

# International Journal of Law Research, Education and Social Sciences

Open Access Journal – Copyright © 2024 – ISSN 3048-7501  
Editor-in-Chief – Prof. (Dr.) Vageshwari Deswal; Publisher – Sakshi Batham



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## Between Protection and Punishment: The Challenges of POC SO Allegations

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Received 11 November 2024; Accepted 12 December 2024; Published 16 December 2024

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*This article examines the challenges posed by misuse of the Protection of Children from Sexual Offences (POCSO) Act, 2012.<sup>1</sup> This act was formulated to protect children from sexual abuse and exploitation. Although the act aims to protect children, it has been misused in certain cases, which results in social, emotional, and legal challenges for the accused and accuser. The act is misused in various scenarios such as family disputes, financial extortion, political rivalries, and inter-caste tensions, which shows how it has been leveraged for personal or political gains. The article discusses the broader aspects of its misuse including the erosion of public trust and the wastage of judicial resources. It calls for reforms, such as addressing gaps in the act related to consensual adolescent relationships, improving investigation methods, and specialised training of law enforcement authorities. The balance between protecting children and ensuring justice is essential to keep the integrity of the Act in place without causing undue harm.*

**Keywords:** *misuse, social stigma, false allegations, child protection.*

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<sup>1</sup> Protection of Children from Sexual Offences Act 2012

## **INTRODUCTION**

What happens when an act is implemented to protect society, especially children, is weaponised for personal vendettas? The POCSO act, implemented to protect children from sexual abuse is now facing this dilemma between protection and punishment. The Protection of Children from Sexual Offences (POCSO) Act, 2012 was introduced in the Indian legal system to safeguard children from various forms of sexual abuse, harassment, or exploitation. This act deals with crimes like sexual abuse, harassment, and child pornography and ensures stringent punishment for those who commit these crimes. With the fast-growing concern for child protection in society, such an act was a much-needed legal framework to protect victims and hold perpetrators accountable for their actions.

Though noble in its intent, the Act has faced challenges related to misuse, particularly false accusations. Even though the law's core purpose is to protect children from these harms, false allegations under POCSO result in significant damage to the lives and reputations of innocent people. While the law's primary goal is to protect children from harm, false accusations under POCSO can lead to significant harm to innocent individuals, disrupting their lives and reputations. This worrying situation requires further scrutiny on the issues resulting from misuse of the act and more importantly on justice and societal trust.

## **UNDERSTANDING POCSO: A COMPREHENSIVE LEGAL FRAMEWORK FOR PROTECTING CHILDREN**

The POCSO Act was enacted in 2012 as an important milestone in addressing the serious offences of child abuse in the country. Before its introduction, there was no such law addressing the issues of sexual offences against minors, leaving many of the victims without legal protection and justice. The act has severe penalties to deter offenders and ensure justice for victims.<sup>2</sup> Moreover, the act shifts the onus of proof on the accused to provide protection to the victims and ensure fair outcomes. It aims to ensure that victims will no longer be afraid to come forth because of the fear of retaliation. The law also mandates people to report these crimes, thus reducing the possibility of cases being left unreported. There are also strengthened provisions for punishment

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<sup>2</sup> *Ibid*

of serious crimes, particularly where the offenders are in authority or cases like gang rape or assault against disabled children.

This Act focuses on protecting the child mentally and emotionally during the legal proceedings so that the approach is more child-centric. It lays down special rules to keep the child comfortable and feeling secure by not asking the same questions again and again and by allowing a trusted adult with them during interviews so that there is no intimidation and trauma in the criminal proceeding before a special court. Thus, the Special Court instituted to deal with matters relating to the POCSO Act must wisely apply judicial mind while passing a decree of conviction because there are cases of false accusation leading to humiliation and societal boycott thereby increasing the probability of suicidal thoughts since the conviction rate in cases relating to POCSO is 15.14% in 2022,<sup>3</sup> A sharp drop from 35.98% in 2018. Legal experts attribute this decline to factors such as false accusations, flawed investigations, lack of expertise among law enforcement officials, political interference, and inexperienced judges in special courts. <sup>4</sup>

### **FALSE ALLEGATIONS UNDER POCSO**

Section 22 of the POCSO Act deals with penalties for making false allegations or providing false information regarding offences under specific sections of the Act.<sup>5</sup> It specifies that if a person deliberately makes a false complaint or gives false information with the intent to humiliate, extort, threaten, or defame another individual concerning offences under Sections 3,<sup>6</sup> 5,<sup>7</sup> 7,<sup>8</sup> and 9,<sup>9</sup> They can face imprisonment of up to six months, a fine, or both. However, the law exempts children from punishment for filing false complaints. Additionally, if a person knowingly makes a false complaint or provides false information against a child to victimize them under any provision of the Act, they may face up to one year of imprisonment, a fine, or both.<sup>10</sup> This higher

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<sup>3</sup> Shan A S, 'Conviction rate in Pocso cases falls to 15 percent in Kerala' *The New Indian Express* (03 January 2024) <<https://www.newindianexpress.com/states/kerala/2024/Jan/03/conviction-rate-in-pocso-cases-falls-to-15-percent-in-kerala-2647280.html>> accessed 04 November 2024

<sup>4</sup> *Ibid*

<sup>5</sup> Protection of Children from Sexual Offences Act 2012, s 22

<sup>6</sup> Protection of Children from Sexual Offences Act 2012, s 3

<sup>7</sup> Protection of Children from Sexual Offences Act 2012, s 5

<sup>8</sup> Protection of Children from Sexual Offences Act 2012, s 7

<sup>9</sup> Protection of Children from Sexual Offences Act 2012, s 9

<sup>10</sup> Protection of Children from Sexual Offences Act 2012, s 22

penalty serves to protect children from being victimized or manipulated through the legal process.

## COMMON SCENARIOS OF FALSE ALLEGATIONS UNDER THE POCSO ACT

**1) Family Dispute:** False allegations in family disputes, especially in cases like child custody, this act is misused to win the cases. In such cases, one parent falsely accused the other of child abuse to gain custody of the child. A notable example in this case is XXXXXX v The state of Kerala, in which the court, observed that in matrimonial disputes between husband and wife, their minor child/children would be meddled with and weaponized to wreak vengeance at the teeth of the POCSO Act to avoid a claim for custody by the father.<sup>11</sup> In cases like Dr Jaseer Aboobacker v the State of Kerala,<sup>12</sup> The mother filed a POCSO case against the father to restrict his visitation rights. The court remarked that the child had been turned into a ‘weapon of choice’ by one parent against the other. These cases result in unnecessary legal battles, emotional distress, social stigma, and public shame for the accused parent. Such cases also divert attention from the real cases and overload the judicial system.

**2) Land and Property Disputes:** In a recent case, a woman was fined Rs 1 lakh by the Delhi Court for making a false report, lodging an accusation of sexual misconduct against her five-year-old daughter, which was found to be fabricated to extort property.<sup>13</sup> Such instances reflect the misuse of the POCSO Act in property disputes leading to wrongful accusations and questioning the credibility of the legal system. These cases indicate how the Act is sometimes misused in family conflicts, defeating its purpose of protecting children from abuse.

**3) Financial Extortion:** False accusations under the POCSO Act are used as a means of financial extortion, where people file false sexual abuse charges against someone to extort money from them as seen in Fakre Alam v State of U.P.<sup>14</sup> The accused faces the threat of imprisonment, social ostracism, and public disgrace. They may feel compelled to pay a settlement to resolve the case quickly, rather than face the harsh consequences of a long-drawn legal battle. This tactic

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<sup>11</sup> XXXXXX v The State of Kerala and Ors (2022) 2 KER 653

<sup>12</sup> Dr Jaseer Aboobacker v State of Kerala (2008) 16 SCC 417

<sup>13</sup> Ajmal, “Blatant abuse of law’: Delhi woman fined Rs 1 lakh for filing false PocsO case’ *India Today* (23 November 2023) <<https://www.indiatoday.in/law/story/delhi-court-fake-pocso-case-fine-one-lakh-sexual-assault-case-verdict-blatant-abuse-law-2466804-2023-11-23>> accessed 04 November 2024

<sup>14</sup> *Fakhrey Alam v State of U P and Ors* Case No 41580/2022

exploits the severe penalties associated with the POCSO Act, including imprisonment and societal stigma, to manipulate innocent individuals into giving up financial resources under duress.

**4) Political Rivalry:** Political rivalries have also led to the weaponization of the POCSO Act, where one party resorts to false accusations to discredit their opponent. In politically charged environments, individuals or groups may leverage the emotional and social weight of child abuse allegations to damage the reputation of political adversaries, potentially influencing public opinion and undermining their opponent's credibility. These politically motivated claims can have far-reaching effects, not just on the accused but also on the public's trust in the law.

**5) Inter-caste Tensions:** Inter-caste tensions often cause false POCSO allegations. This occurs when people from backward communities are falsely accused of sexual offences or rape due to social stratification and personal vendettas. A prominent case involves a Dalit man who was falsely framed with caste hatred, and it was mentioned by the judge that the children's testimony was highly influenced by their parents.<sup>15</sup>

## **IMPACT OF FALSE ALLEGATIONS UNDER POCSO**

False accusations under POCSO can have a devastating impact on the accused, the accuser, and the justice system as a whole.

**Impact on the Accused:** An individual who is accused of such false charges may have to bear social stigma, even if proven innocent. Society's perception of the accused as a criminal can persist, leading to job loss, social ostracization, and emotional trauma. The mere accusation of a sexual offence can destroy personal relationships, career prospects, and even mental health.<sup>16</sup> The stigma attached to such accusations often lasts far longer than the legal proceedings themselves.

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<sup>15</sup> PTI, 'Delhi court acquits man in child rape case, says falsely framed due to caste hatred' *The New Indian Express* (New Delhi, 13 August 2021) <<https://www.newindianexpress.com/cities/delhi/2021/Aug/13/delhi-courtacquits-man-in-child-rape-case-says-falsely-framed-due-to-caste-hatred-2344221.html>> accessed 04 November 2024

<sup>16</sup> 'The suffering of the falsely accused' (*Supporting Victims of Unfounded Allegations of Abuse*) <<https://factuk.org/how-to-cope/the-suffering-of-the-wrongfully-accused/>> accessed 04 November 2024

**Impact on the Accuser:** While the law is designed to protect children, one cannot deny that accusing someone falsely of sexual abuse can have adverse legal repercussions for the accuser as well. If the charges are proven false, the accuser may face criminal charges like defamation and false reporting, which can tarnish their reputation and result in legal penalties. Furthermore, the child's mental health when she/he is exposed to the volley of questions related to the subject matter of sex and sex organs. If not looked at in prima facie evidence properly by the court, such an ordeal would inflict devastating impairment on the child's personality.<sup>17</sup>

**Impact on the Justice System:** False allegations undermine the credibility of the POCSO Act, which ultimately makes it difficult to prosecute a child sexual abuse case that occurs. Delayed justice can result in eroding the trust of the general public towards the law, and this leads to the wasting of judicial resources. Also when false allegations are made, it can lead to overcrowding in prisons, if not investigated properly. When a false case is alleged, the resources for the actual cases are diverted, delaying justice for the actual victim of abuse.

## **LEGAL PROTECTIONS AGAINST FALSE ALLEGATIONS**

The legal framework in India provides various safeguards for a person accused of false allegations under the POCSO Act.

1. The POCSO Act, under section 30, gives an option to the defendant to show that he was without a culpable mental state.<sup>18</sup> The requirement for the accused to disprove culpability 'beyond reasonable doubt' ensures a robust defence mechanism.<sup>19</sup> It therefore protects against arbitrary conviction and mandates the court to investigate the case thoroughly.
2. If the accuser makes a false accusation under the POCSO Act, he or she can be sued for defamation by the accused. If the accused manages to prove that the allegation has been made with malice or ill intent, he or she could pursue redress under the defamation laws. This legal measure prevents false claims or malicious prosecution from damaging one's reputation and also enables the aggrieved to bring a defamation lawsuit against the accuser.

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<sup>17</sup> Shreya Marwaha, 'POCSO Act as a weapon in the child custody: Battlefield Damaging the Father-Daughter Relationship' (*Child Rights Centre*, 05 April 2022) <<https://crc.cnl.u.ac.in/post/pocso-act-as-a-weapon-in-the-child-custody>> accessed 04 November 2024

<sup>18</sup> Protection of Children from Sexual Offences Act 2012, s 30 (1)

<sup>19</sup> Protection of Children from Sexual Offences Act 2012, s 30 (2)

3. The accused can also file a case under sections like Section 217 (false information to a public servant),<sup>20</sup> Section 248 (false charge of an offence),<sup>21</sup> And Section 356 (defamation) of the BNS.<sup>22</sup>
4. Section 72 of BNS,<sup>23</sup> Prevents the disclosure of the identities of victims or accused individuals in cases of sexual offences. By keeping the identities of both parties confidential, the law seeks to reduce the social stigma attached to being involved in such cases, thereby ensuring that wrongful accusations do not unduly damage the accused's reputation.

### ADDRESSING GAPS IN POCSO

The creation of the POCSO Act of 2012, was the needed legislation that would protect children from sexual offences. The rigidity and excessive stringency of the Act have created unfortunate fallout, especially in cases involving consensual relationships involving minors or where people are of similar age.<sup>24</sup> One major gap is that the uniform age of consent does not take notice of the realities of child marriages or consensual relationships among adolescents in cultures and societies. Consensual cases in Meghalaya are dismissed;<sup>25</sup> however, in one similar case, the Allahabad High Court denied anticipatory bail in a similar incident;<sup>26</sup> this gives rise to inconsistency in judicial response. Such cases highlight the need for clarity and amendments in the act, such that grey areas such as theirs are curbed.

Another imperative issue is the mandatory reporting requirement under Section 19 of the Act.<sup>27</sup> This particular provision declares consensual relationships criminal by default, especially when a minor becomes pregnant. Obligated medical officials end up reporting such cases, leading to the cases of young boys being arrested under non-bailable provisions. This fact alone causes the minors untold mental trauma, forcing them to face the rigours of a court proceeding along with the pressures mounted by family and society. The mandatory reporting, therefore, overlooks the

<sup>20</sup> Bhartiya Nyaya Sanhita 2023, s 217

<sup>21</sup> Bhartiya Nyaya Sanhita 2023, s 248

<sup>22</sup> Bhartiya Nyaya Sanhita 2023, s 356

<sup>23</sup> Bhartiya Nyaya Sanhita 2023, s 72

<sup>24</sup> Vinayak Chawla, 'De-criminalising romantic adolescent relationships under the POCSO Act' (*Bar and Bench*, 10 May 2024) <<https://www.barandbench.com/columns/exposing-double-standards-of-law-towards-adolescents-de-criminalising-romantic-adolescent-relationships-under-pocso>> accessed 04 November 2024

<sup>25</sup> Basit Amin Makhdoomi, '16-Yr-Old Capable Of Making Conscious Decision About Sex: Meghalaya High Court Quashes POCSO Case Against Boyfriend' (*Live Law*, 23 June 2023) <<https://www.livelaw.in/high-court/meghalaya-high-court/meghalaya-high-court-quashes-POCSO-fir-conscious-decision-sexual-intercourse-16-year-old-victim-consent-231142>> accessed 04 November 2024

<sup>26</sup> *Mohammad Saif v State of U P and 3 Ors* CrI No 5841/2024

<sup>27</sup> Protection of Children from Sexual Offences Act 2012, s19

nuances of consensual relationships and causes disproportionate damage to those whom it seeks to protect.

Although the POCSO Act does not discriminate based on gender, the application of the same largely reflects patriarchal biases. It is socially constructed that boys in consensual relations are always treated as perpetrators, whereas girls are generally presumed victims. A family often exploits the situation and makes use of the Act to impose religious or cultural norms on the relationship of two individuals who belong to different castes or religions. This indirectly affects the sexual autonomy of young women and community control over their personal choices.<sup>28</sup>

### **THE NEED FOR REFORM**

To ensure the POCSO Act fulfils its purpose of protecting children without unintended harm or misuse, certain legislative and procedural reforms are imperative. The investigative process needs to be strengthened to distinguish between false and genuine allegations. Advanced training for law enforcement and judiciary officials should be conducted in the social and psychological context of such cases, especially where family pressures or cultural norms may force a person to make false claims. This training should focus on identifying coerced allegations and improving the accuracy of investigations.

Furthermore, Section 19 of the Act,<sup>29</sup> Mandates sexual offences to be reported if a minor is found to be pregnant. When a minor becomes pregnant the medical practitioners are required to report the case to the police which leads to immediate arrest and non-bailable provisions. The law should differentiate between consensual relationships and abusive situations. Similar to the laws in the UK, in which the age of consent is 16, which prevents children from being accused of consensual relationships,<sup>30</sup> A similar law in India would prevent young individuals from being accused of these mutually consented acts. Modifying mandatory reporting will prevent unnecessary harm to adolescents and will reduce the stigma and mental trauma of false accusations.

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<sup>28</sup> Chawla (n 24)

<sup>29</sup> Protection of Children from Sexual Offences Act 2012, s19

<sup>30</sup> Sexual Offences Act 2003, s 9(1)(a)



## **CONCLUSION**

While the POCSO Act was enacted to protect children from sexual abuse and sexual exploitation, its unintended consequences highlight a deep flaw in the system where it is being weaponized in personal and social conflicts. Its misuse has revealed critical gaps that need to be addressed. False allegations can devastate innocent people and undermine the very purpose of the law. To ensure that the Act serves its purpose without harming the accused, there is a need to reform investigation procedures, legal training, and the implementation of mandatory reporting provisions. Additionally, reviewing the age of consent and ensuring that the law does not criminalize consensual adolescent relationships will prevent wrongful accusations. Balancing the protection of children with fairness and justice for all parties is essential for maintaining public trust in the legal system and upholding the true spirit of the POCSO Act.