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Introduction

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

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Description

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MISUSE OF THE POCSO ACT AS A LEGAL WEAPON

A Critical Analysis of False Allegations, Consensual Relationships, and the Need for Safeguards

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Abstract

The Protection of Children from Sexual Offences (POCSO) Act, 2012, stands as a landmark legislation enacted to provide robust protection to children from sexual exploitation and abuse. However, in recent years, the Act has increasingly been invoked not only in genuine cases but also as a potent legal weapon for personal vendetta, extortion, property disputes, and to criminalize consensual adolescent relationships. This article critically examines the emerging patterns of misuse, particularly in the contexts of romantic relationships among adolescents and matrimonial/custody battles. Drawing upon judicial observations, empirical data, and reported judgments, the paper highlights the profound legal, social, psychological, and systemic consequences of such misuse on the accused, the child, and the integrity of the criminal justice system. The article concludes with recommendations for legislative fine-tuning, enhanced investigative protocols, greater judicial scrutiny, and public awareness to preserve the protective spirit of POCSO while preventing its abuse as an instrument of harassment.

Keywords: POCSO Act, misuse, false allegations, consensual adolescent relationships, custody disputes, Section 22 POCSO, judicial scrutiny, child protection, due process.

I. Introduction

"Children are the world's most valuable resource and its best hope for the future."

— John F. Kennedy

Children constitute the foundation of any nation's future. Protecting them from all forms of abuse—physical, emotional, or sexual—is not merely a legal obligation but a fundamental duty of the State. In India, the constitutional vision under Articles 15(3), 21, 24, 39(e) & (f), and 45 mandates special care and protection for children. The Protection of Children from Sexual Offences (POCSO) Act, 2012, was enacted as a comprehensive, child-centric legislation to address gaps in the Indian Penal Code, 1860, and to fulfill India's obligations under the United Nations Convention on the Rights of the Child (UNCRC), which India ratified in 1992.

While the POCSO Act has been instrumental in strengthening the legal framework against child sexual abuse and has led to increased reporting of offences, a disturbing trend has emerged: the weaponization of its stringent provisions for collateral purposes. False or exaggerated complaints are being filed to settle personal scores, gain advantage in matrimonial disputes, or criminalize innocent adolescent relationships. This misuse not only inflicts irreparable harm on the accused but also undermines the very object of the legislation—protection of genuine child victims—and erodes public confidence in the justice delivery system.

II. Historical Evolution and Legislative Intent

The international movement for child rights gained momentum after the First World War. The League of Nations adopted the Geneva Declaration of the Rights of the Child in 1924, followed by the United Nations Declaration of the Rights of the Child in 1959. The most significant development was the adoption of the UN Convention on the Rights of the Child (UNCRC) on 20 November 1989, which India ratified on 11 December 1992.

Prior to POCSO, child sexual offences were dealt with under general provisions of the IPC such as Sections 354, 375, 376, and 509. These provisions were inadequate—they were not gender-neutral in all respects, did not adequately address non-penetrative sexual acts against children, and

lacked child-friendly procedures. Landmark judicial pronouncements, including the Supreme Court's reversal in *State of Punjab v. Major Singh*, and recommendations of the Law Commission (42nd Report and others) underscored the urgent need for a dedicated statute.

The POCSO Act, 2012, was thus conceived as a gender-neutral, child-friendly law defining offences comprehensively (penetrative sexual assault, sexual assault, sexual harassment, and use of a child for pornography), prescribing stringent punishments, establishing Special Courts, and mandating child-sensitive investigation and trial procedures. The 2019 amendment further strengthened it by introducing the death penalty for aggravated penetrative sexual assault and broadening the definition of child pornography to include digital and computer-generated content.

III. Salient Features of the POCSO Act, 2012

Section 2(d) defines a "child" as any person below eighteen years of age. The Act creates a graded scheme of offences: Section 3 (Penetrative Sexual Assault) prescribes rigorous imprisonment of not less than ten years (extendable to life); Section 5 (Aggravated Penetrative Sexual Assault) imposes even harsher punishment when committed by persons in authority or in aggravated circumstances. Similar graded punishments exist for sexual assault (Sections 7 & 9) and sexual harassment (Section 11). The Act imposes a mandatory reporting obligation (Section 19) and provides for punishment of false complaints under Section 22.

Crucially, the Act adopts a strict liability approach regarding consent: sexual activity with a person below 18 years is criminalized irrespective of consent. While this was intended to protect vulnerable children, the absence of any close-in-age exception has led to unintended consequences in consensual adolescent relationships.

IV. Patterns of Misuse of the POCSO Act

Empirical data and judicial pronouncements reveal that a significant proportion of POCSO cases do not involve predatory exploitation but arise from other motivations. According to NCRB data for 2024, offences under the POCSO Act accounted for approximately 69,191 cases—about 37%

of all registered crimes against children¹. Conviction rates have generally hovered between 32% and 40% in recent years, notably lower than the overall IPC conviction rate. A landmark empirical study by Enfold India analyzing over 7,000 POCSO judgments from special courts in Assam, Meghalaya, and West Bengal found that 24.3% of cases involved romantic or consensual relationships, with an acquittal rate of 93.8% in such cases—primarily because the "victim" did not support the prosecution or turned hostile².

A. Criminalization of Consensual Adolescent Relationships

The POCSO Act prescribes an inflexible age of consent at 18 years with no "Romeo-Juliet" or close-in-age exemption. Consequently, a 19-year-old boy in a consensual, non-exploitative relationship with a 16- or 17-year-old girl faces the risk of immediate arrest, prolonged trial, stringent bail conditions, and lifelong social stigma. Police often register cases mechanically upon establishment of the girl's age, sometimes converting missing person reports into POCSO FIRs.

The Delhi High Court in *State v. Hitesh* observed that love is a fundamental human experience and adolescents have the right to form emotional connections³. The Court emphasized that POCSO is meant to prevent exploitation and not to punish normative adolescent romantic exploration. The Supreme Court has also taken judicial notice of this phenomenon. On 4 November 2025, a Bench comprising Justices B.V. Nagarathna and R. Mahadevan expressed concern over the misuse of POCSO to criminalize consensual relationships between adolescents and in matters of marital discord, noting that parents frequently lodge complaints against boys of similar age as a form of retribution⁴.

¹National Crime Records Bureau (NCRB), *Crime in India 2024*. Offences under the POCSO Act accounted for approximately 69,191 cases, constituting about 37% of all registered crimes against children in 2024.

²Enfold India, *Empirical Study on POCSO Judgments (Analysis of 7,064 cases from Special Courts in Assam, Meghalaya, and West Bengal)*. 24.3% of cases involved romantic/consensual relationships; acquittal rate in such cases was 93.8%.

³Delhi High Court in *State v. Hitesh* (and similar observations in other High Court judgments) emphasizing that POCSO is meant to prevent exploitation and not to punish normative adolescent romantic relationships where consent is present.

⁴Supreme Court of India, observations dated 4 November 2025 in a writ petition concerning legal awareness and gender education (Justices B.V. Nagarathna and R. Mahadevan). The Court expressed concern over misuse of POCSO in consensual adolescent relationships and marital discord.

B. Misuse in Matrimonial and Custody Disputes

A particularly egregious form of misuse occurs in estranged matrimonial relationships. Wives (or their families) have been known to level false allegations of sexual assault against husbands involving minor daughters to secure favourable interim custody, maintenance, or to pressurize for settlement. The stringent nature of the Act—non-bailable offences, stringent bail conditions, and social stigma—makes it an effective tool to weaken the opposing party's position.

High Courts have repeatedly flagged this trend. The Delhi High Court and Kerala High Court have observed the "growing tendency" to foist false POCSO cases against biological fathers during pending custody battles in Family Courts. In *N. Chandramohan v. State*, the wife filed a complaint alleging sexual assault by the husband on their daughter; the elder daughter (the alleged victim) subsequently denied the allegations before the court⁵. Such cases not only traumatize the accused but also harm the child by manipulating her and depriving her of a healthy relationship with her father.

C. Other Instances of Misuse

The Act has also been invoked in property disputes, neighbourhood rivalries, and political vendettas. In such cases, children are sometimes tutored or influenced to make allegations. The strict liability framework and the difficulty of proving consent or lack of exploitation make POCSO complaints a convenient weapon.

V. Judicial Response and Emerging Safeguards

Indian courts have increasingly recognized the problem of misuse. The Supreme Court has, in several bail matters and writ petitions, taken judicial notice of the phenomenon and called for greater legal awareness, particularly among male adolescents. High Courts have stressed the need for careful scrutiny of allegations in the context of ongoing matrimonial disputes and have granted bail or quashed proceedings where mala fides were apparent.

⁵*N. Chandramohan v. State* – illustrative case where allegations under POCSO were made in the context of matrimonial dispute; the alleged child victim (elder daughter) subsequently denied the allegations before the court.

Section 22 of the POCSO Act itself provides a statutory safeguard⁶. It prescribes punishment for false complaints or false information made with intent to humiliate, extort, threaten, or defame (up to six months' imprisonment or fine, or both; extendable to one year if the false complaint is made against a child). However, prosecutions under this provision remain rare. Courts have also invoked inherent powers under Section 482 CrPC (now corresponding provisions under BNSS) to quash frivolous FIRs.

VI. Impact of Misuse

The consequences of misuse are severe and multi-dimensional:

On the Accused

- Legal: Arrest, prolonged pre-trial custody or trial, stringent bail conditions, and the constant threat of conviction despite innocence.
- Social & Reputational: Irreversible stigma, societal ostracization, media trial, and permanent damage to personal and professional reputation—even after acquittal.
- Economic & Personal: Loss of employment, career opportunities, family breakdown, and heavy financial burden of litigation.
- Psychological: Severe mental trauma, anxiety, depression, and in extreme cases, heightened risk of suicidal ideation due to the combination of incarceration and social humiliation.

On the Child

When children are used as instruments in false allegations—particularly in custody battles—they suffer profound emotional and psychological trauma. Their mental well-being and development are adversely affected, and they may be deprived of a healthy relationship with the accused parent. Manipulation of the child by adults erodes trust within the family and the justice system.

On the Justice System and Genuine Victims

Frivolous cases clog Special Courts, contribute to high pendency (often exceeding 88–90%), and divert scarce investigative and judicial resources away from genuine victims. Low conviction rates

⁶Section 22, Protection of Children from Sexual Offences Act, 2012: Punishment for false complaint or false information. An adult making a false complaint with intent to humiliate, extort, threaten or defame may be punished with imprisonment up to six months or fine or both (extendable to one year if the false complaint targets a child). No punishment if a child makes the false complaint.

in certain categories partly reflect the inclusion of weak or motivated cases, which in turn creates skepticism toward all allegations and undermines the protective purpose of the Act.

VII. Conclusion and Way Forward

The POCSO Act remains an essential and progressive legislation for safeguarding children from sexual exploitation. Its stringent framework is justified for genuine cases involving predation and abuse of authority. However, the emerging pattern of misuse—particularly to criminalize consensual adolescent relationships and to gain tactical advantage in matrimonial disputes—demands urgent attention from the legislature, judiciary, and society at large.

A balanced approach is imperative. The following measures merit consideration:

1. **Legislative Review:** Parliament should consider introducing a carefully calibrated close-in-age exemption ("Romeo-Juliet" clause) for consensual, non-exploitative relationships between adolescents, while retaining strict liability for predatory conduct and relationships involving significant age gaps or abuse of authority.
2. **Enhanced Investigative Protocols:** Police and Special Courts must adopt a more discerning approach in cases arising from matrimonial disputes or where the alleged victim is in the 16–18 age group. Mandatory preliminary inquiry into the context of the complaint, prior relationship between parties, and statements of the child (recorded sensitively under Section 164 CrPC) should precede mechanical registration or arrest.
3. **Greater Judicial Scrutiny at Bail Stage:** Courts should rigorously examine the possibility of mala fides, especially when allegations surface during pending custody or divorce proceedings, and grant bail liberally where the case appears motivated, while protecting the child through appropriate safeguards.
4. **Effective Use of Section 22 POCSO:** Prosecutions for false complaints must be pursued in appropriate cases to deter misuse. Simultaneously, awareness campaigns should inform the public that filing a knowingly false POCSO complaint carries penal consequences.
5. **Training and Sensitization:** Comprehensive training modules for police, prosecutors, and judges on distinguishing genuine child sexual abuse from motivated complaints, with special emphasis on adolescent psychology and family dispute dynamics.

6. Public Awareness: Widespread dissemination of information regarding the legal boundaries of consensual relationships among adolescents and the consequences of false allegations.

Ultimately, the credibility and efficacy of the POCSO Act depend on its balanced and conscientious application. Protecting children from sexual offences must remain the paramount objective; however, this noble goal cannot be allowed to become a cover for the persecution of the innocent. The law must evolve to distinguish between exploitation and exploration, between genuine victimhood and tactical manipulation. Only then can POCSO fulfill its true promise as a shield for the vulnerable rather than a sword in the hands of the vengeful.

Disclaimer: *The views expressed in this article are personal and academic in nature, intended to contribute to informed legal discourse. They do not constitute legal advice. Readers are advised to consult qualified legal practitioners for case-specific guidance. The author acknowledges the critical importance of the POCSO Act in combating child sexual abuse while advocating for safeguards against its misuse.*

