a child victim's statement is recorded in a location of their choice and comfort, with precautions taken to prevent contact with the perpetrator.

- Also it has been dealt with in the law that a police officer who is going to lodge a report must not be in the police uniform. Furthermore, no child shall be detained by the police officer at night.

**8. Special Courts, Powers, and Evidence Recording Methods**

- Special courts are established by the State Government for expeditious trials (Section 28).

- These courts have the authority to try offenses under the POCSO Act concurrently with other offenses (Section 29).

- The burden of proof lies with the accused (Section 30), and the Act presumes the guilty mental state of the accused.

- The court may take cognizance of offenses based on a complaint without the accused being committed for trial (Section 33).

**9. Protection of Child Victims**

- Child victims are provided with care and placed in protective homes within 24 hours of reporting, based on documented concerns (Section 29(5)).

- The court ensures a child-friendly environment and may allow the presence of trusted individuals during proceedings.

## KEY PROVISIONS OF THE JUVENILE JUSTICE ACT, 1986

The word "minor" was first used in international law in 1985 by, post ratification of the “United Nations Minimum Rules for Administration of Juvenile Justice”. The JJA of 1986 which was passed, that brought about a significant shift in language that affected domestic law.

The rules in Assam and Himachal Pradesh are implemented, no institution has been established to address the same issue, and Nagaland does not even have a child-specific statute. In the case of other Indian states, 236 out of 334 districts have implemented the Children's Acts. By the middle of the 1980s, 442 districts had adopted children's legislation, up from 444 at the beginning.

The Juvenile Justice Act of 1986 was implemented by notice in all places where it was extended as of October 2, 1987. The Juvenile Justice Act of 1986 satisfies the requirement for standard legislation that must be implemented throughout time for juvenile justice across the nation. Moreover, there are several States that lack both national consistency and legislation pertaining to fairness among the sixteen. The Juvenile Justice Act of 1987 is essentially an exact replica of the Children's Act of 1960 with a few



insignificant alterations and changes that have been made respectively. A few of these modifications are listed below:

The words training and development have taken the place of the terms maintenance, social assistance, training, and education in the preamble, marking a substantial symbolic semantic shift. In the same vein, the word kid has taken the role of the minor phrase. The most charitable and suitable decision-making about specific matters pertaining to the trial's guidelines.

New definitions of an “appropriate individual, an appropriate institution, and a safe environment may be found in Section 2 of the Juvenile Justice Act of 1986”. The definition of a neglected child was enlarged to include a youngster who was or was likely to be harmed or used for illicit, immoral, or unwarranted advantage which was a step to make the broader definition of the Act which was one of the positive development.

The Juvenile Justice Act of 1986 also established advisory committees, appointed visitors to juvenile prisons, and established funding for social welfare and juvenile rehabilitation under sections 52, 53, and 54.

#### **KEY PROVISIONS OF JUVENILE JUSTICE ACT, 2000**

With the purpose of make the whole article consistent with the “aim which is enshrined in the international conventions such as the UN Convention on the Rights of the Child (CRC), the Beijing Rules, and the 1990 Rules”, the Indian parliament tried to incorporate only those principles which are consisted with itself into the 2000 Act. The “Supreme Court of India has poignantly stated that this juvenile legislation was done to fill the gap in the treatment of children who are under 18 years of age and in accordance with a different legislative position as compared with adults”. The Juvenile Justice Act of 2000 not only makes it essential for the reformation of juvenile offenders, but also focuses of this over the defendant and the prosecution, which courts habitually use. For effective implementation of this declaration, not only is there a need for a shift in the perception of people in positions of authorities but also for this shift in mindset to take place, the realization of its objectives will be more complex.

#### **Application of the Act**

In the case “**Jameel v. the State of Maharashtra**” the apex court for addressing the apprehensions among the people regarding the Juvenile Justice Act 2000. As such, there was no need to invoke the Act since the offense of unlawful sexual intercourse, 1989 was before the Act came into effect, and moreover the appellant was not interfered with, but is known-16 years old at the time of the offense.

Upon its enactment in 1986 of JJA, the policy of considering an individual 16 years or younger, or a girl 18 years old or younger, as a minor, this statute became gender-neutral. It fails to account whether even when the Juvenile Aid Act came into effect in 2000, the Act will be applicable to the accused who was already 18 years of age while the incident occurred. The consequent being that the legal exercise is retroactive. More crucially though, as the defendant was 16- year old: a juvenile under age laws of 2000 is of no consonance.

#### **Non-applicability of Other Legislation**

In *Raj Singh v. State of Haryana*, the Supreme Court held that juvenile justice laws should be applicable in juvenile proceedings irrespective of the nature of the offense committed. A juvenile may enter a plea at any stage, even subsequent to being found guilty by the trial court.

#### **Juvenile Justice Board**

In addition to delineating the establishment and composition of the board, Section 4 of the Juvenile Justice Act of 2000 empowers the state government to constitute a juvenile justice board for a district or group of districts. In the event that “Section 5(2) is not adhered to, a member of the board may preside



over a case involving a minor who has committed an offense. Section 6(1) vests the Board with exclusive jurisdiction to adjudicate all cases under the 2000 Juvenile Law in Conflict with the Law Act".<sup>12</sup>

### **Juveniles in Legal Trouble**

For the purpose of observation, designated observation homes must be established in each district has been created for the accomodation juveniles. Special shelters must be established to house and rehabilitate these juveniles; this suggests that juvenile justice boards in each district or group of districts have previously issued orders in similar circumstances.

### **Procedures**

The I.O must not detain any juvenile to lockup or jail for any reason. After receiving the report, the Committee which can be of any police officer, special juvenile police unit, or designated police officer must conduct an investigation in accordance with Section 32 and direct the child's placement in an observation home for expeditious investigation. The Committee may authorize the child protection officer or worker, either independently or in response to a report, to conduct the investigation.

### **Observation Homes**

The state government can setup and administer the shelters for children belonging to the most vulnerable category of the society in every district as well as collection of the districts on their own initiatives or working in partnership with any or more voluntary organizations. The homes are responsible for the nurturing, education, training, correction, and follow-up care of the children who were wronged during the trial.

The regulation of these services are put in place by the state government which may be through subsidies or others locally started ones. On the other hand, via the implementation of these laws, the Act also formulate regulations on approval of children home or voluntary organizations.

### **Inspections**

The state government may establish inspection committees at the state, district, and municipal levels to inspect children's homes and assess their functioning and objectives. These committees comprise government officials, local authorities, board members, volunteers from organizations, and other medical and social experts. Both the central and state governments, through designated individuals and organizations, may monitor and evaluate the operations of children's homes during this period.

## **JUVENILE JUSTICE ACT, 2015**

On the 31<sup>st</sup> December 2015, the President gave his approval for the accompanying and implementation of Act of Parliament. The Act is now being distributed for public information. This Act aims to reconcile and modify laws concerning children who are positively stated and found to be in violation of the law. It also requires that children receive care and security, with consideration given to their basic needs through justifiable consideration, assurance, advancement, treatment, and social reintegration. Additionally, a child-friendly approach to issue resolution and mediation leading to the child's most forward-thinking development and restoration through provided procedures, etc must be done for the upliftment of the child.

The Juvenile Justice (Care and Protection of Children) Act, 2015 is another name for this act. The only exception to this Act is the State of Jammu & Kashmir which after 2019 has been amended and presently this Act encompasses all of India.

The jurisprudence behind the Act is that it will apply to all matters pertaining to the care, security, and needs of children as well as youths involved in legal disputes, regardless of any provisions in other laws

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<sup>12</sup> supra



currently in effect. This includes concerns about anxiety, incarceration, arraignment, proper punishment or detention, restoration, and the social reintegration of children involved in legal disputes.

The new juvenile legislation was attacked by several demonstrators as being unlawful. In the case of *Pratap Singh v. the State of Jharkhand*, the Court observed that, under Rule 4 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, one must accord the moral and psychological aspects with their full significance, even when one is more accountable for a crime which was perpetrated against the victim by offender.

Another issue brought up by a number of campaigners is that Article 20(1)—which says that an individual cannot be given a punishment that is worse than what would have been imposed on them under national law—is not being followed by the 2015 legislation. The new rule allows for the proper sentencing of a convicted juvenile to jail if, after reaching the age of 21, he has not served out the whole of his sentence. The essence of Article 20 is undermined by this new legislation.

#### LANDMARK JUDGEMENTS POSCO ACT

##### **S. Jarnail Singh vs. State of Haryana (Jul 09, 2013)<sup>13</sup>**

The Supreme Court in the decision of *Jarnail Singh v. State of Haryana*, under which the appellant was allegedly raped and abducted while the victim's daughter, Savitri Devi, was asleep and claimed to be a minor, is one case as such. It instructed the police station by applying Rule 12 of the Juvenile Justice (Care, Protection, and Welfare of Minor) Rules, was right in to determine the age, the court held that appealing *Jarnail Singh* was right for the sentence.

##### **State of Karnataka v. Shivanna (2014)<sup>14</sup>**

The POCSO Act of 2012 implies that no such summary of a statement taken in accordance with Section 164 of the Criminal Procedure Code of 1973 should be adopted, as per the provisions of the act. The Supreme Court, *State of Karnataka v. Shivanna (2014)*, rescued the situation by saying that the victim shall be taken to Metropolitan, specially, a Judicial Magistrate, within 24 hours after the spirited act for the Investigation Officer to record the testimony of the victim in accordance with Section 164 (5-A) (a) of the Criminal Pro The victim might wish to be deferring of the case before a lady Magistrate.

##### **Satish & Others v. Attorney General of India (2021)<sup>15</sup>**

In “*Satish Ragde v. State of Maharashtra (2021)*”, the Nagpur Bench of the Bombay High Court held that, under the POCSO Act, “holding a child's breasts without making "skin-to-skin contact" constitutes molestation”. This statement was made by a single bench led by Justice Pushpa Ganediwala.<sup>16</sup>

The apex court overturned the Bombay High Court's decision, stating that the current case warranted the application of the "mischief rule" of legislative interpretation. This underscores the necessity for courts to continually interpret the law to advance remedies and prevent harm. According to this perspective, the top court's decision observed that the High Court's interpretation seeks to undermine the original purpose of the law while limiting its application.

#### LANDMARK JUDGEMENTS ON JUVENILE JUSTICE ACT

<sup>13</sup> “S. Jarnail Singh vs. State of Haryana, CRIMINAL APPEAL NO. 1209 OF 2010”

<sup>14</sup> “State of Karnataka v. Shivanna, SPECIAL LEAVE PETITION (CRL.) NO. 5073/2011”

<sup>15</sup> “Satish & Others v. Attorney General of India, CRIMINAL APPEAL NO. 1410 OF 2021 (@ SPECIAL LEAVE PETITION (CRL) NO. 925 OF 2021)”

<sup>16</sup>“ Oishika Banerji, Landmark judgments under POCSO Act, 2012, ipleaders (April 14, 2024, 8:09 PM), [Landmark judgments under POCSO Act, 2012 - iPleaders](#)”

**Sheela Barse v. Union of India (1986)<sup>17</sup>**

The petition in this case had the judges ask for the release of minors who were minors and who were under sixteen years of age and who were in several prisons in the state. Thus, the authorities are obliged to disclose how many juvenile justice facilities are located in the given area, and what other rehabilitation programs apply to juveniles in the community, as well as the particular details about the number of young offenders that they serve.

In its decision, the Supreme Court said quite clearly that the fact that the incarceration of minors alongside adult offenders has far-reaching negative consequences for their lives in general and maturity, in particular, is one of the well-established legal principles. In this respect, the following instructions were provided:

It was required of each state to implement and enforce the Children Act of 1960 in its jurisdiction. Every jail in the nation was expected to have up-to-date jail manuals. In Every state's district and session judges were requested to visit prisons no less often than every two months.

**Dr. Subramanian Swamy v. Raju, Thr. Member, Juvenile Justice Board (2014)<sup>18</sup>**

This lawsuit was brought after the same Nirbhaya tragedy, in which five individuals viciously raped a lady and caused her death via physical and sexual abuse. One of the five individuals was underage. Even though the petitioners argued opposite to the case and indicated that he should be treated as an adult and the process should not pause, still the House was sent to the Juvenile Justice Board. Act's determination to classify individuals under the age of 18 as distinct was correct.

**Regarding COVID-19 virus Contamination in Children's Protection Homes<sup>19</sup> (2020)**

In order to safeguard children in observation homes and law-breaking youngsters housed in juvenile homes and shelter homes during the pandemic lockdown, a writ petition was filed in this case.<sup>20</sup> The petition concerned children in foster and kinship care, as well as juvenile homes, and their health and safety during the COVID-19 pandemic. In this context, the Supreme Court issued the following directives:

In order to maintain records of children who have been returned home, they were also instructed to work in conjunction with the district child protection committees as well as the foster care and adoption committees. Support systems and online help centres were to be set up.

The committees were also tasked with monitoring sexual harassment and violence and making sure that no such incidence involves children living in such facilities.

The Juvenile Justice Board was instructed to take aggressive measures to stop the virus from spreading among young people living in foster homes. For the sake of their wellbeing, safety, and best interests, children may thus be housed in child care facilities. Online sessions must be used for the prompt resolution of cases. Children living in observation homes must get counselling sessions.

The government has to let the child care facilities know about all the steps that need to be followed in this case. It is essential to implement a rotating staffing model for district protection units and child care facilities, with a focus on assigning qualified volunteers to oversee child care.

<sup>17</sup> "Sheela Barse v. Union of India, JT 1986 136 1986 SCALE (2)230"

<sup>18</sup> "Dr. Subramanian Swamy v. Raju, Thr. Member, Juvenile Justice Board, CRIMINAL APPEAL NO. 695 OF 2014 (Arising Out of SLP (Crl.) No.1953 of 2013)"

<sup>19</sup> "Regarding COVID-19 virus Contamination in Children's Protection Homes, IA No. 64373/2021 - APPROPRIATE ORDERS/DIRECTIONS"

<sup>20</sup> "Monesh Mehendiratta, Landmark Juvenile Supreme Court cases in India, ipleaders (April 14, 2024, 09:10 PM), [Landmark Juvenile Supreme Court cases in India - iPleaders](#)"



All officials and government employees need to be made sure they carry out their responsibilities with diligence. Children are given high-quality face masks, hand sanitizers, hygiene items, etc., and the space is adequately sanitised. It is important to educate kids about the transmission of diseases and the necessary safety measures. Social separation has to be consistently practiced.

If the individual exhibits viral symptoms, they need to be placed in isolation right away. It was instructed that families who foster children be kept up to speed on virus protection measures. The wellbeing and security of these families and their children need to be monitored. Children were told to distract themselves with enjoyable and educational activities in order to reduce tension and anxiety.

## CONCLUSION

In this research paper, we have comprehensively and critically examined how the Juvenile Justice Act (JJA) and the Protection of Children from Sexual Offences (POCSO) Act interacted and work in relation to each other to shed light on India's extensive legal system for the upbringing, protection, and treatment of minors and their welfare.

The POCSO Act, which was passed in 2012 defines a number of sexual offenses against juveniles and imposes severe penalties on those who perpetrate them rendering it a potent instrument in the struggle against child sexual abuse. The Act provisions for victim compensation, accelerated trials, and child-friendly processes have accelerated to all help to make handling incidents of child sexual abuse more tactful and effective.

Similarly, the JJA seeks to guarantee the care, protection, and rehabilitation of children who are in trouble with the law or who need care and protection. The main focus and the center point of this Act are in the child's best interests by protecting them and punishing the offenders. It also endeavors to young offenders opportunities for reintegration into society and assistance for their general development via the establishment of Juvenile Justice Boards and specific facilities.

Both statutes have evolved in response to the changing socio-legal environment and out of a dedication to defending the rights and welfare of children in India. Regardless several obstacles still exist, such as the need for increased cognizance and implementation of these regulations, dealing with systemic problems that fuel child abuse and delinquency, and strengthening assistance programs for both victims and perpetrators.

India's legislative system for child protection, which includes statutes such as the Juvenile Justice Acts and the POCSO Act, endeavors to safeguard kids from sexual offenses and to provide for their upbringing, recovery, and reintegration into society. These laws define crimes, punishments, and processes; the way they are applied is formed by important rulings. Recent orders such as those issued during the COVID-19 epidemic highlight continuous attempts to modify and uphold these rules to safeguard children who are at risk. Furthermore, with the passage of time, the Act will need continual attention and modification to preserve children's rights and welfare throughout the country for making the free from the offences of child sexual abuse.

There is a need for comprehensive collaborations between government agencies, civil society organizations, and legal experts. Also, this collaboration must be accompanied by the general public working together to ensure that these laws are implemented effectively, advance child welfare and safety, and create a society in which all children can develop and flourish in a secure and nurturing environment.





## RECOMMENDATIONS AND SUGGESTIONS

### POCSO ACT

1. Although the POCSO Act is a landmark piece of law, it might be more effective if these suggestions were followed:  
Programmes to raise awareness of the POCSO Act throughout the country will inform and motivate investigative authorities to properly execute the law.
2. Each district will have special police units for POCSO offences that include counsellors and child welfare specialists to help with the delicate handling of cases. According to the Act, each district must establish a Fast Track Special Court in order to expedite trials and boost conviction rates.
3. It is necessary to provide provisions for victims' rehabilitation via instruction and job training.
4. The Act needs to be modified to acknowledge male victims of child abuse and to include consenting sexual encounters between minors between the ages of 16 and 18.
5. For better outcomes, timelines for forensic evidence gathering and medical assessment must be established after the filing of a complaint.

### JUVENILE JUSTICE ACT

1. The Juvenile Justice Act has to be strictly enforced. A risky and unsuccessful act is one that has no willing implementers. As a result, the government has to ensure that the authorities are appropriately implementing the legislation.
2. In India, there shouldn't be a uniform juvenile age for all crimes. The mechanism to classify and split the juvenile justice system into several age groups may be designed along the lines of the United States, the United Kingdom, and France.
3. Juvenile cases shouldn't be sent to adult courts.
4. To increase the efficacy of local child welfare organisations in offering safe havens to abused and neglected children, juvenile justice boards need to collaborate with them.
5. Juveniles who are in legal trouble would get justice if the juvenile correctional services' procedures were improved and guaranteed to be of high quality.

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