

EFFECTIVENESS OF POCSO ACT IN PROTECTING CHILDREN
FROM SEXUAL ABUSE: A CRITICAL STUDY

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SUBMITTED BY

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I wish him success in life.

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Brijendra Singh Kushwaha
LL.M. (CSL)

LIST OF ABBREVIATIONS

CCL	Centre for Child and the Law
CrPC	Code of Criminal Procedure
CSA	Child Sexual Abuse
HC	High Court
In re	In the matter of
IPC	Indian Penal Code
NCPCR	National Commission for Protection of Child Rights
NCRB	National Crime Record Bureau
POCSO	Protection of Children from Sexual Offences
SC	Supreme Court
SCC	Supreme Court Cases
SCPCR	State Commission for Protection of Child Rights
UN	United Nations
UNICEF	United Nations International Children Emergency Fund
WHO	World Health Organisation

LIST OF CASES

1. Alakh Alok Srivastava v. Union of India (2018) 17 SCC 291
2. Arhant Janardan Sunatkari v. State of Maharashtra 2021 SCC OnLine Bom 136.
3. Attorney General for India v. Satish 2021 SCC OnLine SC 1076
4. C. Chenga Reddy v. The State of A.P. (1996) 10 SCC 193
5. Eera V. State, 2017 SCC Online SC 787
6. In Re, Alarming Rise in the Number of Reported Child Rape Incidents (2020) 7 SCC 108
7. Jagar Singh v. State of H.P. 2015 (2) RCR (Criminal) 320
8. Jongi v. State 2014 (4) JCC 2922
9. K. Muthu Mariappan v. The State MANU/TN/1611 /2015
10. Mahadev Gaur Bishwas v. State of Maharashtra and Anr. CRL.A. NO.440 OF2019, Bom HC
11. Maruthupandi v. State CRL.A [MD] No. 209 of 2017
12. Mr. 'X' v. State Govt. of NCT of Delhi and Anr. 2022 LiveLaw (Del) 1077
13. Nipun Saxena v. Union of India (2019) 2 SCC 703
14. Pranil Gupta v. State of Sikkim MANU/SI/0035/ 2015
15. Sachin v. State of H.P. MANU/HP/0180 /2015
16. Sahil Thakur v. State of Himachal Pradesh MANU/HP/0527 /2015
17. Sharath Chandra Pottala v. Union of India 2014 (2) WLN 410 (Raj.)
18. Silvestar Khonglah v. State of Meghalaya 2022 SCC OnLine Megh 575
19. State vs Pankaj Choudhary CRL. A. 813/2011
20. Suryanarayana v State of Karnataka (2001) 9 SCC 129
21. Tarun Vaishnav v. The State of Rajasthan and Anr. 2022 SCC OnLine Raj 2237
22. The State of Rajasthan v. Manoj Pratap Singh MANU/RH/085 3/2015
23. Veekesh Kalawat v. State of Madhya Pradesh and Anr. MISC. CRL. CASE No. 4521 of 2023
24. Venkatachalam v. Inspector of Police, Crimnal Appeal No.113of 2021(Mad. HC)

TABLE OF CONTENT

Declaration	i
Certificate	ii
Acknowledgement	iii
List of Abbreviations	iv
List of Cases	v

CHAPTER 1 INTRODUCTION **Pg. 1-12**

1.1 Meaning and Definition of Child
1.2 Meaning of Child Sexual Abuse
1.3 Child Sexual Abuse in India
1.3.1 The Roots of Child Abuse
1.4 Forms of Sexual Abuse
1.5 Statement of Problem
1.6 Objective of Study
1.7 Hypothesis
1.8 Research Methodology
1.9 Literature Review
1.10 Scope of the Research
1.11 Chapterization

CHAPTER 2 HISTORY AND DEVELOPMENT OF THE ACT **Pg. 13-23**

2.1 Scenario in India
2.2 The Development of Child Rights in India
2.3 Inception of the POCSO Act
2.4 Journey through Legislation
2.5 Child Sexual Abuse in India
2.6 Law Before POCSO Act, 2012
2.7 Reasons for Enactment of POCSO Act, 2012
2.8 Commencement of POCSO Act, 2012
2.9 Exclusive Provisions of POCSO Act, 2012

CHAPTER 3 APPLICATION AND OPERATION OF THE ACT Pg. 24-38

- 3.1 Objective of the Act
- 3.2 Salient Features of the POCSO Act
- 3.3 Types of Sexual Offences and Punishment
- 3.4 Role of Child Welfare Committee
- 3.5 Role of State Commissions for Protection of Child Rights
- 3.6 Duty of the State to Raise Awareness
- 3.7 Mandatory Reporting of Sexual Offences
- 3.8 Role of Police
 - 3.8.1 Unmistakable Duties of Police During Initial 24 Hours
- 3.9 Role of Doctors
- 3.10 Duties of Hospital During Initial 24 Hours
 - 3.10.1 Medical Examination of Child
 - 3.10.2 Provision to Prevent Child Re-Victimisation
- 3.11 Function of the State Govt. Pursuant to Sec. 39 of the POCSO Act
- 3.12 Designation of Special Court under Sec.28 of the POCSO Act
- 3.13 Protection of Children from Sexual Abuse: Data Analysis
 - 3.13.1 Police processing of rape and assault cases under POCSO is quicker than IPC offences against women
 - 3.13.2 Trends in pendency of POCSO Cases
 - 3.13.3 Analysing the Duration for Disposal of POCSO Cases
 - 3.13.4 Nature of POCSO Cases
- 3.14 POCSO e-Box

CHAPTER 4 ISSUES AND CHALLENGES CONCERNING

THE ACT Pg. 39-58

- 4.1 Applicability of POCSO Act to Consensual Relationship between Minors
 - 4.1.1 Stand of Government on the Issue
- 4.2 Challenges at the Pre-Trial Stage
- 4.3 Challenges at the Trial Stage
- 4.4 Challenges at the Post-Trial Stage

CHAPTER 5 JUDICIAL APPROACH TOWARDS PROTECTION OF

CHILDREN FROM SEXUAL ABUSE Pg. 59-77

- 5.1 The State of Rajasthan v. Manoj Pratap Singh
- 5.2 Sharath Chandra Pottala v. Union of India
- 5.3 K. Muthu Mariappan v. The State
- 5.4 Sachin v. State of H.P.
- 5.5 Sahil Thakur v. State of Himachal Pradesh
- 5.6 Pranil Gupta v. State of Sikkim
- 5.7 Jongi v. State
- 5.8 Jagar Singh v. State of H.P.
- 5.9 Attorney General for India v. Satish
- 5.10 Competency of Child Witness
 - 5.10.1 Mahadev Gaur Bishwas v. State of Maharashtra and Anr.
- 5.11 Consent in Conflict
 - 5.11.1 Remarks by Chief Justice of India
 - 5.11.2 Mr. 'X' v. State Govt. of NCT of Delhi and Anr.
 - 5.11.3 Veekesh Kalawat v. State of Madhya Pradesh and Anr.
 - 5.11.4 Tarun Vaishnav v. The State of Rajasthan and Anr.
 - 5.11.5 Silvestar Khonglah v. State of Meghalaya

CHAPTER 6 COMPARATIVE STUDY OF LAWS PROTECTING

CHILDREN FROM SEXUAL ABUSE Pg. 78-86

- 6.1 Child Sexual Abuse in United Kingdom
 - 6.1.1 Child Pornography: A Legal Perspective
- 6.2 Child Sexual Abuse in USA
 - 6.2.1 Historical Context
 - 6.2.2 Development of Pornography Laws in United States
 - 6.2.3 Child Pornography Prevention Act, 1996
 - 6.2.4 PROTECT Act, 2003

CHAPTER 7 CONCLUSION AND SUGGESTIONS **Pg. 87-93**

7.1 Conclusion

7.2 Suggestions

BIBLIOGRAPHY **Pg. 94-95**

CHAPTER 1

INTRODUCTION

India is regarded to have the world's greatest child population. In India, there are 472 million children under the age of 18, accounting for 39% of the total population (1.21 billion according to the Census of India, 2011).

The Indian Constitution provides all children in India 'Fundamental Rights' and authorises state governments to establish particular measures for the protection of children from all forms of maltreatment and to secure their right to live in a peaceful environment.

Furthermore, the Directive Principles of State Policy specifically require state governments to protect children from sexual abuse and to provide chances and facilities for children to grow in a healthy way in circumstances of freedom and dignity.

Children's rights are being violated severely in India, and they are being sexually molested, harassed, and attacked on a regular basis. The state's constitutional obligation is to protect people's rights, particularly those of children.

Sexual crimes against children have increased dramatically in the last two decades, not just throughout the globe but especially in India, where children are seen as the nation's riches. These crimes are more savage, have little regard for gender or age, and are often fatal.

Until 2012, sexual offences against children were recognised under three sections of the Indian Penal Code (IPC): rape (unauthorised sexual intercourse - Section 376), violation of modesty (Section 354), and unnatural acts (unnatural sexual intercourse with any male or female animal) (Section 377).

The Indian Penal Code was insufficient to protect children and criminalise their sexual abuses, prompting the creation of the POCSO Act.

This was in accordance with Article 15 of the Indian Constitution, which requires states to protect the country's children, and in lieu of the United Nations Conventions on the Rights of the Child, which recommend a set of rules for member states to follow in securing the best interests of the child.

To protect children from sexual offences in India, the Protection of Children from Sexual Offences (POCSO) Act 2012 defines different types of sexual abuse, such as sexual assault, penetrative sexual assault, aggravated penetrative sexual assault, as well as sexual harassment and also includes punishment for using a child for pornographic purposes.

The POCSO Act has played a critical role in safeguarding children from sexual assault since its passage. The Act guarantees harsh punishment for criminals and allows for expedited trials and victim rehabilitation. The Act also mandates anybody, including parents, teachers, and medical experts, to report any sexual crime against a minor, and it calls for a prompt investigation and trial.

Despite the Act's provisions, the frequency of child sexual abuse remains a major problem in India. Many incidents of child sexual abuse are unreported, and even when they are, they often face lengthy investigations and trials. The Act has also been criticised for failing to provide enough assistance to child victims and their families.

The statute defines a child as anybody under the age of eighteen; this is the most significant flaw in the statute, which assesses anyone based on their biological age rather than their mental age.

There have been occasions when a sufferer with cerebral palsy was 38 years old biologically and 6-8 years old mentally. If a youngster of such capacity is raped, only IPC 375 applies, and the POCSO Act does not apply¹.

Consensual adolescent relationships are criminalised under the POCSO Act, and the Act also leaves unanswered the subject of what happens when two minors engage in any type of sexual activity.

The Indian Penal Code 1860, the Criminal Procedure Code of 1973, the Indian Evidence Act of 1872, and the Protection of Children Sexual Offences Act of 2012 has been amended by The Criminal Law (Amendment) Act of 2013.

¹ Eera V. State, 2017 SCC Online SC 787

The Criminal Law (Amendment) Act 2013, for example, offers sanctions for stalking, voyeurism and disrobing, trafficking, and acid assaults, however POCSO is an ideal kind of regulation that recognises all potential types of sexual crimes against children as crimes punishable by law.

Following this, a few provisions were added to The Criminal Law (Amendment) Act 2018 relating to the degree of punishment fluctuating with the range of age that is victim is below 12 than the punishment is death penalty in such case, also with the amendment in the Indian Penal Code, Criminal Procedure Code 1973, the Indian Evidence Act, 1972, and the Protection of Children Sexual Offences Act, 2012. Having all of this is a blessing, yet a few issues remain unaddressed. To offer effective assistance to the victim of sexual abuse, a multi-dimensional multi-agency team, and multi-tier strategy, together with psychological treatment, needs to be provided.

In this context, the current study is being carried out to critically examine the implementation and performance of the POCSO Act, as well as to study the issues and challenges associated with the Act by conducting a comparative analysis of laws for the protection of children from sexual abuse in USA and UK, as well as the role of the judiciary in protecting children from sexual abuse and providing them with a safe and protected environment.

1.1. Meaning and Definition of Child

A child is a natural person; physiologically, a child is a human being between the ages of birth and puberty. There is a legal meaning of kid that relates to a minor, also known as a person under the age of majority².

A child is defined as someone who has an association with a parent (as in the capacity of sons and daughters of any age) or who, metaphorically, holds a figure or represents group membership in a clan, dynasty, or creed; it can also be based on, or indicate the specific time, place, or surroundings as a nature of the child, and the age is the number defined as "a child of the Sixties."³

² Child, From Wikipedia, the free encyclopedia, <https://en.wikipedia.org/wiki/Child>

³ "American Heritage Dictionary"

Definition of a Child

Historically, the term “Child” comes from the Latin infants who mean ‘the one who does not speak’. As per the Roman, the term “Child” means the stage from birth, till the age of 7 years.

Such a notion and belief may be traced down through the years and civilizations to eventually view it as a human person from birth to maturity. However, the concept of a kid is fairly broad, and the age of majority or adulthood varies greatly from culture to culture⁴.

According to the **Convention on the Rights of the Child 1989**, a child is defined as "any human being under the age of eighteen years, unless the majority is attained earlier under the law applicable to the child."

Section 2(d) of the POCSO Act of 2012 defines "Child" as any individual under the age of eighteen.

1.2. Meaning of Child Sexual Abuse

According to the **Standing Committee on Sexually Abused Children (SCOSAC) 1984** "Any child below the age of consent may be deemed to have been sexually abused when a sexually matured person has engaged or permitted the engagement of that child in any sexual activity of a sexual nature which is intended to lead to sexual gratification of the sexually mature person,"

The World Health Organization⁵ states that child sexual abuse is defined as the engagement of a child in sexual behaviour that he or she does not completely grasp and is unable to provide informed agreement to, or for which the kid is not psychologically prepared and cannot offer consent, or otherwise violates societal laws or social taboos. kid sexual abuse is defined as an action between a kid and an adult or another child who, due to age or development, is in a position of responsibility, trust, or authority; this activity is meant to fulfil or meet the wants of another person. This includes, but is not limited to, inducing or coercing a kid to participate in any illegal sexual behaviour, as well as exploiting the child in pornographic performance and materials.

⁴ Rights of the Child, The meaning of the child and the rights of the children see online text at <https://www.humanium.org/en/child-rights/>

⁵ Who Report of the consultation on child abuse prevention, 29-31 March, 1999, Geneva: WHO, 1999

1.3. Child Sexual Abuse in India

Child sexual abuse laws have been implemented in India as part of the country's child protection programmes. In India, 53% of children are subjected to some type of sexual abuse. The need for stricter laws has been acknowledged several times. Prior to the 2012 Act, the only particular item of child abuse legislation was the Goa Children's Act, 2003⁶. The Protection of Children Against Sexual Offences Act was approved by the Indian Parliament. Prior to the POCSO Act, the majority of sexual crimes were covered under the IPC 1860. However, its general statute does not cover all sorts of sexual assaults against minors. It doesn't differentiate between adult and kid victims.

The POCSO Act, 2012 makes measures to minimise re-victimization of children at the hands of the legal system, and so it allows for special courts that conduct the trial in-camera and without exposing the identity of the minor in a child-friendly manner. As a result, the youngster may have a parent or other known person present while testifying and may request support from an interpreter, special educator, or other experts. Above all, the Act requires that a case of child sexual abuse be resolved within one year of the date of the incident when it is reported, ensuring that these matters get prompt justice.

1.3.1. The Roots of Child Abuse

Child abuse and victimisation, like any other kind of social suffering, have specific causes. It should be mentioned that the elements that contribute to child abuse in every community are determined by economic, social, and cultural factors, as well as the norms that govern that society. For example, in impoverished or developing nations, child abuse is often caused by poverty, illiteracy, and parental ignorance, but in wealthy countries, inadequate family foundations have a little role in producing child abuse.

As a result, the family is the most significant institution that, directly or indirectly, contributes to child maltreatment. The family is the most important and sensitive social unit in the development of a child's personality, physical ability, and spiritual traits. When this social unit is damaged, children will be the first to suffer significant harm, perhaps leading to a bleak future and a dismal destiny for this group in society.

⁶ CHILDLINE India Foundation: Documents - Cause View Point - CHILD SEXUAL ABUSE-The Law and the Lacuna". Childlineindia.org.in. 2010-01-19. Retrieved on 12May2023.

Child Sexual Abuse is a major issue in Indian culture that has reached epidemic proportions. According to the study, it is propagated as a societal evil everywhere, and curing it is not a simple chore for anybody. However, the only solution is to support it and make every effort to rescue, prevent, and protect.

It demonstrates in the Indian context that the issue of Sex Trafficking and Child Sexual Abuse is both widespread and harmful in the nation. Children who have been sexually abused are often known to the perpetrators. As a result, the CSA issue should be approached in a straightforward and particular manner in order to be more successful and stringently implemented.

1.4. Forms of Sexual Abuse

Sex crimes encompass a variety of circumstances in which a person engages children or adolescents in any sex activity, displays insufficient sex material, or displays inappropriate sex conduct. There are several forms of sexual abuse in which a youngster is compelled to engage in sexual behaviour by another child. In general, sexual abuse involves physically, mentally, or physically threatening a child, but it also includes many types of influencing that are to be viewed or felt as impressing the child with love and affection.

Sexual abuse may be divided into numerous kinds, all of which are referred to as child sexual abuse mentioned below-

- **Sexual Assault:** In this person physically contacts children for their sex needs, sexual pleasure, such are rape, sexual penetration⁷.
- **Sexual Exploitation:** In this adult exploit utilize or victimize a minor for sexual advancement, profit or gratification example: prostituting child, trafficking child or child pornography.
- **Sexual Grooming:** Social behaviour of an offender who creates or makes more favour to a child. Minor accept their favour or advances.
- **Penetrative Sexual Assault:** When a person is said to commit “Penetrative Sexual Assault” if makes such attempt-
 - He penetrates his penis to any extent into the vagina, mouth urethra or anus of a child or makes the child do so with him or any other person; or
 - He inserts, to any extent, any object or a part of the body, not being the penis into the vagina, the urethra or anus of the child or makes the child to do same with him or with any other person, or

⁷ Section 7 of POCSO Act,2012

- He manipulates any part of the body so as to cause penetration in the vagina, urethra, anus, mouth or any part of the body of child along with that forced the child to do the same with him or with other person, or
- He put his mouth on the private body parts of the child and forced him to do same⁸.
- **Sexual harassment:** Sexual harassment means a person harass, molest or annoy a child along with the intention to fulfill the sexual needs-
 - Making or producing such sounds or words with the intention to attract a child along with the showcasing any objects or making expression with the sexual intent that must be influence to child; or
 - Force to child to showcase the body or any part thereof, that can be seen by person
 - Showing any kind of pornographic or obscene material; or
 - Regular or continue watches or following the child and make contact with them by any medium such as direct meeting, by electronic medium or online or any kindof; or
 - Use threat to indulge in sex activity either in real form or through media or making a deception on electronic media of any part of body of child; or
 - Alluring children just for enjoyment or pornographic uses and sexual pleasure⁹.
- **Incest:** Incest means a close relative or family member indulge in sexuality which is unlawful. Much jurisprudence explains what was incest as per their rule of law or land? It depends upon the type of sexual activity, though such connection may be consequently, affinity or relationship through adoption¹⁰.
As in the case here, incest sexual activity is in each and every jurisdiction is always considered as unlawful illegal in spite of their age, consent of the parties. This type of sexual activity continues or in relation to the marriage of people as a prohibited relationship.
- **Paedophilia:** Paedophilia is a state where an adult or an adolescent is initially or particularly related to prepubescent children that is a child who attaches puberty. Though such attraction may not be acted such thing is called Paedophilia. A person with that situation is called pedophilia¹¹.
- **Organized Sexual Abuse:** It means where a variety of children is subjected to sexual abuse by several perpetrators, as that situation where an area is not specified.

⁸ Section 3 of POCSO Act

⁹ Section 11 of POCSO Act

¹⁰ <https://legal-dictionary.thefreedictionary.com/incest>

¹¹ <https://www.revolvy.com/page/Pedophilia>

In this condition, children are included into various heinous and harm crime that involves child prostitution, creator of child pornography, ritualistic abuse, illegal, unacceptable usage, brutal or bizarre act and in human sexual practices or torture.

There are circumstances, where a child is subject to organized sexual abuse. As they have an abusive family atmosphere which may include either a member of the family or a family friend or any person paying for abusing children. On the side, a child is inserted to organized child sexual abuse through the perpetrator, though they are in school, street, religious institution or poor, homeless, not stable, uneducated family.

Generally, parents are involved in organized sexual abuse because they have an unhappy family life or they are the background of abuses in the past life, outside the family. All kind of abuses are interconnected in it, but the basis is by parent and relatives. It is actually different from any other offence, as in women are considered as a perpetrator. Reason for that they have raised in such environment where an organized sex crimes actually is regular system of society, also in the capacity of an adult may have power to abused in an organized sexually abuse with the male offenders.

1.5. STATEMENT OF THE PROBLEM

Sexual crimes are a major source of worry in today's society since they are committed against minors, having a devastating impact on their lives and future. Though the POCSO ACT, 2012 was created with the express purpose of protecting minors from sexual assaults, the act has certain flaws.

Given the limitations of this law, the duty of interpreting and properly implementing it falls to the court. However, the court's position has not been consistent; the judiciary has expressed differing positions on the meaning of certain clauses of the POCSO Act, 2012. Furthermore, several elements of the POCSO Act are flawed in that they do not evaluate the victim's mental age but simply the biological age. It also criminalises teenage sexual interactions that are consenting. There is also a lack of understanding of the provisions of this Act.

As a result, the researcher intends to conduct a critical examination of the POCSO Act's efficacy in protecting minors from sexual abuse.

1.6. OBJECTIVES OF THE STUDY

1. To assess the POCSO Act's efficacy in protecting children from sexual assault.
2. To investigate the role of the court in safeguarding children from sexual offences under the POCSO Act of 2012.
3. To study the laws of other countries for protection of children from sexual abuse.
4. To identify and provide solutions to the issues encountered during the implementation of the POCSO Act.

1.7. HYPOTHESIS

- The provisions of the POCSO Act, 2012 are successful in both the pre-trial and trial procedures by protecting the victim and preventing their re-victimization.
- Implementation of POCSO Act, 2012 is not effective.
- It is unjust to criminalise consensual adolescent sexual relationships.

1.8. RESEARCH METHODOLOGY

The researcher has recommended using a doctrinal research technique. The current study is mostly based on doctrinal and analytical methods. The study primarily examined the efficacy of the POCSO Act in reducing child sexual abuse. The researcher resorted to and evaluated existing literature on child abuse in relation to the current topic from numerous sources.

Analysis of research papers, pertinent legislation, publications, and reports, articles in journals, dissertations, and material from the internet are all part of doctrinal study.

The researcher endeavoured to analyse the material gathered from various sources and critically assessed, reviewed, and presented it in the research study. The researcher acquired information from secondary data sources, i.e., Books, journals, media pieces, and court decisions are all examples.

1.9. LITERATURE REVIEW

- Model Guidelines for the Protection of Children from Sexual Offences Act of 2012. September 2013, Ministry of Women and Child Development. [Internet-based document]. Accessible at: <http://www.wcd.nic.in/childabuse.pdf>.
- The effect of child sexual abuse on health: a systematic evaluation of reviews, Maniglio R. Review of clinical psychology. 2009; 29(7):647–57.
- World Health Organisation. Report of the consultation on child abuse prevention (WHO/HSC/PVI/99.1)
- Government of India (2013), "Report of the Committee on Amendments to Criminal Law"
- 205th Law commission Report of India. 5th February 2008

The researcher has read the above-mentioned literature in the form of reports and journals, and the researcher believes that the child sexual abuse menace is still prevalent against children. However, the literature falls short of highlighting the actual drawbacks of the POCSO Act due to its ineffective implementation, which results in injustice. As a result, the proposed research seeks to evaluate the efficacy of the POCSO Act in protecting minors from sexual abuse.

1.10. SCOPE OF THE RESEARCH

The scope of the research denotes the overall framework of the study that will be addressed by this research job. The primary goal of this study is to evaluate the efficacy of the POCSO Act.

The scope of study is confined to just one Child Protection legislation i.e. The Protection of Children from Sexual Offences Act (POCSO) Act 2012, and is limited to a study of the role of the court in protecting children from sexual offences, as well as a study of gaps in the POCSO Act's provisions and suggestions on how to fill them. The study is also valuable to the general public in learning about the POCSO Act, which protects minors from sexual abuse. The current study, its analysis, results, recommendations, and conclusion presented by the current researcher will be very useful to future researchers doing similar studies.

1.11. CHAPTERIZATION

➤ CHAPTER 1: INTRODUCTION

Present chapter aims to give a broad outline of proposed research topic, the backgrounds which the researcher has observed upon which the researcher has formulated his hypothesis, the methodology adopted for study and aims and objectives with which the work has been carried out. It also explains the brief idea of research work.

➤ CHAPTER 2: HISTORY AND DEVELOPMENT OF THE POCSO ACT

The present chapter will study about the history of child sexual abuse and will discuss about the various factors that lead to the adoption of the POCSO Act,2012.

➤ CHAPTER 3: APPLICATION AND OPERATION OF THE ACT

It deals with study of Indian Legislation for the protection of children from sexual offences through the provision of provisions Protection of Children from Sexual Offences Act, 2012.It will examine adequacy of Indian legislation for protection of children from child abuse.

➤ CHAPTER 4: ISSUES AND CHALLENGES CONCERNING THE ACT

The present chapter will discuss about the issues challenges that hampers the effectiveness of POCSO Act. It will also study the shortcomings in the Act.

➤ CHAPTER 5: JUDICIAL APPROACH TOWARDS PROTECTION OF CHILDREN FROM SEXUAL ABUSE

It discusses the legal issues of child abuse dealt with by Courts in India i.e. at the level of the Supreme Court, the High Courts. It discusses the principles & measures which Indian Courts have

formulated in the course of dealing with controversies relating to protection of children from sexual offences and thereby doing justice to the victims of child abuse.

➤ **CHAPTER 6: COMPARATIVE STUDY OF LAWS RELATING TO CHILD SEXUAL ABUSE**

As Indian legislation is highly inspired from the laws at global level, it is necessary to study the laws of certain foreign countries on the issue of child abuse so as to compare the measures and protection granted by foreign courts & Indian courts, in order to provide suggestions for effective implementation of POCSO ACT, 2012 for the cause of facilitating justice to victims.

➤ **CHAPTER 7: CONCLUSION AND SUGGESTIONS**

The present chapter will be concluded by various factors considered in the proposed research work & will give a summary of what work has been done, findings of researcher and suggestions for effective implementation of the POCSO Act and measures to overcome its drawbacks.

CHAPTER 2

HISTORY AND DEVELOPMENT OF POCSO ACT

Sexual acts have their own function to play in the development of civilization. It is the foundation for the family's growth, development, or expansion. These, on the other hand, must be governed by legislation since they have their own set of advantages and disadvantages. Sexual violence encompasses sexual abuse, incest, or any other criminal sexual behaviour, as well as certain privilege relationships.

Laws exist to characterise the actions of society, whether the conduct is socially acceptable in the current society or not, and if not, to regulate the situation and their penalty. Such laws differ from nation to country and are constantly fought, overturned, and re-enacted across the world.

As far as we are concerned, violence against children has no bounds of race, location, class, religion, or culture. It may happen at home, school, on the street, at work, in the market, at amusement, at a care facility, or in imprisonment. Perpetrators might be parents, family members, teachers, neighbours, friends, carers, law enforcement officials, or anybody else. Rape, stalking, voyeurism, sodomy, sexual abuse, sexual harassment, sexual abuse of children, and child trafficking are all prohibited under the law.

2.1. Scenario in India

India is a huge nation with many social, cultural, and sexual differences. Sexuality in Indian culture has developed through time and has been greatly impacted by the rulers of their period and their religion. Indian sexuality may be shown in their clothing, conduct, leisure, literature, art, scriptures, sports, and religion. It has influenced how we recognise our well-being, problem, and therapy for the same. With rising globalisation, the distinct Indian sexuality is becoming more widely dispersed in current times. At this moment in time, it is vital to understand our sexual selves in order to achieve individual independence and to reinvest energy in sexuality-related societal concerns¹².

¹² Indian Concept on Sexuality, Indian journal of psychiatry, Jan 2013, see link on <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3705691/>

From digging the first literature that regarded sexual interaction as a science to the present Indian setting that focuses on the ideology of new age groups in relation to sex, India has played an important role in the history of sex. It is a point of contention that India pioneered sexual education via the mediums of art and literature. However, there was a variance in sexual practise throughout all cultures, even among individuals from the same state, since the norms for the ruler and the ordinary people are different. Powerful individuals live a luxurious lifestyle that lacks values and does not reflect the lives of ordinary people. India is a big nation in terms of structure, history, and custom, with wide variations in population and socioeconomic conditions. Despite the fact that India has variation in religion or morals, it has been collectively defined as "a jumble of possibilities," which implies that there is a vast potential to develop since they have diversity in belief, traditions, and culture, which has largely moulded their lives and sexuality.

2.2. The Development of Child Rights in India

There are many provisions in the Indian Constitution that are based on the fundamental framework to protect, develop, and care for children. There are many laws that contain the essence of the UN Convention; in this spirit, they guarantee their rights and are entitled to protection under the constitution. The UN General Assembly passes the UN Declaration of the Rights of the Child in the 1950s, and it is recognised in Indian governments in the capacity of Five-Year Plans. Various laws and programmes undertaken by the government with the goal of providing services to children such as health, nutrition, safety, livelihood, or education.

The Government of India developed the National Policy for Children in 1974, seeing children as the nation's most valuable asset. Such policy prescribes the suggestion for a comprehensive health programme, additional nourishment for both mother and child, nutritional knowledge to child bearer, right to education until the age of 14, informal re-school study system, promote health studies, contesting motion, exclusive recognition to vulnerable sections such as scheduled castes and others, hindrance to using and certain amenities for handicapped children.

Under the National Policy for Children, a National Children's Board is established to function in accordance with the design, inspection, coordination, and execution of specific support for children. It was first maintained in 1974 and was last updated in 2013.

India's history of recommitting to the United Nations Convention on the Rights of the Child since India ratified the Convention in 1992¹³:

- India acceded to UNCRC on 11 December 1992
- National Plans of Action for Children, 2005¹⁴
- India adopted the National Charter for Children, 2003
- The Commission for Protection of Child Rights Act, 2005
- The National Policy for Children, 2013

National Policy for Children, 2013¹⁵

Recognises the following:

- A child is defined as a person below the age of 18 years.
- Childhood is an integral component of life with intrinsic significance.
- Every child is unique in his or her character and kind, making it difficult to analyse such disparities in maltreatment across conditions.
- A constructive vision that works together for the exclusive benefit of the child is required for successful protection.

Reaffirms that:

- All children are exclusively essential along with that a supreme treasure of a nation
- Significant standard and supporting acts must be mandatory for abating or vanishing the situation which creates the inequity
- Every child deserves to have happy, loving surrounding or the environment
- Family of the children must adequately equip with the societal system to protect, care, and nurture their children.

¹³ The UNCRC and India in The United Nations Convention on the Rights of the Child (UNCRC). For online text see, <https://fight-ipca.com/wp-content/uploads/2017/05/un-crc-and-india.pdf>

¹⁴ THE COMMISSION FOR PROTECTION OF CHILD RIGHTS ACT, 2005 AND THE SUBSEQUENT CONSTITUTION OF THE NATIONAL COMMISSION FOR THE PROTECTION OF CHILD RIGHTS <http://wcd.nic.in/The%20Gazette%20of%20India.pdf>

¹⁵ <http://wcd.nic.in/childwelfare/npc2013dtd29042013.pdf>

The “Department of Women and Child Development” was established in 1985¹⁶ by the "Ministry of Human Resource Development". These departments, in collaboration with the ICDS, carry out numerous programmes that empower women and children by advocating for and controlling their rights. In order to achieve this, the current government established a National Plan of Action for Children in 1992.

On November 12, 1992, the Indian Government ratifies the Convention on the Rights of the Child. By ratifying, the government is obligated to align the policy with convention by reviewing it or amending the proviso. Such agreements do not authorise the rights granted by the Indian Constitution; rather, they only confirm them and offer a solid foundation for definitively protecting the rights promised¹⁷.

The primary goal of the "Ministry of Women and Child Development" is to uphold and carry out existing conventions. Regardless of whether the topic is included in an article of the Convention or in separate policies, the departments and agencies of the government are comparable. To that end, a committee was formed up of representatives from the relevant ministries to take art to work, inspect, and oversee the convention's implementation process.

2.3. Inception of the POCSO Act

There is an urgent need to safeguard children, and this has become a global concern for all cultures. Children are victims of abuse and exploitation in a variety of ways, including sexual exploitation, including commercial sexual exploitation, physical and psychological abuse.

There are several reasons why children find themselves orphaned, relocated, handicapped, homeless, or abandoned. These instances develop during an emergency, war, natural catastrophe, or when they are separated from their parents and no one is around to safeguard them from danger.

Child exploitation and abuse have traumatised youngsters, which has a negative impact on their well-being and retards their development.

Children who are abused have long-term implications such as mental health issues, physical issues, a lack of skills, drug and alcohol usage, and the possibility of coming into touch with the authorities.

¹⁶ https://en.wikipedia.org/wiki/Ministry_of_Women_and_Child_Development

¹⁷ <https://panihatichhatrashakti.wordpress.com/the-history-of-child-rights-in-india/> Last accessed on May17,2023

Sexual abuse of children is a blot on society as a whole because it shudders society's human sensitivity and obstructs children's natural healthy growth. It will have severe physical, mental, and psychological impacts on the children's bodies, brains, and growth. Child sexual abuse is the most heinous crime since it leaves permanent traces on a child's mentality. It is an invasion on childhood; not just by physical assault, but also through blunting the ability to trust, feel, and live a normal life. The creation of the POCSO Act is a benefit for victims and their families. It is highly prescribed regulation that outlines each and every possible offence, including numerous sorts of penetration and immodesty against youngsters.

2.4. Journey through Legislation

According to history, "Child Sexual Abuse" must remain a hidden problem in the Indian context, and it should not be brought to the forefront of the mainstream, society, or court system. Until the passage of the POCSO, CSA was not an infraction; rape was the sole criminal violation, and there were no additional laws in place to protect minors from sexual assaults. objectionable sexual acts such as sexual assault, harassment, exploitation, pornography, and sexual favours were never considered objectionable under that situation. In recent years, the central government has made laudable initiatives with the assistance of the "Ministry of Women and Child Development" to "break the chain of the conspiracy of silence"¹⁸ and have commenced a constructive political and public momentum in that direction. In light of the constitutional provision introduced by the "Ministry of Women and Child Development," these movements bring out for the first time a legislation known as "Protection of Children from Sexual Offences (POCSO) 2012."

The current legislation is founded on constitutional provisions and was written in this spirit. The constitution is regarded as the legislative basis. There is a specific article that enables children and women to speak out against society.

¹⁸ Human Rights Watch. (2013). *Breaking the Silence: child sexual abuse in India*. USA: Human Rights Watch. ISBN 1-56432-980-1.

The Constitution protects children and prohibits them from abusing the legal system. It also strengthens society by enacting various laws to protect and shelter them. Some are listed below¹⁹:

Constitutional Provisions²⁰

Article 14 provides the right of equity before the law and equal protection of laws in Indian Territory.

Article 15(3) provides that; the state is empowered to make any laws for any special provision in regard to women and children.

Article 21 provides the rights to life that has to be free, dignified, as per the procedure established by the laws.

Article 21A direction to the state to provide elementary education to children up to the age of 6, free of cost.

Article 23 deals with the prohibition trafficking human or forced labour.

Article 24 prohibits the employment of children below the age of fourteen years in hazardous occupation.

Article 25-28 guarantees to all citizens freedom of religion.

Article 39(e) and (f) provide that to secure the health of the worker, children, men, women, and have a healthy life and livelihood, dignity and protection from exploitation.

Article 45 provide for early childhood care and education to children below the age of 6.

2.5. Child Sexual Abuse in India

With all of this, there is one issue left over i.e., child sexual abuse in India. A large-scale research study was conducted on the emerging issue of female abortion, rapes and abuse in institutions, or serious offences that result in the commission of a crime, sponsored by authorities to administer the approach and type of sex crime in the Indian scenario²¹. This research is resolved by a profoundly constructed approach that consists of 13 states, each two states from 6 geographical zones solely in the nation, comprising entities that have higher or lower levels of crime in connection to crimes against children. It may be summarised based on the findings of numerous studies in this field that more than 20% of cases of sexual abuse in children are perpetrated by family or known persons, with the remaining 50% perpetrated by an outsider with preparation or arrangement with another person.

¹⁹ M.P. Jain, Indian Constitutional Law Vol. First, New Delhi: Wadhwa and Company Nagpur.

²⁰ Dr. J.N. Pandey, The constitutional law of India; Central Law agency Allahabad; Ed. 2018

²¹ Kacker, L., Mohsin, N., & Dixit, A. (2007). *Study on child abuse: India 2007*. New Delhi: Ministry of Women and Child Development, Government of India.

Furthermore, there were many variations in the crime rate and its extent based on regional and rural-urban areas in relation to such crimes in Indian society situation of women and girls are more brutal in comparison to boys as on the other hand reported cases show the different side of the coin in this matter.

Conclusively exploitation or abuse is mostly associated with low economic levels. In general, the problem arises in families with poor socioeconomic conditions. In this perspective, we can firmly explain the element of child sexual abuse as a lack of education, a poor income, a large family or friends, and a lack of a decent living standard.

Children who have been abused are treated similarly by the country's justice system, and the improvement system is ineffective, as is asocial avoidance. According to the police department's study, only 3% of incidents of child abuse are brought to light. Surprisingly, most cases of sexual abuse do not come to light owing to societal pressure or participation of family members. It is the fact of Indian culture, or to state that other Asian nations, despite having such a shared or collective culture, in which the individual's experience is overlooked for the purpose of the family or to shield such family from the term sexual abuse.

2.6. Law Before POCSO Act, 2012

Prior to the passage of the POCSO, an offence of "Child Sexual Abuse" was dealt with under the Indian Penal Code. Child sexual abuse was prosecuted under the Indian Penal Code under the sections listed below²²:

- I.P.C (1860) – Sec 375 Rape
- I.P.C (1860) – Sec 354 Outraging the modesty of women
- I.P.C (1860) – Sec 377 Unnatural Offences

The Indian Penal Code was insufficient to protect children from sexual abuse or other non-conventional abuses, which are separate from the abuses mentioned above, such as pornography, trafficking, and child trade. There were many flaws in the current criminal code under this time, which did not sufficiently address the problem of child sexual abuse.

²² S.N. Mishra, Indian Penal Code, Central Law agency Allahabad;2018

These are some examples of loopholes:

- IPC 375 provides protection to the female victim not to protect male victims also the basic standard of the sexual act is considered a crime “traditional” peno- vaginal intercourse.
- IPC 354 the statutory definition of “modesty” does not justify its purpose as it not up to the mark in relation to sexual abuses. It takes very low penalty along with that is compoundable offence, moreover it, it does not provide protection to the male child in this specific area.
- In IPC 377, “unnatural offences” were not specifically defined. This term is associated only with the penetrated sex attacks; it does not specifically protect the children from sexual attacks.

Until the adoption of a separate legislation dealing with specialised fields such as sexual abuse against children, it was only punishable under the country's criminal laws in three specific sections that did not solely pertain to minors. However, the only option to report offences in these exact conditions is as follows²³:

- **Rape** (sexual intercourse without consent—Section 376),
- **Outraging modesty of a woman** (Specific Acts are not defined—Section 354) and
- **Unnatural acts defined as** “carnal intercourse against the order of nature with any man, woman or animal”— Section 377”.

In this regard, some sorts of sexual abuse, such as "non-penetrative sexual assault, harassment, and exploitation," are not defined or considered crimes, and hence are not documented. The "Protection of Children from Sexual Offences (POCSO) 2012" regulations are the result of media awareness and significant public demonstrations on such horrible subject, which pushed the Indian government to establish a unique legislation for the protection of the society's children. The special act incorporates every imaginable type of sexual abuse into it, such as "sexual assault, sexual harassment, and pornography" involving minors under the age of 18 years, as well as that designed to settle special court charges.

²³ S.N. Mishra, Indian Penal Code, Central Law agency Allahabad; 2018

2.7. Reasons for Enactment of the POCSO Act,2012

The Indian Penal Code's weakness, as well as the absence of special legislation that is expressly or entirely allocated to deal with the problem of sexual abuse in the form of sexual exploitation and sexual harassment. It is the primary reason for the government's creation of a new legislation to protect minors from sexual crimes such as pornography, assault, and harassment by providing a legal framework to maintain special courts for matters relating to sexual abuse or incidental to them. It was the result of the provision of Article 15 of the Indian Constitution, which directs states to make any laws to protect the children of the nation, as well as the essence and standards set by the "United Nations Conventions on the Rights of the Child," to secure and provide the best and healthiest life for children.

2.8. Commencement of POCSO Act,2012

On the 19th of June 2012, the legislation obtained the President's assent, and on the 20th of June 2012, it was announced in the Gazette of India under the title "The Protection of Children from Sexual Offences Act, 2012." And it came into force on 14 November 2012.

The preamble of the legislation indicates or insists on the urgent need for such legislation, which constantly protects and develops the rights of children, using every available means during each stage of the judicial proceeding to maintain the privacy and confidentiality of the children.

The POCSO Act places a premium on child safety as well as the kid's whole development in terms of physical, emotional, intellectual, and social development.

The aforementioned legislation also instructed the state to gather all of the key provisions of the "Convention on the Rights of the Child" that are required or appropriate for consideration in systems such as national, bilateral, and multilateral conditions to prohibit the following:

- The persuasion or intimidation of youngsters to engage in or participate in illicit sex acts;
- Illegal or brutal recruitment of a child as a sex worker or other prohibited sex-related activities;
- Taking deceptive or unethical advantage of a child for pornographic or obscene publishing and associated matters.

2.9. Exclusive Provisions of POCSO Act

In general, the current legislation under discussion here is not limited to defining the terms "rape" or "penetrative sex through the penile." Regardless, it encompasses any imaginable sex-related action, such as oral sex, insertion of any object in the anus, mouth, or vagina, under the guise of 'penetrative sexual assault' (Section 3).

The current case of **State vs Pankaj Choudhary, 2011**, which deals with the digital penetration of anus and vagina of a 5-year-old child, may only be punished for "outraging the modesty of a woman." The prosecution had failed to establish that the act of accused falls within ambit of sexual crimes or rape since such acts were not included in the Indian Penal Code²⁴. In this light, the term of penetrative assault has been expanded to better protect minors.

In POCSO, a variety of acts are prescribed and mentioned in the act as to what falls into which category, such as "sexual assaults, short of penetration (Section 7)". Along with that crime, "aggravated" forms of penetration or non-penetration sexual assault are considered more serious offences and have harsher punishments under Sections 5 and 9 of the Act, if it was committed by a specific gang, perpetrators, or in an ample plan to commit by a person in power or authority in relation to children, in a shared household.

As a result, in this connection, inflict physical harm, a threat with arms and weapons, a threat with guns, or acid assaults, in a community protest or violence. Abusing or harassing a kid under the age of 12 years old, as well as a child who is mentally or physically challenged, might infect the child with a disease like HIV, cause pregnancy, attack a pregnant child, or result in public humiliation. The scope of such an infraction is broad enough to include any behaviour that could be involved in protecting the child's interests in the current situation.

POCSO is a next generation act in many ways, but it defines sexual harassment in such a way that the words "repeatedly or constantly" following, watching, or contacting a child by direct method or through any other method such as electronic medium such as [Section 11(iv)] emerge, thus covering incidents of child harassment via sexting or sexual cyberbullying.

²⁴ Delhi High Court. (2011). State vs Pankaj Choudhary. <https://indiankanoon.org/doc/613056/>. Last Accessed 19 May 2023.

Nonetheless, an examination is made of such expressions as "repeatedly," "constantly," "following" or "contacting" youngsters with sexual purpose, which are not specified in the act and must be construed by the courts in each and every instance, making it likely to be contested. The Act has an unusual characteristic in that it punishes "the abetment of or attempt" to commit the offence described in the preceding Sections (Section 16). The additional 'extraordinary clause' (Section 29) is regarded as "the presumption of guilt" to the accused until he shows guilt free.

Because the matter is so sensitive, the outline for the Special Courts defined under Section 35, in which trial proceedings may be done or conducted 'in camera trials' (i.e., privately), via video-link, or behind curtains or screens, is intended not only to reduce trauma but also to protect the identity of the child to testify the victim. The Special Court is critical in dealing with instances of sexual abuse in the legislation, as well as in their implementation or interpretation.

POCSO implementation developed the criminal justice system, and a multi-sector strategy was used to maximise the utilisation of their resources at par. Numerous problems emerged as a result of a lack of training as well as a lack of cash or resources, which hampered the process of investigation, prosecution, medical examination, or any other emergency necessary in instances of child sexual abuse. The effectiveness of an act or a law is entirely dependent on the person responsible for its implementation, execution, or application.

The legality of a legislation is solely dependent on the individuals in charge of its implementation and execution. State governments must guarantee that all of the standards outlined in the legislation are met, and all key stakeholders must internalise the fundamental principles of child rights in order for the law to be effective.

From 2012 to the present, the journey of the POSCO Act has varied in various ways, as there was no such awareness about the act after its enactment, but with increasing time blown in the society and with the emergence of the brutal incident, the act comes into the light, and amendment and necessary provisions were added to the Act, to improve the act for the betterment of the society.

The current Act, which went into effect in 2012, includes provisions for punishing paedophilic abusers who conduct crimes such as "child pornography, sexual abuse classified as penetrative or non-penetrative offences, or attempt to abuse, etc." In 2018, an amendment was made by the Criminal Law (Amendment) Bill 2018, which increases the punishment requirements up to the death sentence in instances of rape of children under the age of 12 years. It also demands that cases be concluded within two months.

CHAPTER 3

APPLICATION AND OPERATION OF THE ACT

Child sexual abuse not only violates the body or a person's dignity, but also affects a child's primitive trust. Protection of Children from Sexual Offences (POCSO) Act, 2012, was mandated by the ministry of women and child development in revolutionary action to address this offence. The purpose of the act is to safeguard minors against sexual harassment, sexual assault, and child pornography. The acts define a 'Child' as an individual under the age of eighteen and provide for their paramount interest and well-being at every stage. The act also describes sexual offences and their "aggravated forms" as well as certain circumstances related to them, such as when they are committed by a person in a position of trust or authority, such as a father, police officer, teacher, doctor, carer, or anyone else. The special provision related to the infant with mental illness and physical disability. In accordance with the gravity of the offences, the Act also stipulated that offenders may face imprisonment or a fine.

As it relates to a special class and is regarded a constitutional obligation to protect and provide the essentials, this law occupies a unique position in the legal system of the nation. Provide a wholesome and secure environment for the future of our generation in order to protect them. In this spirit, the act has the magnificent feature of incorporating all systems into a chain process that connects each element and establishes an appropriate channel to resolve the problem. However, they were in it in a manner that did not correspond with the objects and were not implemented as expected. Everything has two aspects, whether it be the challenge and acceptance in society or their effect there.

POCSO act has its own unique characteristics; all-encompassing factors must comply with his professional responsibilities under the guidance of the legal system when dealing with cases of child abuse and child victims of sexual offences. Previously, the accused was released even though he had committed an offence, but there is no specific provision for such offences because there are only a few laws, such as the rape law and the law against outraging the modesty of a woman (Section 376 and 354 of the Indian Penal Code), which do not encompass every action of the offender. POCSO is a boon for the victim because it criminalises all forms of sexual abuse, thereby eliminating the legal lacuna that existed under previous legislation.

3.1. Objective Of the Act

The POCSO Act was enacted throughout India on November 14, 2012. The Act was enacted to protect children from the acts involving sexual abuse and establish a child friendly trial system for prosecution of offences under the Act. It also intends to secure the child throughout all phases of the legal procedure and places a premium on the principle of the child's best interests.

3.2. Salient Features of the POCSO Act

- 1. Gender-neutral:** This Act is having jurisdiction in such cases where the offence is committed either against male or female child.
- 2. Burden of Proof:** The rule under this act is 'guilty until proven innocent,' as opposed to the general rule 'innocent until proven guilty,' and to prevent the misuse of the law, penalties have been established for false complaints or maliciously false information.
- 3. It makes recording of abuse mandatory:** This legislation also stipulates that the authorities must register a First Information Report (FIR) in all instances of child maltreatment. A child's statement can be recorded at the child's domicile or another location of his choosing, preferably by a female police officer with a minimum rank of sub inspector²⁵.
- 4. It lists all known types of sexual offences towards a minor:** It punishes penetrative sexual assault, aggravated penetrative sexual assault, non-penetrative sexual assault, aggravated non-penetrative sexual assault, sexual harassment, use of minor for pornographic purposes, attempt or abetment of offence, and failure to report an offence, i.e., if there is apprehension that such an offence will be committed, it must be reported immediately. Failure to report is punishable by six months in detention, a fine, or both.
- 5. It ensures the protection of minors throughout the legal procedure.**
 - I.** For an expeditious trial, the child's testimony must be recorded within thirty days²⁶.
 - II.** Special tribunals have been established to conduct trials, which are expected to conclude within a year.

²⁵ Section 24(1) of the POCSO Act 2012

²⁶ Section 35 of the POCSO Act 2012

These courts must ensure that the minor is not exposed to the accused in any way during the recording of evidence and that his identity is not revealed during the investigation or trial²⁷. The minor is not required to repeat his/her testimony in court and can do so via video link. The defence must route all inquiries through the judge and is prohibited from asking them aggressively. An interpreter, translator, special educator, or other specialist is present in court to assist the juvenile.

6. It has raised the age of consenting sexual activity from 16 to 18 years²⁸, in accordance with the Indian Penal Code of 1860. This means that –
 - Any person (including a child) who engages in a sexual act with a child, regardless of the child's assent, is subject to prosecution.
 - A spouse can be prosecuted for engaging in sexual activity with a spouse under the age of eighteen.
7. Those who traffic minors for sexual exploitation are also punishable under the Act's provisions pertaining to facilitation.
8. In accordance with the highest international child protection standards, the Act imposes a legal obligation on anyone with knowledge of a child's sexual abuse to report the crime; if he fails to do so, he faces up to six months in prison and/or a fine²⁹.
9. The law mandates that a case of child sexual abuse must be resolved within one year of the offence being reported.
10. No child will be detained overnight at the police station³⁰, and the child's statement will be recorded verbatim. To prevent abuse of the law, penalties have been established for filing fraudulent complaints or providing maliciously false information. The media are prohibited from disclosing the identity of the minor without the special court's permission. The penalty for media outlets who violate this provision may range from six to 1 year³¹.

²⁷ Section 24(3) of the POCSO Act 2012

²⁸ The age has been increased with the Criminal (Amendment) Act 2013

²⁹ Section 21 of the POCSO Act 2012

³⁰ Section 24(4) of the POCSO Act 2012

³¹ Section 23 of the POCSO Act 2012

3.3. Types of Sexual Offences and Punishment

The following is a list of sexual offences and their respective penalties under the Act:

S.No.	Offence and Description	Punishment
1	<p style="text-align: center;">Section 3</p> <p style="text-align: center;">Penetrative Sexual Assault</p> <p>Inserting body part or object in a child, or making a child do this with another.</p>	<p style="text-align: center;">Section 4</p> <p>Not less than seven years of imprisonment which may extend to imprisonment for life, and fine</p>
2	<p style="text-align: center;">Section 5</p> <p style="text-align: center;">Aggravated Penetrative Sexual Assault</p> <p>Penetrative sexual assault by a police officer, member of armed forces, public servant, staff of remand home, jail, hospital or school. It includes penetrative sexual assault committed by any other person through gang penetrative assault, penetrative sexual assault using deadly weapons, fire, heated substance or corrosive substance, penetrative sexual assault which physically incapacitates the child or causes child to become mentally ill, causing grievous hurt or bodily harm and injury to the sexual organs of the child, making girl child pregnant, inflicting child with HIV or any other life threatening</p>	<p style="text-align: center;">Section 6</p> <p>Not less than ten years of imprisonment which may extend to imprisonment for life, and fine</p>

	disease, penetrative sexual assault more than once, penetrative sexual assault on a child younger than 12 years, by a relative, owner / manager or staff of any institution providing services to the child, by a person in a position of trust or authority over the child, committing penetrative sexual assault knowing the child is pregnant, attempts to murder the child, by a person previously convicted for a sexual offence, penetrative sexual assault in the course of communal or sectarian violence, penetrative sexual assault and making the child strip or parade naked in public.	
3	Section 7 Sexual Assault With sexual intent touching the private parts of a child	Section 8 Not less than three years of imprisonment which may extend to five years, and fine
4	Section 9 Aggravated Sexual Assault Sexual assault by a police officer, member of armed forces, public servant, staff of remand home/jail/hospital/school, etc, and other acts of sexual assault by any person as mentioned in the second part of section 5, except making a girl child pregnant.	Section 10 Not less than five years of imprisonment which may extend to seven years, and fine (Section 10)
5	Section 11 Sexual Harassment of the Child With sexual intent: showing any object/body part, or making any gesture aimed at a child making a child exhibit her body enticing or threatening to use a child for pornography	Section 12 Up to three years of imprisonment and fine

6	Section 13 Use of Child for Pornographic Purposes	Section 14 (1) Imprisonment up to five years and fine and in the event of subsequent conviction, up to seven years and fine
7	Section 14 (2) Penetrative sexual assault by directly participating in pornographic acts	Section 14 (2) Not less than ten years of imprisonment, which may extend to imprisonment for life, and fine
8	Section 14 (3) Aggravated penetrative sexual assault by directly participating in pornographic acts	Section 14 (3) Rigorous imprisonment for life and fine
9	Section 14 (4) Sexual assault by directly participating in pornographic acts	Section 14 (4) Not less than six years of imprisonment which may extend to eight years, and Fine
10	Section 14 (5) Aggravated sexual assault by directly participating in pornographic acts	Section 14 (5) Not less than eight years of imprisonment which may extend to ten years, and fine
11	Section 15 Storage of pornographic material involving a child for commercial purposes	Section 15 Three years of imprisonment and / or fine
12	Section 21 Punishment for failure to report or record a case by (i) Any person; (ii) Any person, being in charge of any company or an institution. (This offence does not apply to a child)	Section 21 Imprisonment of either description which may extend to six months or with fine or with both.

		<p>Any person, being in charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub section (1) of section 19 in respect of a subordinate under his control shall be punished with imprisonment for a term which may extend to one year and with fine.</p>
13	<p>Section 22</p> <p>Punishment for false complaint or false information in respect of an offence committed under sections 3, 5, 7 and section 9 solely with the intention to humiliate, extort or threaten or defame him.</p> <p>False complaint or providing false information against a child knowing it to be false, thereby victimising such child in any of the offences under this Act.</p> <p>(This offence does not apply to a child)</p>	<p>Section 22</p> <p>Imprisonment for a term which may extend to six months or with fine or with both.</p> <p>Imprisonment which may extend to one year or with fine or with both.</p>

3.4. Role of Child Welfare Committee (CWC)

This Act must be reported to the CWC within twenty-four hours of filing a complaint³². The Child Welfare Committees (CWC) play a vital role under the POCSO Act; cases registered under CWC should take the child's opinion into consideration when deciding whether the child should remain in an institution or with the family within three days. The CWC should appoint a support person to assist the child during the investigation and adjudication of the case, with the consent of the child's parent / guardian other person in whom the child has faith.

3.5. Role of State Commission for Protection of Child Rights

The State Commissions for Protection of Child Rights (SCPCR) is tasked with monitoring the implementation of the provisions of the POCSO Act 2012, conducting investigations, and reporting the activities undertaken under the POCSO Act in its annual report³³. The SCPCR is also authorised to request a report on any specific case of child sexual abuse falling within the jurisdiction of a CWC. Additionally, the commission may recommend interim relief or make recommendations to the state government in an effort to effectively rectify the situation.

3.6. Duty of the State to Raise Awareness³⁴

The Act imposes on the state the obligation to educate the general public about the provisions of this act via media, such as television, radio, and print, at regular intervals. Periodically, the officers of the Central Government and the State Government, as well as other concerned parties, including police officers, receive training on the implementation of the Act's provisions.

3.7. Mandatory Reporting for Sexual Offences

In accordance with the highest international standards for child protection, the Act also mandates the reporting of sexual offences. A person who has knowledge that a child has been sexually abused has a legal obligation to report the crime; if he fails to do so, he may face sentence up to six months or fine or both³⁵. In contrast, the Act also specifies penalties for those who provide false information with the intent to defame any person, including a minor.

³² Section 19(6) of POCSO Act 2012

³³ Section 44 of POCSO Act 2012

³⁴ Section 43 of POCSO Act 2012

³⁵ Section 21(1) of POCSO Act 2012

3.8. ROLE OF POLICE

During the investigation process, the Act also designates the police as child protectors³⁶. Thus, police personnel who receive a report of sexual abuse of a child are tasked with making immediate provisions for the child's care and protection, such as obtaining emergency medical treatment for the child and, if necessary, placing the child in a shelter home. The police is also duty bound to bring into knowledge the matter to the Child Welfare Committee (CWC) within 24 hours of receiving the report, so that further arrangements for the child's protection and security, if necessary can be made by the CWC.

3.8.1. Unmistakable Duties of Police During the Initial Twenty-four Hours

Since, under the Protection of Children from Sexual Offences (POCSO) Act of 2012, the police are required to record and register sexual offences (Penetrative or non-Penetrative) committed against children, any negligence or lapses on the part of the police will have grave consequences³⁷. If the police fail to register a case under the Act in a timely manner, the case will remain almost unreported and will gradually disappear from the public domain, leaving the perpetrator unpunished and the surviving child without care, protection, or justice.

According to the POCSO Act, the police are required to record the complaint, designate an entry number to it, recite it to the complainant/informant, and record it in a book maintained by the Police Unit³⁸.

Consequently, it is clear that the Police cannot deny to record or register such a complaint. Because, under the Act, failure to record information relating to the commission of an offence or an apprehension that an offence is likely to be committed is punishable by up to six months or with fine, or both³⁹.

³⁶ See Section 19 and 24 of POCSO Act 2012

³⁷ Section 24-Recording of statement of a child (1) The statement of the child shall be recorded at the residence of the child or at a place where he usually resides or at the place of his choice and as far as practicable by a woman police officer not below the rank of sub-inspector. (2) The police officer while recording the statement of the child shall not be in uniform. (3) The police officer making the investigation, shall, while examining the child, ensure that at no point of time the child come in the contact in any way with the accused. (4) No child shall be detained in the police station in the night for any reason. (5) The police officer shall ensure that the identity of the child is protected from the public media, unless otherwise directed by the Special Court in the interest of the child.

³⁸ Section 19(2) of the POCSO Act2012

³⁹ Section 21 of the POCSO ACT 2012

Local police or Special Juvenile Police Unit (SJPU) shall, without unnecessary delay but within 24 hours of the report being registered, i.e., registering a FIR, report all sexual assault cases to the concerned Child Welfare Committee and Special Court or where no Special Court has been designated, to the Court of Sessions, including the need for care and protection of the child⁴⁰.

It is the responsibility of the SJPU and the Police to transport a minor victim of sexual assault to the closest hospital (Government or Private, whichever is closer) or medical facility within twenty-four hours of the report being filed⁴¹. The police should be aware that the timeframe for a child's medical examination is within 24 hours of the time the case is reported to them. Therefore, the police should never, under any circumstances, attempt to delay transporting the child for a medical examination within 24 hours.

3.9. ROLE OF DOCTORS

The Act also stipulates that a child's medical examination must be conducted in the least distressing manner possible⁴². The Act also stipulates that physicians should not require legal records, legal procedure, or documentation prior to initiating treatment or examination. After initiating medical care, legal procedures can be handled later. Doctors are now required to file a medicolegal report in all cases of juvenile sexual assault. Under Section 21 of the POCSO Act of 2012, failure to report could result in a six-month jail sentence and/or a fine. The registered medical practitioner providing medical care shall (i) collect evidence after a thorough medical examination, (ii) treat the physical and genital injuries, (iii) conduct an age assessment of the victim (if necessary), (iv) offer prophylaxis for sexually transmitted diseases including HIV, (v) discuss emergency contraceptives with the pubertal child and her parent, (vi) conduct a baseline evaluation for mental health issues, and (vii) provide monthly follow-up for at least six months. No hospital under the jurisdiction of the Indian Constitution may refuse to admit a victim of child sexual abuse for examination and treatment, according to another provision of this law.

⁴⁰ Section 6 of the POCSO ACT 2012

⁴¹ Section 19(5) of the POCSO ACT 2012

⁴² Section 27 of the POCSO ACT 2012

Section 357C of the Code of Criminal Procedure of 1978 emphasises this issue once again⁴³. The amended section 166B⁴⁴ of the Indian Penal Code states that no hospital, whether public or private, may refuse to treat a rape victim. Child sexual abuse is a complex issue with legal, social, medical, and psychological repercussions.

3.10. Duties of Hospitals During the Initial Twenty-four Hours

Rule 5(3) of the POCSO Rules prohibits doctors or hospitals from requiring legal documents (FIR, etc.) prior to providing medical care, and Section 27 of the POCSO Act states that medical examinations must be conducted even if a FIR or Complaint has not been filed. In brief, the Act prohibits doctors and hospitals from requiring the victim's party to complete legal formalities, such as filing a First Information Report (FIR) or filing a formal complaint with the police about a sexual offence, prior to a medical examination or emergency medical care for a minor victim.

3.10.1. Medical Examination of Child⁴⁵

The Act also stipulates that the child's medical examination should cause as little distress as feasible.

3.10.2. Provision to Prevent Child Re-Victimization

The Act also includes provisions to prevent the re-victimization of the minor by the judicial system. It establishes special court that conduct the in-camera trial⁴⁶ and without disclosing the identity of the child, in the most child-friendly manner possible.

⁴³ Section 357C of the Code of Criminal Procedure, 1978- Treatment of victims-All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, 376A, 376B, 376C, 376D or section 376E of the Indian Penal Code (45 of 1860), and shall immediately inform the police of such incident.

⁴⁴ Under Section 166B of the Indian Penal Code -whoever, being in charge of a hospital, public or private, whether run by the central government, the state government, local bodies, or any other person, contravenes the provisions of section 357C of the code of criminal procedure, 1973 (2 of 1974), shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

⁴⁵ Section 27 of the POCSO act medical examination of a child: (1) The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offences under this Act, be conducted in accordance with section 164A of the Code of Criminal Procedure, 1973. (2) In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.(3) The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the children poses trust or confidence.(4) Where, in case the parent of the child or other person referred to in sub-section (3) cannot be present, for any woman nominated by the head of the medical institution

⁴⁶ Section 37 of the POCSO Act

Consequently, the child may have a parent or other trusted adult present at the time of testimony and may request assistance from an interpreter, special educator, or other professional while giving evidence⁴⁷; furthermore, the child is not to be repeatedly called to testify in court and may testify via video-link rather than in the intimidating courtroom. In addition, the Act stipulates that a case of child sexual abuse must be resolved within one year of the offence being reported.

3.11. Function of State Government pursuant to Section 39 of POCSO Act

State governments must actively participate in the implementation of the aforementioned Act. In accordance with section 39 of the aforementioned Act, the State Government is required to establish guidelines for the use of persons, including non-governmental organisations, professionals and experts or persons trained and knowledgeable in psychology, social work, physical health, mental health, and child development, to assist the child during the trial and pre-trial stages.⁴⁸

3.12. Designation of Special Court by the State Government under Section 28 of the POCSO Act

According to Section 28 of the POCSO Act of 2012, the State Government must designate a Court of Session as a Special Court for each district in order to prosecute violations of the Act. If a Court of Session is already notified as a children court under the Commissions for Protection of Child Rights Act, 2005, then such court shall be deemed to be a Special Court under the POCSO Act, 2012.

3.13. Protection of Children from Sexual Offences: Data Analysis

- Nationwide, 53,874 POCSO cases were reported in 2021, with Uttar Pradesh (7,129) reporting the maximum number, followed by Maharashtra (6,200) and Kerala (6,064 cases). In 2020, 47,221 POCSO cases were recorded, whereas in 2019, 47,335 cases were reported.
- Sikkim has the highest rate of sexual offences against minors at 48.6%, followed by Kerala at 28.1%, Meghalaya at 27.7%, and Haryana at 24.7% and 24.6% for Mizoram⁴⁹.
- The police charge-filing rate for POCSO cases was 94.2% in 2016 and will increase to 94.2% by 2020. The proportion of POCSO cases still pending with the police has decreased from 31.8% in 2016 to 28.2% in 2020.

⁴⁷ Section 38 of the POCSO Act

⁴⁸ Guidelines for the use of Professionals and Experts under Section 39 of the POCSO Act, 2012, Last accessed at www.manupatra.com on 25 May,2023.

⁴⁹ <https://www.indiatracker.in/story/ncrb-pocso-cases>. Last Accessed on 25 May,2023

- The conviction rate, on the other hand, is an indicator of the disposition of cases by courts and is defined as the proportion of convicted cases relative to the total number of cases in which the trial was concluded. The conviction rate has increased significantly over the years, from 29.6% in 2016 to 39.0% in 2020. But by the end of 2020, 94.7% of court cases were still pending, up from 88.8% at the end of 2019.
- This high pendency persists despite the establishment of special courts for expedited POCSO-related trials. As of 31 January, 2022, there are over 2.26 lakh cases pending before POCSO Courts across the country (according to a response in the Lok Sabha in March 2022),.
- The Ministry of Law and Justice added in the same response that the government had rolled out a plan to establish 1,023 Fast Track Special Courts, including 389 exclusive POCSO (e-POCSO) Courts, in 31 states and UTs to expedite the trial and disposal of rape and POCSO cases.
- In 22.9% of cases, the defendants were known to the victims, and in 3.7% of cases, they were relatives.
- 18% had a "previous romantic relationship," while in 44% the relationship between the victim and the accused was not identified.
- According to data published by the National Crime Record Bureau (NCRB) in 2021, the accused was known to the victim in nearly 96% of cases.
- The POCSO Act stipulates that cases should be resolved within a year, but the average length of time it takes to resolve a case is approximately 510 days, according to the study.

3.13.1. Police processing of rape and assault cases under POCSO is quicker than IPC offences against women

According to the 2020 NCRB report, the charge sheeting rate in cases of rape against women was 82.2% and under POCSO it was 96.6%. 33.2% of cases of rape against women and 27.6% of assaults reported under the POCSO Act were pending with the police. Similarly, in cases of sexual assault, 85.5% of women were charged under IPC and 93.1% were charged under POCSO, while 28.7% of IPC cases of assault against women and 28.7% of POCSO cases were pending. This indicates that the authorities dispose of POCSO cases significantly more quickly than crimes against women.

Similarly, the data relating to disposal of rape cases by the court reveals a conviction rate of 39.3% for crimes against women and a conviction rate of 37.9% for POCSO cases. The fact that the pendency rates for rape cases under IPC offences against women and POCSO were 94.2% and 94.4%, respectively, indicates that there was little variation between the two.⁵⁰

3.13.2. Trends in pendency POCSO cases

Despite a progressive increase in the number of pending POCSO cases over the years, their proportion has been decreasing until 2019. However, there was a significant increase of 24,863 pending cases from 2019 to 2020, which can be attributed to the COVID-19 pandemic and its effect on the functioning of courts across the country.

More than three-quarters of the total POCSO cases submitted between November 2012 and February 2021 are unresolved in Uttar Pradesh (77.7%). Tamil Nadu, on the other hand, has the greatest disposal percentage (percentage of total filings since November 2012 that were disposed as of February 2021) among the examined states and territories, at 80.2%.

3.13.3. Analysing the duration for disposal of POCSO cases⁵¹

Section 35 of the Act stipulates that a POCSO case must be resolved within one year; however, on average, it takes 509.78 days (roughly 1 year and 5 months) to do so. Chandigarh and West Bengal are the only states where the average duration for convictions falls within the legally mandated one-year period. In the majority of states, courts spend more time hearing cases that result in a conviction than those that result in an acquittal.

44% of POCSO trials result in acquittals while only 14.03 % result in convictions; therefore, for every POCSO conviction, there are three acquittals. In all states analysed, acquittal rates are significantly higher than conviction rates. In Andhra Pradesh, for example, there are seven times as many acquittals as convictions, while in West Bengal, the ratio is five to one. Kerala is the only state where the disparity between acquittals and convictions is relatively small, with acquittals accounting for 20.5% of all dispositions and convictions for 16.49%.

⁵⁰ <https://factly-in.cdn.ampproject.org/v/s/factly.in/data-pocso-cases> Last Accessed on 25 May,2023

⁵¹ https://vidhilegalpolicy.in/wp-content/uploads/2022/11/221117_Final-POCSO Draft_JALDI.pdf. Last Accessed on 25 May2023

3.13.4. Nature of POCSO cases⁵²

Over 56% of all POCSO cases, penetrative sexual assault contributes to 31.18% and aggravated penetrative sexual assault has share of 25.59% of the cases, for which the POCSO Act prescribes the severe punishment.

There is no significant difference between the percentages of acquittals and convictions for distinct offences, with conviction rates ranging from 21 to 26% for cases of penetrative sexual assault and aggravated sexual assault, respectively. However, sexual intimidation has the lowest conviction rate (18.16%).

3.14. POCSO e-Box

Protection of Children from Sexual Offences (POCSO) e-box was introduced in 2016 in New Delhi by the Union Ministry of Women and Child Development.

POCSO e-box is an online system for reporting complaints concerning sexual offences against minors and taking prompt action against perpetrators in accordance with the POCSO Act, 2012. Direct online Reporting of Child Sexual Abuse is an initiative of the National Commission for the Protection of Children's Rights (NCPCR). The National Commission for Protection of Child Rights (NCPCR) website <http://ncpcr.gov.in/> includes an e-Box on its homepage. The user can file a complaint by clicking the arrow on this page, which will take him or her to a new page where he or she must select at least one image option (depicting the type of harassment). To register a complaint, the user must also provide their email address, mobile number, and a description of the harassment.⁵³

⁵² <https://vidhilegalpolicy.in/research/a-decade-of-pocso-developments-challenges-and-insights-from-judicial-data/>. Last Accessed on 25 May,2023

⁵³ <http://currentaffairs.gktoday.in/tags/ministry-of-women-and-child-development>. Last Accessed on 25 May2023

CHAPTER 4

ISSUES AND CHALLENGES CONCERNING THE ACT

Despite the fact that the POCSO Act of 2012 is an excellent piece of law that makes almost every recognised form of sexual abuse of children a crime. However, there are still some issues which are required to be considered. Victims of child sexual abuse would have access to a multi-dimensional, multi-agency group, and multi-tier plan that included availability to psychological assistance in order to give comprehensive, high-quality care under a single roof.

4.1. Applicability of the POCSO Act to ‘Consensual’ relationships between Minors

The Indian law governing child weddings and the age of consent are connected. In accordance with Section 375 of the IPC, the age of consent was 16 until 2012.⁵⁴ The POCSO Act changed this by defining a child as "any person below the age of eighteen years"⁵⁵ and making any sexual conduct involving a child a violation of the Act. However, the IPC, 1860, which set the legal age of consent at 16, did not agree with this clause.

The Criminal Law Amendment Act, 2013, raised the age of consent from 16 to 18 years, resolving this inconsistency. As a result, any sexual activity involving people under the age of 18 would constitute "statutory rape" under Section 375 of the Indian Penal Code, 1861, regardless of whether they gave their consent.

One of the POCSO Act's more contentious features is the result of this. Consensual 'romantic relationships' between teens frequently end up being criminalised since they are rendered incapable of giving consent to sexual connections. The significance of this situation is not lost on the judiciary. The Bombay High Court noted that occurrences of voluntary intercourse between juveniles have been a legal grey area because a minor's consent is not recognised by the law in **Arhant Janardan Sunatkari v. State of Maharashtra**⁵⁶.

⁵⁴ Amita Pitre & Lakshmi Lingam, 'Age of consent: challenges and contradictions of sexual violence laws in India' (2020)

⁵⁵ Section 2(d) POCSO Act 2012

⁵⁶ 2021 SCC OnLine Bom 136.

Numerous studies indicate that many instances brought under the Act include juveniles who gave their assent. According to a study done in Delhi, for instance, 28% of the complaints filed between January 2013 and September 2015 involved people between the ages of 16 and 18. In 90% of these cases, the adolescent girl was found not guilty because she refused to testify against her sexual partner.

According to a report by CCL-NLSIU that compiled findings about the POCSO Act's implementation in five states, 5% of POCSO instances involved consensual partnerships in Karnataka, 15% in Assam, 20% in Maharashtra, and roughly 21% in Andhra Pradesh.

The report also notes that the majority of the "romantic cases" were filed by the family of the victim and not the victim herself, leading to the assumption that these provisions were being abused by families of adolescents to thwart relationships that they did not approve of. A study of rape trials in a Fast Track Court shows that while the numbers may seem small, there is no denying the fact that this prevents minors from safely exhibiting and exploring their sexuality.

The POCSO Act has frequently been given a stringent interpretation by courts, who have determined that a minor's assent has no legal significance. The POCSO Act was intended to protect innocent children from sexual offences, not to be abused as a tool to force someone into a "compromise marriage," but as time goes on, people are starting to recognise the draconian interpretations of the law and going back to its original intent.

For instance, the Calcutta High Court⁵⁷ construed the term "penetration" in the POCSO Act to mean an affirmative, unilateral act on the part of the accused and not sexual unions between two people of their own free will, even acknowledging that the assent of a juvenile is not a good consent in law.

Additionally, given the legal ambiguity surrounding consenting partnerships, courts have acknowledged the difficulties in applying the strict penalties mandated by the POCSO Act⁵⁸ and the necessity to raise public awareness of these issues.

The Madras High Court has given the most conclusive guidance on what the appropriate legal position should be in this matter. In 2019,⁵⁹ it was suggested that the definition of "child" under Section 2(d) of the POCSO Act should be 16 years old rather than 18 years old and that consensual relationships occurring after the age of 16 should be exempt from the harsh penalties of the Act.

⁵⁷ Ranjit Rajbanshi v State of W.B., 2021 SCC OnLine Cal 2470

⁵⁸ Vikramsinh Champaksinh Parmar v State of Gujarat, R/Special Criminal Application Number 765 of 2020 (Guj H.C.) (unreported).

⁵⁹ Sabari v Inspector of Police, 2019 (3) MLJ CrI 110

It suggested a reasonable adjustment, drawing on the justification of a Canadian law⁶⁰, to the effect that the age of the perpetrator should not be more than five years or so greater than the age of the victim girl (who should be 16 years or older).

In a different instance, a petition to halt the proceedings in a POCSO case currently before the trial court was submitted by the alleged victim under Section 482 of the Code of Criminal Procedure, 1973. The case against the boy was filed as a result of the juvenile victim and the accused running away. While halting the criminal proceedings, the court acknowledged that a statute intended to safeguard and provide justice for child abuse victims and survivors could also be misused by some groups in society to their own ends.

The Madras High Court elaborated on its position in 2021, ruling that since consensual relationships between teenagers are a natural part of biosocial dynamics, "painting a criminal colour to this aspect would only serve counter-productively" and that "punishing an adolescent boy who enters into a relationship with a minor girl by treating him as an offender, was never the objective of the POCSO Act." The Court quashed the case under Section 482 of CrPC.

The Delhi High Court noted that it is an unpleasant practise for the police to file proceedings under the POCSO Act at the request of the girl's family, who were against the relationship, when dealing with a case involving a "consensual" relationship.⁶¹

Current state of the law:

In **Maruthupandi v. State**⁶², a different bench of the Madras High Court favoured a more literal interpretation of the Act and held that the penalty under POCSO will be attracted regardless of whether the relationship was consensual or not. This decision came as one bench of the Madras High Court was praised for its progressive implementation of POCSO. Only the Supreme Court's decision or a suitable amendment introduced by Parliament will put an end to this uncertainty. The choice made will depend on how a particular bench decides to interpret the statute, and until that time, sexual actions involving minors will still be illegal.

⁶⁰ Criminal Code of Canada 1985, s 150.1(2.1)

⁶¹ Pradhuman v. State, B.A. No. 2380 of 2021 (Del H.C.) (unreported)

⁶² CRL.A [MD] No. 209 of 2017

It is clear that while some of the legal disputes that have emerged since 2012 about the application of various POCSO Act provisions have been resolved, there are still a large number of them. Even within each individual issue, there are still some issues that need to be resolved even while some aspects have gained some degree of legal clarity.

It's possible that the courts will eventually provide answers to some of these queries. For a select few others, however, legislative action in the form of law modifications is required.

4.1.1. Stand of Government on the Issue⁶³

The Central Government has told the Rajya Sabha that there is no plan under the Protection of Children from Sexual Offences Act 2012 to decrease the age of consent from 18 to 16 years in order to avoid the criminalization of consensual relationships between youngsters.

Smriti Irani, Union Minister for Women and Child Development, remarked this in answer to a question from Rajya Sabha MP Binoy Viswam.

The unstarred question asked if the government is contemplating lowering the age of consent from 18 to 16 years under the Act in order to avoid the prosecution of consensual relationships between youngsters.

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The Minister's brief written answer was "does not arise." According to the Minister, the age of majority in India is 18 years, and the POCSO Act "clearly defines a child as any person under the age of 18 years."

⁶³ <https://www.livelaw.in/top-stories/no-proposal-to-reduce-age-of-consent-under-pocso-act-centre-tells-rajya-sabha-217293>. Last Accessed on 29May,2023.

4.2. Challenges at the Pre-Trial Stage

Pre-Trial stage has following steps:

- **Reporting:** offence under POCSO Act may be reported to SJPU or local police (s. 19 POCSO Act and s.154 CrPC) or child helplines (Rule 4(2) POCSO Rules) by any person (including the child).
- **Filing of FIR:** Report is written down, read over to the informant and entered in the book maintained by the police (Sec.19 POCSO Act). A copy of FIR is given free of cost to the informant (Sec.154 CrPC).
- **Recording of victim's statement:** Ideally recorded by a woman police officer, not below the rank of sub-inspector and without uniform, in presence of a person the child trusts at the residence of the child or at a place where he usually resides or at the place of his choice (Sec.24 POCSO Act and Sec.161 CrPC). Statement under s. 164 of the CrPC shall be recorded by a Magistrate (Sec.25 POCSO Act and Sec.164 CrPC). Translators, interpreters and special educators are employed as and when required (Sec.26 POCSO Act).
- **Medical examination of the victim:** The child must be taken to the nearest hospital or shelter home within 24 hours (s. 19(5) POCSO Act and Rule 4(3) (b) POCSO Rules). Victim is examined by a registered medical practitioner (woman doctor in case of girl victim) (s. 27 POCSO Act and s. 164-A CrPC), who should send a report to the police within 24 hours (Rule 6(5) POCSO Rules). Forensic samples collected must be forwarded to FSL at the earliest (Rule 4(3)(d) POCSO Rules).
- **Production of victim before CWC:** Police to report matter to CWC and Special Court within 24 hours (Section 19(6) POCSO Act).
- **Assignment of Support Person to victim by CWC:** On its assessment, CWC may assign a support person to assist the victim throughout all stages of investigation and trial (Rule 4(8) POCSO Rules).
- **Investigation and collection of evidence:** Investigation is conducted by the police to collect evidence which includes spot investigation (s. 157 CrPC), search and seizure (ss. 165 and 102 CrPC), and examination of accused and witnesses (s. 161 CrPC).
- **Arrest of accused:** Accused is arrested and produced before the Magistrate without unnecessary delay and within a maximum period of 24 hours from arrest (ss. 41 and 76 CrPC).

- **Medical examination of accused:** Medical examination of accused is conducted and forensic samples received therein sent to FSL (s. 53-A CrPC).
- **Filing of chargesheet:** On completion of investigation, a chargesheet is filed before Special Court within 90 days (s. 173 CrPC).

Challenges:

1. Inquiry and chargesheet filing being delayed

Due to the enormous backlog of POCSO cases. The police's delayed investigation process and the delay in submitting samples to the Forensic Science Laboratories are two of the main causes of this high pendency⁶⁴. According to information contained in a Supreme Court judgement, the length of time it took the police to complete their investigation and deposit samples with forensic science laboratories (FSLs)⁶⁵

It is clear that just 35% of POCSO cases have their investigations wrapped up in under 60 days. It takes more than six months to finish the inquiry in 36% of the cases. If the inquiry itself takes that long, it becomes very unlikely that the trial will be finished within a year after the date on which cognizance is taken⁶⁶. The fact that the police took between 31 days and more than a year in 49% of the cases to deposit sample with FSLs is also troubling.

The amount of time it takes FSLs to prepare reports might also be a cause of delay. Courts have regularly reprimanded FSLs for their severe tardiness in submitting reports, which has a detrimental effect on the proceedings. A Times of India investigation into 100 district court orders revealed that some proceedings had been delayed for more than five years solely because FSL reports were unavailable.⁶⁷ Officials frequently cite a lack of manpower as the cause of this, leading to a prioritisation of newer cases over older ones.

⁶⁴ Ramya Kannan, 'Activists press for speedy resolution of POCSO cases' *The Hindu* (20 August 2021) <<https://www.thehindu.com/news/national/tamil-nadu/activists-press-for-speedy-resolution-of-pocso-cases/article36009297.ece>> Last Accessed 20 May,2023.

⁶⁵ In *Re, Alarming Rise in the Number of Reported Child Rape Incidents* (2020) 7 SCC 108. Report submitted by Surinder S. Rathi, Registrar, Supreme Court of India. The report was filed in compliance to the order of the Supreme Court dated 01-10-2019 <https://main.sci.gov.in/supremecourt/2019/24308/24308_2019_14_1_17281_Order_01- Oct-2019.pdf> accessed on 27 May,2022.

⁶⁶ Section 35(2) POCSO Act 2012

⁶⁷ Usha Das, 'Courting trouble...how endless wait for forensic reports is delaying justice,' *Times of India* (13 December,2021)<<https://timesofindia.indiatimes.com/city/delhi/courting-trouble-how-endless-wait-for-forensic-reports-is-delaying-justice/articleshow/88244533.cms>> Last accessed 27 May,2023

A report on the state of policing and law and order in Delhi found that a total of 14378 cases of crime against children were to be investigated in Delhi as of December, 2020, out of which 56% cases were pending for investigation at the end of the year. This is according to NCRB data from 2020, which shows that out of the 137552 cases of crimes against children, investigation was completed for only 79297 cases, while 58186 (42%) cases were still pending investigation. Only 2284 of the instances that were investigated had charges brought against them.⁶⁸ It should be noted that the 14378 cases include all crimes against children, not simply those that violate the POCSO Act. Delays in investigations are a common occurrence in all crimes against children, not only POCSO cases.

Delhi Commission for Protection of Child Rights (DCPCR) requested quarterly reports from the FSL, Government of India, and closely monitored the phases of investigations where delays occur.

Delhi would check to see if forensic investigations were finished on time. The DCPCR noted that although investigations were finished within three months in over 50% of POCSO cases, the police took longer to compile these findings and file chargesheets.⁶⁹ This demonstrates the police's lack of priority given to POCSO cases.

A study in Maharashtra discovered that because DNA and forensic labs are only found in certain major cities, such as Mumbai, samples under the POCSO Act are sent there from all over the state, which causes a significant delay in receiving reports and a delay in the filing of the chargesheet. In addition to these issues, there is a shortage of sufficient experts, expertise, and infrastructure in FSLs, and in some cases, there are no FSLs at all. In order to ensure effective investigation, it is therefore more necessary to increase the number of and capacity at FSLs in addition to solving the issue of delays where FSLs are present.

Current Situation:

The Kerala High Court has bemoaned the POCSO Act's poor application and provided comprehensive directions to safeguard the children involved in POCSO cases from the possibility of secondary victimisation and to make the provision of justice under the law effective and meaningful.⁷⁰

⁶⁸ Praja, 'State of Policing and Law & Order in Delhi November 2021' (2021) Praja and IC Centre for Governance <<https://justicehub.in/dataset/ddae969e-4278-4383-8c0f-f21b2eb29007/resource/3da4a36d-9c68-45c7-a5e1-3d91597a1dea/download/report-on-state-of-policing-and-law-and-order-in-delhi-2021.pdf>> Last Accessed 28 May,2023

⁶⁹ Delhi Commission for Protection of Child Rights, 'Intervention Undertaken by the POCSO Division recently' DCPCR (29 May 2021) <<https://dcpcr.delhi.gov.in/interventions-undertaken-pocso-division-recently>> Last Accessed on 28 May,2023

⁷⁰ Abhishek K.A @ Bhanu v State of Kerala, Criminal Appeal No. 1087 of 2019 (Ker H.C.) (Unreported).

There are still instances when the accused are freed on bail because the police failed to submit chargesheets in a timely manner, in spite of these interventions by the higher judiciary.

2. Failure to designate Support Persons for Victims

A support person can be a person or organisation that works in the area of children's rights or child protection, a representative of a children's home or shelter that has custody of the child, or a member of the District Child Protection Unit (DCPU). These individuals can be vital in helping the victim navigate interactions with the legal system.

In addition to the duties outlined in the law, support personnel communicate with numerous agencies and provide families with crucial information.⁷¹ These duties include informing families of the services that are available, the compensation received, the legal process, and prospective results. Additionally, they provide assistance with matters such as moving and school admissions that are not exactly their legal obligations under the Act.

Nevertheless, a study done in Maharashtra four years after the POCSO Act went into effect discovered that 94% of Child Welfare Committees were unaware of the POCSO Rules' provision for designating a support person.⁷² It also discovered that not a single DCPU involved in the study was aware of the conditions under which they could be designated as support persons under the POCSO Rules.

When a support person or organisation was involved in the cases, the number of compensation awards under the POCSO Act increased, according to a study looking at the implementation of the POCSO Act in Delhi and Mumbai. Support persons are not, however, being appointed in the majority of POCSO cases. The victim was not given a support person in 96% of POCSO instances, according to the Supreme Court.

Current Situation:

To assist support persons in understanding their roles and responsibilities with regard to the child victim, the stakeholders and the child rights NGOs “Enfold Proactive Health Trust” and “Prerna” released "The Handbook for Support Persons 2021 - Assisting Child Victims of Sexual Violence" in March 2022.

⁷¹ See Rule 4(15) POCSO Rules 2020

⁷² Pravin Patkar and Pooja Kandula, ‘4 Years Since POCSO: Unfolding of the POCSO Act in the State of Maharashtra’ (2016) Aarambh India 20 <http://aarambhindia.org/wp-content/uploads/2018/05/DigitalAarambh_4-Years-Since-POCSO.pdf> Last Accessed 29May,2023

Such initiatives will increase support persons' capacity and make it possible for them to effectively support victims. The "*Bal Mitra Yojana*" is a programme that the Rajasthan government has launched to support people.

The plan outlines the function of the support persons, the steps for appointing and dismissing them, their compensation, and how to file complaints against them.⁷³ Plans like this can significantly increase the likelihood that support persons will be assigned in POCSO cases.

4.3. Challenges at the Trial Stage

Trail includes the following Stages:

- **Cognizance by Special Court:** The Special Court takes cognizance of the offence (s.33(1) POCSO Act and s. 193 CrPC)
- **Issuance of warrants:** Special Court issues a warrant for the appearance of the accused (s. 204 CrPC).
- **Supply of documents to the accused:** The following documents are supplied (s. 207 CrPC):
 - Police report;
 - Copy of FIR;
 - Record of statements of victim and witnesses; and Other relevant documents
- **Framing of charges/Discharge:** After hearing submissions from both prosecution and defence, if the Special Court finds sufficient grounds to prosecute, charges are framed (s. 228 CrPC), otherwise the accused is discharged (s. 227 CrPC).
- **Plea by the accused:** If accused pleads 'guilty' to the charges, the accused gets convicted (s. 229 CrPC). If the accused pleads 'not guilty', the Special Court proceeds with evidence for prosecution.

⁷³ Government of Rajasthan, 'Notification 28.01.2021' <http://www.crc-hcmripa.in/wp-content/uploads/knowledge_hub/Bal-Mitre-Yojna-2020.pdf> Last Accessed on 29 May,2023.

- **Prosecution evidence including victim’s testimony:** Testimony of the victim (s. 231 CrPC) is recorded. During examination-in-chief, Special Public Prosecutor and the defence counsel are required to communicate questions to be put to the child to the Special Court which shall in turn put those questions to the child (s. 33(2) POCSO Act). It is stipulated that the evidence of the child shall be recorded within 30 days of taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court(s. 35(1) POCSO Act). During examination, the court must ensure a child- friendly atmosphere. No direct, aggressive, or defamatory questions can be put to the child (s. 33 POCSO Act). Child should not be exposed to the accused in any manner (s. 36 POCSO Act). Special educators, translators, and legal aid services are provided wherever required (ss. 38, 39, and 40 of POCSO Act). Victim can be examined at a place other than the court as well(s. 37 POCSO Act and s. 284 CrPC).
- **Examination of accused:** Accused is examined by Special Court (s. 313 CrPC).
- **Acquittal:** at this stage, if the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal (s. 232 CrPC).
- **Defence evidence:** If the accused is not acquitted under Section 232 CrPC then he is called upon to enter on his defence and adduce any evidence in support thereof (s. 233 CrPC).
- **Arguments:** The case is summed up by the prosecutor and the accused or his pleader shall be entitled to reply (s. 234 CrPC).
- **Pronouncement of judgment:** Judgment of conviction or acquittal is pronounced after oral submissions from both sides (s. 235 CrPC).
- **Hearing on sentence (if convicted):** If an accused is convicted, a sentence of imprisonment and/or fine is passed by Special Court after giving accused an opportunity to be heard (s. 235(2) CrPC).
- **Order on compensation:** Compensation, both final and interim, may be awarded to the victim irrespective of whether the trial results in conviction,acquittal, or discharge (s. 33 POCSO Act, Rules 9 and 10 of POCSO Rules and 357-A of CrPC).

Challenges:

1. Lack Special Courts in all districts

According to Section 28 of the POCSO Act, the State Government shall designate for each district a Court of Session to be a Special Court to try the offences under the POCSO Act after consulting with the Chief Justice of the High Court and publishing a notice in the Official Gazette.

Due to the sensitivity of POCSO cases involving child victims, it was hoped that Special Courts would not only offer a quick trial but also a welcoming environment for the victims. However, even after the POCSO Act was passed and put into effect in 2012, the process of designating Special Courts (as required by the Act) did not go as quickly as anticipated. The Supreme Court intervened because states were taking too long to name these courts.

Intervention by the Supreme Court:

The Supreme Court provided specific directives in **Alakh Alok Srivastava v. Union of India**⁷⁴ in order for the POCSO Act's legislative intent and purpose to really materialise on the ground. It stipulated that, if not already done, Special Courts as defined by the POCSO Act be formed. Additionally, High Courts were instructed to make sure that Special Courts handle the trial and disposition of cases filed under the POCSO Act and that their presiding officers had received training in child protection and psychological reaction. Despite this ruling, not all districts had Special Courts established.

Taking note of the various problems with the POCSO Act's implementation, the Supreme Court ordered that within 60 days of its order, the Central and State governments should set up exclusive/designated POCSO courts in all districts if there were more than one. The Supreme Court expressed shock at the current state of affairs and directed the Central and State governments to take steps for creation or assignment of dedicated courts to try POCSO cases on top priority.

In addition, the Apex Court mandated that at least two exclusive POCSO Courts be established in districts with more over 300 POCSO cases now ongoing. The Apex Court ordered that these courts would only try crimes covered by the POCSO Act. It stated that these courts would be established under a Central scheme and funded by the Central government.

⁷⁴ Alakh Alok Srivastava v Union of India (2018) 17 SCC 291

This fund would not only be used to appoint the presiding officer, but would also be used to appoint support individuals, Special Public Prosecutors, court staff, and infrastructure (including the creation of a child-friendly environment and vulnerable witnesses).

Current Situation

POCSO courts have not yet been established in all districts across the nation, notwithstanding these instructions. As part of the government's Fast Track Special Court's Scheme, 408 POCSO courts have been established as of 2022 in 28 States.⁷⁵ Despite the fact that Section 28 of the Act only permits the designation of Special Courts and not their establishment, the government has set up specific courts for POCSO cases due to the high rates of pending cases.

2. Lack of Special Public Prosecutors for Special Courts

Setting up Special Courts and selecting qualified judges won't be enough to guarantee the Act is implemented correctly. Judges ultimately rely on the expertise of Special Public Prosecutors (SPPs), who are tasked with assisting the court by presenting the State's case and supporting evidence.

Section 32(1) of the POCSO Act, states that the State Government shall, by notification in the Official Gazette, appoint Special Public Prosecutor for every Special Court for conducting cases under the provisions of this Act. However, a study of POCSO courts in Maharashtra found that only 42% of courts had a designated SPP assigned to attend to cases under the POCSO Act. Also under harsh criticism is the prosecutors' level of support.⁷⁶

Current Situation:

A writ petition has been filed before the Delhi High Court seeking directions by the court regarding the appointment of Additional Public Prosecutors (APPs) for Fast Track Special Courts (including POCSO courts) is currently pending. The Prosecution Department in the state of Tamil Nadu has appointed 16 Special Public Prosecutors to handle offences relating to the POCSO Act in 16 special courts throughout the State as of February 2020.

⁷⁵ Department of Justice, 'Fast track Special Courts (FTSCs)' <<https://doj.gov.in/fast-track-special-court-ftscs/#:~:text=1572.86%20Cr.,with%20Rs.,than%201%2C02%2C000%20pending%20cases>> Last Accessed on 29 May, 2023

⁷⁶ Hannah M Varghese, 'Abject Incompetence of Prosecution: Kerala High Court initiates Suo Moto Case to probe appointment of Prosecutors' *Live Law* (23 September 2021) <<https://www.livelaw.in/news-updates/kerala-high-suo-motu-cognizance-on-incompetence-of-prosecutors-182322>> Last Accessed on 30 May, 2023

The High Court noted that expeditious resolution of rape and POCSO cases was urgently needed and noted that the state government's failure to create the necessary number of APP posts was impeding the "laudable" goal of creating fast track courts. As a result, states vary in their ability to ensure an adequate number and calibre of prosecutors handling POCSO cases. It could be necessary for the Supreme Court to step in and order all state governments to take the appropriate action in a timely way.

3. Non-Compliance with the Timeline prescribed by the Act

In accordance with Section 35 of the POCSO Act, a child's testimony must be recorded within 30 days of the Special Court receiving notice of the offence, and any delays must be noted by the Special Court. Additionally, according to this clause, the Special Court must conclude the trial within a year of the day it was given cognizance of the offence, insofar as that is possible.

However, in the vast majority of POCSO cases, this clause is violated. Only 11% of instances in Delhi's Special Court orders had the child's testimony recorded within 30 days after the date of cognizance, according to an analysis of those cases.⁷⁷

As required by Section 35(1) of the POCSO Act, the courts also fail to note the reason for the delay in recording the child's testimony. In addition, out of 946 cases for which the delay in trial completion was computed, delay was noted in 682 cases from Delhi and Mumbai (72%).

From 55 cases, just two (4%) had a time difference of more than six months between the FIR and the date the child provided evidence. The study also discovered that the majority of instances (45 out of 62) were resolved after one year had passed but within two years. This was the case in 33 cases (60%) and 17 cases (31%) respectively.

According to a CCL-NLSIU study, only 37% and 29% of POCSO cases in Maharashtra and Assam, respectively, were resolved within a year, while 72% of cases in Karnataka took longer than a year to be resolved. One effect of the delay in resolution may be that the victims, who are frequently young children, may forget important case details as time passes. Long-drawn-out proceedings may also call for the victim to testify years after the incident, re-traumatizing them and preventing them from recovering. Children and their families can decide to drop the case as a result. For instance, the CCL study discovered that as the time passed between filing a FIR and recording the evidence increased, the number of children in Assam who were hostile increased.

⁷⁷ Bharti Ali, Maharukh Adenwalla and Sangeeta Punekar, *Implementation of the POCSO Act: Goals, Gaps and Challenges: Study of cases in Special Courts in Delhi & Mumbai (2012 - 2015)* (HAQ: Centre for Child Rights and FACSE 2017) 95<www.haqrc.org/publication/implementation-pocso-act/> Last Accessed 30May,2023.

The case data for all open and closed cases from 2012 to 23 April 2020 were calculated as part of a more recent study of POCSO cases in Delhi, Assam, and Haryana. It was discovered that only 15% to 25% of cases registered in a given year are being resolved in the same year as the year of registration, and it took more than two years for 19.86% of total disposed cases and 33.39% of total ongoing cases.

In Re, Alarming Rise in the Number of Reported Child Rape Incidents⁷⁸, a ruling by the Supreme Court, it is noted that 63% of POCSO cases are still pending after more than a year.

However, according to NCRB data, 94.7% of the total POCSO cases that were awaiting trial at the start of 2020 were still open at the end of the year. The age of the cases demonstrates that the resolution of a significant fraction of POCSO cases requires much more time than a year.

Intervention by the Supreme Court:

In **Alakh Alok Srivastava v. Union of India**⁷⁹, the Supreme Court ruled that the Special Courts should receive instructions on how to expedite POCSO cases by denying unwarranted adjournments and concluding the trial in a timely manner or within the precise time frame mandated by the POCSO Act. Additionally, it asked the Chief Justices of the High Courts to appoint a committee of three judges to oversee and manage the POCSO Act trials.

In order to prevent minor victims from forgetting the incident due to the passage of time and giving the accused an advantage, the Bombay High Court reaffirmed early this year that the Special Courts should finish the examination of minor victims as quickly as possible. Because the trial had not progressed, the High Court ordered the sessions judge to file a report within two weeks to explain the delay in the trial's conclusion.

Current Situation:

Since the Supreme Court's instructions, little has changed in the situation, and POCSO cases continue to take a very long time to resolve. A POCSO case is typically resolved in 509.78 days, or almost 1 year and 5 months, as opposed to the one-year time frame required by Section 35 of the Act.

⁷⁸ In Re: Alarming Rise in the Number of Reported Child Rape Incidents (2020) 7 SCC 108

⁷⁹ (2018) 17 SCC 291

4.4. Challenges at Post Trial Stage

This stage includes the following:

- 1. Sanctioning of the Compensation:** Victim is authorised for the compensation and it must be paid by the State government within 30 days of receiving the order, using the Victim Compensation Fund or another similar fund (Rule 9 of the POCSO Rules and Section 357-A of the Criminal Procedure Code). Compensation orders may also be issued by special courts.
- 2. Disbursement of Compensation to Victim:** If a portion of the fine is ordered to be paid to the victim, the CWC works with DLSA to make sure the victim receives it after the appeals time has passed (see section 357 of the Criminal Procedure Code and Rule 10 of the POCSO Rules). In accordance with Rule 10 of the POCSO Rules, CWC is also required to take action, such as creating bank accounts, to guarantee that the kid receives the compensation sum.

Challenges:

1. Inadequate Compensation to Victim

The payment of compensation to victims under the POCSO Act is a complicated issue because the procedures for disbursing the compensation are frequently unclear, particularly in situations where the child has no family support, lives in a childcare facility without parental support, or there is concern that the compensation thus awarded may be misused.⁸⁰ Powers to direct payment of compensation to victims arise from various provisions under the POCSO Act, 2012. The POCSO Act Section 33(8) gives the Special Courts the authority to order the payment of compensation for the child's bodily or mental harm, as well as for prompt rehabilitation, in addition to the imposition of punishment.

The method for when and how compensation may be provided in POCSO situations, as well as the pertinent elements that may be taken into account while deciding the amount of compensation to be paid, are outlined in Rule 9 of the POCSO Rules, 2020.

⁸⁰ Bharti Ali and Urmi Chudgar, *Unpacking Judicial Data to Track Implementation of the POCSO Act in Assam, Delhi & Haryana* (HAQ: Centre for Child Rights and Civic Data Lab 2021) 122 <<https://justicehub.in/dataset/5467514c-1714-483d-8b82-2fb3984a0cf9/resource/9377bdfc-b723-4617-a74c-9ae508ebe3f3/download/>> Last Accessed 31May,2023

The powers under the CrPC come from Sections 357 and 357A. A court may order, in accordance with Section 357(1)(b), that the entire fine imposed as part of a sentence, if recovered, be given towards compensation for any loss or harm caused by the offence, provided that such compensation might be claimed in a Civil Court. Therefore, this section can only be drawn in situations when the accused was found guilty. The compensation awarded should be paid from the Victim Compensation Fund or any other government programme for compensating and rehabilitating victims under section 357A of the CrPC or any other law currently in effect, according to Rule 9(4) of the POCSO Rules, 2020, or, in the absence of such a fund or programme, by the State Government.

The fact that the victim must cooperate with the police and the prosecution during the investigation and trial in order to be eligible for compensation under the victim compensation schemes of several States and Union Territories raises another crucial issue when discussing compensation.

Even though the POCSO Act and Rules do not tie the payment of compensation to the child's testimony in court, there have been instances where the trial court has ordered the return of compensation (if paid) because the victim became hostile during the trial.⁸¹ This conflict has not yet been resolved by a specific judicial ruling from the higher judiciary. A judicial ruling on this matter is essential since a victim may become hostile for a number of reasons, including but not limited to threats and social pressure.

According to a study that examined POCSO cases in Delhi, the majority of judgements, sentence orders, and daily orders did not include information about victim compensation. Another investigation in Karnataka discovered that no compensation orders under the POCSO Act have been passed in Karnataka. None of the daily decisions also referenced the award of interim compensation.

According to a CCL-NLSIU analysis that examined POCSO judgements from five states, compensation was typically only given in 5–10% of cases. Assam was the only exception, with about 22% of judgements ordering compensation to the victims. In none of the judgements, with the exception of one judgement from the Assam Special Court, was there a reference to interim compensation. In both Delhi and Maharashtra, compensation was given in 5% and 9% of cases, respectively.

⁸¹ State of Maharashtra v Vicky Vinod Gajabe & Others, Special Case Child Protection No. 258 of 2016 (City Civil & Sessions Court, Borivali Div)

Intervention by the Supreme Court:

In **Nipun Saxena v. Union of India**⁸² the Supreme Court ordered that the Special Court shall independently or upon the victim's request inquire as to the child's immediate needs for relief or rehabilitation and pass appropriate orders for interim compensation upon receiving information as to commission of any offence under the Act by registration of FIR. Furthermore, it was decided that the court must give a written explanation as to why it decided against awarding interim or final damages. Finally, the Apex Court made it quite clear that the Special Court is required to review the compensation portion of each POCSO case. This does not imply that compensation must be awarded in every circumstance, but that there must always be a decision regarding compensation. In addition, the court ruled that until the Central Government finished the Rules, the NALSA's Compensation Scheme shall serve as the Special Court's guide for the award of compensation to victims of child sexual abuse under Rule 7.

Most states and union territories have created victim compensation programmes specifically for POCSO victims in addition to the Central Victim Compensation Fund Scheme.⁸³

The Supreme Court had noted in March 2020 that it will explore the question of designing a national mechanism for payment of compensation to victims of offences under the POCSO Act on the next date of hearing. In order to help it formulate a plan for compensating the victims, it had asked the Joint Secretary of the Indian government's Ministry of Women and Child Development to stay present in court. However, since then, the case has not been heard on the merits.

Current Situation

Interim compensation is not mentioned in any Special Court orders, according to a more recent study of POCSO cases in Delhi, Assam, and Haryana. CCL-NLSIU's study of Special Courts in Delhi discovered that the courts frequently delayed the decision to determine interim compensation until after the victim's testimony in order to prevent the victims from becoming hostile.

The POCSO Act and Rules mandate that the Special Courts determine the quantum of compensation to be provided under the state scheme, while the DLSA's role is limited to disbursement. In one instance, the Special Court explicitly limited the victim's right to apply for additional compensation, which was a clear violation of Rule 7(6) of the POCSO Rules.

⁸² (2019) 2 SCC 703.

⁸³ Central Victim Compensation Fund Guidelines 2016.

Final and interim compensation are only given in 1% of cases, according to data from a Supreme Court order. This statistic is appalling given the physical and mental trauma that victims of child sexual abuse experience and the resources that may be needed for their treatment and rehabilitation.

2. Inadequate Awareness about the POCSO Act

To guarantee that any new law truly achieves its goals, it is essential that the target audience is aware of both the law's existence and its content. In recognition of this, Section 43 of the Act mandates that the Central Government and each State Government take all necessary steps to ensure that the POCSO Act's provisions are widely publicised through media, including television, radio, and print media, at regular intervals in order to make the general public, including children as well as their parents and guardians, aware of this Act's provisions.

Steps Taken:

The National Institute of Public Cooperation and Child Development has created a set of booklets to raise awareness about child sexual abuse among children. Awareness campaigns have been carried out by state governments in cooperation with the local police and NGOs. Additionally, several Information Education Communication (IEC) materials on POCSO have been designed and published by various Civil Society Organisations like Arpan, Tulir, Antak, and others.

The Supreme Court specifically ordered the Ministry of Women and Child Development to screen a brief clip for raising awareness about child sexual abuse in movie theatres and broadcast it on television channels at regular intervals in order to push the government to carry out its obligation under the POCSO Act. The court also ordered the Department to prominently display child helpline numbers in order to raise awareness about these helplines.

Current Situation:

Despite these initiatives, World Vision India's 2020 study on attitudes towards child sexual abuse discovered that just 35% of children and 32.13% of carers were aware of the POCSO Act. Urban, rural, and tribal communities all have varying levels of awareness, with tribal areas having the lowest levels.⁸⁴

⁸⁴ World Vision India, 'A Study on Child Sexual Abuse Awareness and Attitudes' WVI, <<https://www.lifenews.co.in/assets/front/pdf/CSA%20Launch%20PPT%20Final%20Updated%20-wsj%20today.pdf>> accessed 20 June 2022; The News Minute, 'POCSO Act: Only 13.7% TN children aware, Bihar has almost nil awareness' *The News Minute* (15 September 2020) <<https://www.thenewsminute.com/article/pocso-act-only-137-tn-children-aware-bihar-has-almost-nil-awareness-133077>> Last Accessed 31May,2023.

Even though the court was handling a bail application, it used its powers under Article 226 of the Constitution to Suo Moto implead the state government, Central Board of Secondary Education, and the Kerala State Legal Service Authority, the Kerala High Court in an order passed in June 2022, stated that the educational machinery of the state had miserably fallen short in imparting the essential awareness to young children regarding the heinous crimes under the POCSO Act.

This makes it clear that even while efforts have been made to raise awareness of the POCSO Act, there is still a long way to go.

3. Poor Training of various Stakeholder

The complexity of treating child sexual abuse in the nation is shown by a closer look at the roles played by the several actors in the child protection system.

Stakeholders in the child protection system must not only be aware of their own duties and responsibilities within the system, but also be able to recognise the roles played by the others as they constantly interact with one another. To guarantee that the system runs properly and that the children who were victims receive justice, training is essential.

According to Section 43 of the POCSO Act, periodic training on issues relevant to the enforcement of the Act's provisions must be provided to officers of the Central Government, State Governments, and other concerned parties (including police personnel). Even though training is currently being provided, individuals who are getting it think it is insufficient.

Intervention by the Courts:

The lack of training for important parties including courts and public prosecutors has been noted by courts. In Venkatachalam v. Inspector of Police⁸⁵, the Madras High Court noted that Special Judges who handle cases brought under the POCSO Act frequently lack a thorough understanding of the law's purpose and reach. It ruled that any Sessions Judge who is to be assigned to the Special Court, which hears matters governed by the POCSO Act, must first undergo training and sensitization at the Tamil Nadu State Judicial Academy. In a later decision, the Madras High Court ordered the State Judicial Academy to provide training to all parties involved in cases under the POCSO Act, specifically the Investigating Officers, Special Public Prosecutors, and Special Judges.

⁸⁵ Venkatachalam v Inspector of Police, Crimnal Appeal No. 113 of 2021 (Mad H.C.) (Unreported); Venkatachalam v Inspector of Police, Criminal Miscellaneous Petition No.r 2925 of 2021 (Mad H.C.) (Unreported).

Due to a lack of specialised training to handle POCSO cases, which frequently expose judges to graphic facts, interviews with POCSO judges have shed light on the mental health difficulties that judges deal with. Judges' academies must be sufficiently equipped to provide appropriate training for judges and prosecutors to have the skills to handle these cases.

There is now serious consideration of the "vicarious trauma"⁸⁶ affecting judges and prosecutors involved in heinous crimes such as rape and child sexual abuse.

The Supreme Court has also highlighted that Special Public Prosecutors must have empathy for and knowledge of child psychology. The Apex Court explained the duty of Special Public Prosecutors in POCSO cases by stating that they must be able to elicit the truth from children who have been subjected to sexual abuse and are forced to go through the trauma again while reliving the terrible event. The court observed that the Public Prosecutor's role in POCSO matters is an extremely demanding one that requires careful consideration and sensitivity.

Because of this, the court acknowledged the need for both exclusive public prosecutors and the development of a training programme that would prepare these special public prosecutors to handle issues that might come up in their courts, such as legal, psychological, health, and other related issues. The Supreme Court requested that the Chief Justices of all High Courts ensure that special programmes are developed in the State's Judicial Academy so that these Special Public Prosecutors of the POCSO Courts are provided training in both law and child psychology, child behaviour etc. The Supreme Court has made an order requiring that exclusive Public Prosecutors shall be appointed all in all POCSO courts by the State Govt. across the nation. The National Judicial Academy's director was also asked by the Supreme Court to see to it that a training programme is created there so that master trainers can be trained there and then go on to work in the Judicial Academies in each State.

Current Situation:

On the ground, not much has changed despite these initiatives. The majority of the time, it was underlined that various child protection system stakeholders lacked enough training.

This Chapter's goal was to raise awareness of a few issues that have made it difficult for the POCSO Act to be effectively implemented across the nation. The purposes of the POCSO Act are not being realised due to a single obstacle, as is clear from the debate above. To create a system that genuinely works for child sexual assault victims, comprehensive reform is required.

⁸⁶ American Counseling Association, 'Vicarious Trauma' (Fact Sheet #9)
<https://www.counseling.org/docs/traumadisaster/fact-sheet-9---vicarious-trauma.pdf?sfvrsn=2> Last Accessed 31May2023.

CHAPTER 5

JUDICIAL APPROACH TOWARDS PROTECTION OF CHILDREN FROM SEXUAL ABUSE

The importance of the Indian judiciary and the breadth of judicial interpretation have grown dramatically in recent years, owing in part to the current era's massive increase in legislative action. The twin guarantees of equality before the law and equal protection under the law are seen as the two most essential foundations of human rights anywhere in the world where freedom to express and develop these rights is recognised, whether under an unwritten or written constitution. Respect for the judges was part of the common man's determination to uphold the Rule of Law and construct an equal society. The law's more important goal was the building of a civilised society. The unbiasedness, autonomy, and reliability of the personnel in the judiciary are the basic underpinnings of this high regard.

Many administrative faults are often connected with modest activity and human rights. The court has played an essential role in defending the common man's unique rights and privileges. The Supreme Court of India broadened the scope of Article 21 of the Indian Constitution, ruling that the right to life includes not only the right to exist, but also the right to live with dignity. As a result, if a child is a victim, the offence will not be regarded against the child until dealt with in line with Article 21 of the Indian Constitution. The Indian Constitution uses all available measures, including the court, to convert the status quo into a new human order in which everyone has equal position and equal possibilities. The judiciary serves a socioeconomic and constructive function. Similarly, the Indian judicial system has played an essential role in safeguarding children's well-being. Keeping this in mind, the Supreme Court has often emphasised that the country should take care of the child, who is the nation's hope for the future.

To demonstrate the development and progress in the Judicial approach to child sexual abuse legislation, an effort is made herein to explore several examples that demonstrated the apathetic and indifferent judicial attitude towards children and the offender of the crime.

5.1. The State of Rajasthan v. Manoj Pratap Singh⁸⁷

Facts: In this instance, the victim's mother, Kamla, runs a fruit and vegetable cart near RK Hospital. When Manoj Pratap Singh (Accused), who used to live at Housing Board, arrived on a motorbike to purchase fruit, her husband Dharm Das and her father Madan Lal were also there. Her little 8-year-old daughter was also there, who was intellectually challenged with an IQ of 50% and a lifelong physical impairment of 70%. After giving her a chocolate, the accused returned to the kiosk and carried the small girl away on his motorbike, heading towards Somnath Chauraha. The accused was apprehended by police, and during questioning, it was discovered that she had died. The dead suffered head injuries, injuries to her left eye, injuries to her face, neck, chest, hands, stomach, and back, as well as injuries to her private parts, according to the medical report. Following the filing of the FIR and investigation, the police submitted a charge-sheet before the relevant court, and the matter was committed to the court for trial for violations of Sections 363, 365, 376(2)(f), and 302, Indian Penal Code, as well as Section 6 of the POCSO Act. The offender was convicted by the POCSO Special Court of the aforementioned acts and sentenced to death.

Remarks: The court heard testimony from witnesses who said that the deceased was treated to considerable brutality during the rape and subsequent murder. The doctor who produced the postmortem report also said that the dead was severely raped before to her death and died as a result of a head injury. The court referred one supreme court matter, i.e., **C. Chenga Reddy v. The State of A.P. (1996) 10 SCC 193**, where it was held that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is drawn must be fully proved and must be conclusive in nature; additionally, all the circumstances must be complete, with no gaps in the chain of evidence. Aside from that, the proven circumstances must be compatible exclusively with the premise of the accused's guilt and completely incongruous with his innocence. In this case, the competent court determined that there is enough circumstantial evidence to imply that such horrible rape of an 8-year-old child who is mentally challenged occurred. While granting the death penalty, the court cited to the landmark case of **Bachan Singh v. State of Punjab & Machhi Singh and Others v. State of Punjab**, in which the Supreme Court decided that the conventional rule is that the crime of murder is punishable by life imprisonment.

⁸⁷ MANU/RH/085 3/2015

However, if the court determines that the crime is extremely wicked and horrible, that it is against society as a whole, and that it is necessary for the healing of civil society, the court may issue a death sentence. In this instance, the court determined that the death penalty is justifiable since the nature of the crime and the method in which it was committed point to its rarity.

5.2. Sharath Chandra Pottala v. Union of India⁸⁸

Facts: The petitioner, an accused in a Sessions Case proceeding before the Sessions Judge in the Jodhpur District, has filed a writ petition seeking relief. One among them is that the Hon'ble Court be pleased to rule that the provisions of POCSO are extra vires the Indian Constitution. a) Section 34 of POCSO empowers the Special Court under POCSO to determine the age of an accused if a question arises over the age of a juvenile accused, whereas there is no provision for the accused person to seek determination of the age of the victim despite a valid and sustainable question and dispute over the age of the victim, and such an inconsistency in POCSO creates such a prejudice which is detrimental to the accused person. b) A Special Court under POCSO would not have jurisdiction to try an offence when the victim is a minor, and thus when a dispute or question arises over the age of the victim, there should be a procedure for deciding the same, and denial of such remedy to the accused would be a serious violation of his fundamental right under Arts. 14 and 21 of the Constitution of India.

Remarks: After considering the arguments brought to the provisions of the POCSO Act, the Court concludes that the so-called deficiencies, anomaly, or gap in the process as given are devoid of substance and do not establish a case against the legality of the statute. The court said that it is nevertheless conventional that a statutory provision might be challenged as extra vires on the basis of legislative competence or if the provision violates any of the Constitution's provisions. Legislative competence is not in dispute in this instance, and based on the comments made, it is impossible to establish any constitutional provision violated by the legislation. It was said that POCSO was created for the sole aim of protecting minors from sexual assaults and sexual harassment, among other things. The method for recording the kid's statement was also the medical examination of the youngster in Section 27 in accordance with Section 164- A of the Code of Criminal method.

⁸⁸ 2014 (2) WLN 410 (Raj.)

The designation of Special Courts for the prosecution of violations under the Act has been created, with the provisions superseding even other special enactments such as the Information and Technology Act of 2000. The petition was rejected.

5.3. K. Muthu Mariappan v. The State⁸⁹

Facts: In this instance, the victim is 15 years old and attends school. In the promise to marry, one of his friends brings her to "Chennai" and sleeps in a rented home with her, having sexual intercourse with her. Following the filing of the complaint by the victim's mother, police locate the accused and file the case under "Section 366(A), 376 of the Indian Penal Code, and Section 4 of the POCSO Act." The accused is found guilty by the trial court and a criminal appeal is filed against such order.

Remarks: When dealing with the case, the court must consider specific factors such as age, kind of offence, and penalty. These are discussed more below-

As for limiting the age criterion, it was pretty evident in this instance based on the definition supplied by the specific laws, which were supplemented with the relevant evidence.

The abduction is then completed, as shown by age.

Section 3 or Section 5 of the abovementioned statute must be invoked depending on the nature of the offence. When dealing with 'Section 3 penetrative sexual assault' and 'Section 5 aggravated penetrative sexual assault'. It is included in the category if "more than one or constantly, repeatedly, or continuously engage in sexual intercourse."

The conviction was made under Section 4 of the POCSO Act when deciding on the sentence.

⁸⁹ MANU/TN/1611 /2015

5.4. Sachin v. State of H.P.⁹⁰

Facts: In this case, two FIRs have been filed, both of which are in conflict with one another. While one of them claims that the incident occurred at a hotel, the other claims that the location of the accused is up to 90 km away. Though the stories of both parties did not match, the court's trust was not required to commence the proceedings. Because of the conflicts involved, no crime is made out under any legislation.

Remarks: When dealing with this case, the court must consider the seriousness of the offences under Section 376D IPC, i.e., gang rape, and Section 6 and section 17 of POCSO Act , i.e., aggravated penetrative sexual assault upon minor prosecutrix and punishment for abetment. There is always the fear that if the guilty individual is released on bond, the victim and family will be threatened, and the investigative process, procedure, or trial may be disrupted. Before granting bail, the following factors must be considered:

- Type and Gravity of offence
- Evidence character
- Conditions related to convicted
- Chances of presence in trial or in investigation
- Threat may be given to witness
- In interest of State and Public

5.5. Sahil Thakur v. State of Himachal Pradesh⁹¹

Facts: In this case, both the victim and the accused are students at the same institution. Both travelled to Chandigarh in a hired car with two mutual friends and slept at a hotel. Where the accused sexually attacked the victim by engaging in sexual intercourse with her. She later stated that she was abducted and given a drink with drugs in it, as a consequence of which she got unconscious, and the perpetrator took advantage of her by establishing personal contact. A bail application has been submitted.

⁹⁰ MANU/HP/0180 /2015

⁹¹ MANU/HP/0527 /2015

Remarks: In this case, the court stated the basic goal of judicial custody, which is to meet the needs of the accused during the trial or at the time of punishment. Though the convictions obtained in trials are not intended to punish the guilty, but rather to apply a preventative approach to rehabilitation. According to the evidence, the accused may be released if specific conditions are met, which include the following:

- By fulfilled the bail bonds
- Must corporate the investigation and trial
- No threat or influence may be made to person related to case
- No disturbance will be caused to any evidence or witnesses
- Without permission may not leave the Indian territory
- Freedom should not be misused by them

5.6. Pranil Gupta v. State of Sikkim⁹²

Facts: In the instant case, the victim is 14 years old and is known to the abuser, who is also the driver. Victim and companion went shopping; at this point, the accused contacted the victim and directed her to the school grounds, where she met his sister-in-law. The victim follows the instructions and meets with the lady; she brings them to the accused's room and orders the victim's buddy to return home. At this location, the accused has a sexual relationship with the victim. A complaint is submitted by the victim's family, and the allegations under "Section 4 of the POCSO Act, 2012 and Section 363 of the Indian Penal Code, 1860" must be proven.

Remarks: When evaluating the case, the court must reject the claim that the conduct was permitted since the victim travelled to see the accused, but when considering the victim's age, no issue of consent arises because consent is irrelevant until the age of 18. State laws have shielded her. So, in this case, Section 3 of the special legislation is liable, and when interpreting Section 30(2)(1) of the special legislation, it must be proven beyond reasonable doubt that a scrutinised act was performed to verify the "Culpable Mental State," which includes "intention, motive, knowledge of the fact, and belief in or reason to believe a fact." Finally, the trial court's decision is affirmed.

⁹² MANU/SI/0035/ 2015

5.7. Jongi v. State⁹³

Facts: The accused requests that the victim accompany him to get her potli. He led her to gali, where he kissed her and also injured her on the face with a little knife and demanded that she remove her pants. Furthermore, the accused had removed her blouse and massaged her chest. When she screamed and wailed. The accused fled in terror. A complaint was filed, on the basis of which conviction of the accused was made under Section 354 IPC and Section 9 of the POCSO Act. Against this order, an appeal is filed.

Remarks: After considering the facts and situation or the object involved in the proceedings, the court concluded that the act of undressing the victim falls under the purview of Section 11 of the POCSO act as sexual harassment, which is punishable with imprisonment for a term that may extend to three years and a fine.

5.8. Jagar Singh v. State of H.P.⁹⁴

Facts: The current case is before the HC for the grant of Anticipatory bail under Section 438 of the CrPC 1973. Here the accused is charged under Section 354A IPC and Section 8 of the POCSO Act 2012. The victim is a juvenile girl who was caught by the accused from behind while going to the toilet. Offender told the victim that if she freely participated in the activity and satisfied his demand, he would not injure her. After that, he began to touch the victim's body in pursuit of his sexual desire and create specific marks and in advancement of such conduct. Along with that, he opened the salwar of the minor victim, and the minor yelled out loudly, and upon hearing the minor's screams, the minor's maternal grandpa came out.

Remarks: According to Section 30 of the Protection of Children from Sexual Offences Act 2012, there is a presumption of culpable mental condition, and the burden of proving that he does not have such mental state is on the accused. It was concluded that whether the accused possessed such a mental condition or not could be decided at this time. The same fact will be resolved on the merits after both parties have had a chance to present evidence in support of their case.

⁹³ 2014 (4) JCC 2922

⁹⁴ 2015 (2) RCR (Criminal) 320

According to Section 42-A of the Protection of Children from Sexual Offences Act 2012, the provisions of the POCSO Act take precedence over the provisions of other laws to the extent of the discrepancy.

Interpretation of Section 7 of POCSO: It was argued that sexual intent to touch the child's naked vagina, naked penis, naked anus, or naked breast is required in order to prosecute the accused under Section 7 of the POCSO Act, 2012. Sections 7 and 8 of the Protection of Children from Sexual Offences Act of 2012 have been thoroughly reviewed by the Court. The court believes that there is no recital in Section 7 of the POCSO Act that touches on sexual intent to the child's naked vagina, naked penis, naked anus, or naked breast. The court believes that merely touching the minor kid's vagina, penis, anus, or breast while the minor child is dressed is sufficient to trigger Sections 7 and 8 of the Protection of Children from Sexual Offences Act 2012. The term nude is absent from Section 7 of the Protection of Children from Sexual Offences Act 2012, and it is well-established law that where two interpretations are feasible, the Court should choose the interpretation favourable to children in the interests of justice. The court determined that it is not in the best interests of justice to release the petitioner on anticipatory bail. As a result, the applicant's anticipatory bail motion is denied.

5.9. Attorney General for India v. Satish⁹⁵

Case Trajectory: In the current instance, the accused took the 12-year-old victim to his residence on the guise of providing her guava, attempted to remove her salwar, and squeezed her breast. When she began screaming, he squeezed her mouth shut. On February 5, 2020, the Special Court convicted and sentenced the accused under Sections 342, 354 and 363 of the IPC and Section 8 of the POCSO Act, 2012. On 19.01.2021, the Bombay High Court's Nagpur Bench acquitted the accused of the offence under Section 8 of the POCSO Act and convicted him of the offences under Sections 342 and 354 of the IPC, sentencing him to 1 year rigorous imprisonment and a fine of Rs.500 for the offence under Section 354- and six-months imprisonment and a fine of Rs. 500 for the offence under Section 342.

⁹⁵ 2021 SCC OnLine SC 1076

Pushpa V. Ganediwala, J., of the Bombay High Court's Nagpur Bench, had stated that the act of pressing the breast of the child aged 12 years, in the absence of any specific detail as to whether the top was removed or whether he inserted his hand inside the top and pressed her breast, would not fall under the definition of "sexual assault."

The aforementioned judgement sparked a significant commotion in January 2021, particularly since the "shocking" verdict was delivered by a female judge. This caused India's Attorney General, K. K. Venugopal, to file an appeal with the Supreme Court, claiming that the judgement was likely to create a "dangerous precedent." On January 1, 2021, the three-judge panel of former Chief Justice SA Bobde, AS Bopanna, and V. Ramasubramanian stayed the stated judgement.

"Sexual intent" is the most important component of a sexual assault under Section 7 of the POCSO Act, not "Skin to Skin" contact with the child."

Interpretation of Section 7 of the POCSO Act- "The act of touching any sexual part of a child's body, or any other act involving physical contact with sexual intent, could not be minimised or held insignificant so as to exclude such act from the purview of "sexual assault" under Section 7." Restricting the interpretation of the words "touch" or "physical contact" to "skin to skin contact" would not only be a narrow and pedantic interpretation of the provision contained in Section 7 of the POCSO Act, but also the Legislature could not have intended or anticipated "skin to skin contact" as being a "sexual assault" crime.

The objective of enacting the POCSO Act was to protect children from sexual abuse, and if such a restricted interpretation is accepted, it would result in a very detrimental situation, defeating the very purpose of the Act, because touching the sexual or nonsexual parts of a child's body with gloves, condoms, sheets, or cloth, even if done with sexual intent, would not constitute a sexual assault under Section 7 of the POCSO Act.

Importantly, neither Section 7 nor any other provision of POCSO implies that 'direct' physical contact unobstructed by clothes is required for an offence to be committed. The High Court's reasoning is flawed because it believes that indirect contact is not protected by Section 7, or that there is no "touch" at all. That clause includes and is intended to include both direct and indirect contact. "The reasoning in the High Court's judgement trivialises, if not legitimises, an entire range of unacceptable behaviour that undermines a child's dignity and autonomy through unwanted intrusions."

5.10. Competency of a Child Witness

The trial court issued a special directive to assess the competency of a juvenile witness, which was instructed to be forwarded to all judicial officers in Delhi's District Courts for compliance.⁹⁶

In the case of **Suryanarayana v State of Karnataka**,⁹⁷ the significance of a witness under the age of 18 was examined. (The witness), who was around four years old at the time of the incident, is the sole lone eyewitness who was not properly sworn in. According to the position and circumstances of the case, it was impossible to have any individual as an eye witness at the time and place. The evidence of the child witness cannot be rejected per se, but the Court, as a matter of prudence, is required to scrutinise such evidence and, only after being convinced of the quality and reliability of the statements, base conviction by accepting the statement of the child witness.

If she is demonstrated to have withstood cross-examination and there is no flaw in her evidence, the prosecution may rightfully claim a conviction based only on her testimony. Corroboration of a child witness' evidence is not a norm, but rather a measure of care and precaution. Conflicts in the stamen of the child witness cannot be used to dismiss the evidence. Inconsistency in dismissal is not definite things that infer the witness child testimony, in normal settings, and like to mix all of them, that what a witness truly saw or likely to imagine what has been seen. While considering the testimony of the child witness, the Courts must rule out the possibility that the youngster was tortured. In the absence of any accusation of torture or manipulating the child witness for ulterior prosecution objectives, the Courts must depend on the determination or firmness rousing the witness's statement to determine whether the accused is accountable or not.

⁹⁶ State Vs. Rahul CrI P. 250/2012

⁹⁷ (2001) 9 SCC 129

5.10.1 Mahadev Gaur Bishwas v. State of Maharashtra and Anr.⁹⁸

Facts: When she was just 3 years and 5 months old, a small girl was sexually abused by a guy in her neighbourhood whom she referred to as 'uncle,' her friend's father.

On 6/11/2017, as she was playing with her siblings with her mother nearby, she was brought inside the home by the accused and he fingered her, causing her to start bleeding. The small girl ran to her mother, removed her panty, and went to the bathroom. She was unable to pass pee and was screaming in anguish and misery while caressing her private parts. When the mother spotted blood flowing out, the victim revealed to her that it was Sanya's father, the accused, who had inserted his finger in the area where Sanya was peeing, which was painful.

The victim was brought to the family doctor the following day, who directed her to go to 'MAA' hospital, but when she arrived, she was told to go to Rajawadi Hospital.

A gynaecologist examined the victim at Rajawadi hospital, and a medicolegal examination report was produced.

The perpetrator was charged with raping the victim girl, age four, by inserting his finger into her vagina, an act punishable under Section 376(2) of the Indian Penal Code. He was also charged with aggravated penetrative sexual assault, a crime punishable under Section 6 of the POCSO Act.

After reviewing the full evidence, the learned Judge of POCSO Court was satisfied of the veracity of the witnesses and concluded that the prosecution had proven its case beyond all reasonable doubt, found the accused guilty and condemned him for the crime punishable under Sections 376(2) and 6 of the POCSO Act.

Remarks: During a hearing on an appeal filed by the accused person, the Bombay High Court held that it cannot be expected of a little girl, barely four years old, to focus on the photograph and identify the person, specifically because a child of that age may not be able to focus on a point due to underlying anxiety or being distracted by external stimuli. In the instance of this child, the stressful environment she was in might have been one of the causes.

⁹⁸ CRIMINAL APPEAL NO.440 OF 2019, Bombay HC

The Hon'ble High Court further held that a 3.5-year-old girl should not be exposed to her own organs and should not be asked to provide a detailed description of her private parts.

The Court determined that the Appeal do not deserve consideration because it lacked merit. As a result, the Appeal was dismissed, and the Special Judge's judgement and order of conviction in POCSO Special Case No.23/2018 dated 28/2/2019, convicting the appellant and imposing sentence was upheld.

5.11. Consent in Conflict

5.11.1. Remarks by the Chief Justice of India:⁹⁹

Amid growing concerns about cases of mutually consenting 'romantic relationships' falling under the purview of the POCSO Act, Chief Justice of India DY Chandrachud suggested that the legislature take into account growing concerns about the age of consent under the 2012 Act, which is 18 years.

The CJI delivered the keynote lecture at the first two-day National Stakeholders Consultation on the POCSO Act, which was organised by the Supreme Court Committee on Juvenile Justice in collaboration with UNICEF.

During his speech, the CJI said that one of the subjects that the panel will be discussing during the session would be POCSO Court judgements in 'Romantic situations,' or situations where consenting minors engage in sexual activity.

He said that "You are aware that all sexual acts among those who are under 18yrs. regardless of whether consent is present is criminalised by the POCSO Act because the presumption of the law is that there is no consent in the legal sense among those below 18. In my time as a judge, I have observed that this category of cases poses difficult questions for judges across the spectrum".

⁹⁹ <https://www.livelaw.in/top-stories/cji-dy-chandrachud-urges-parliament-to-consider-concerns-about-age-of-consent-under-pocso-act-216336>. Last Accessed on 1June,2023.

The comment from CJI Chandrachud follows the Madras High Court's recent observation that the Court is "eagerly" awaiting a change to the legislation to correctly deal with situations involving teenage relationships.

This remark was made by the bench of Justice P Velmurugan while maintaining the conviction and sentencing of one Ravi, who was accused of kidnapping and forcefully marrying a 17-year-old female in May 2014. He was convicted by the trial court under Sections 366 of the IPC, Section 5(l) of the POCSO Act, and Section 3(1)(w)(i) r/w 3(2)(Va) of the SC/ST Act and sentenced to RI of 10 years." Whereas, the law defines a child as someone who has not reached the age of 18. This Court, as an Appellate Court, is a final fact finding Court and cannot go beyond the statute.

5.11.2. Mr. 'X' v. State Govt. of NCT of Delhi and Anr.¹⁰⁰

Facts: In this instance, the father of Ms. "A" filed a FIR alleging that his daughter, who is around 17 years old, married Mr. "X" on June 30, 2021. On October 27, 2021, Ms. "A" visited the Applicant's home, and on October 28, 2021, the Applicant escorted Ms. "A" to Punjab and married her. As a result, a FIR was filed under Section 366 IPC and Section 6 POCSO Act.

She claims to have been married to Mr. "X," but she no longer want to be with him. She was a juvenile and approximately 17 years old when she married the applicant on October 28, 2021.

She goes on to say that she married the application of her own free choice and without any undue influence, threat, pressure, or coercion, and that she still wants to be with the applicant.

As a result, the girl was not pressured into the connection with the guy. Ms. "A" really went to the applicant's residence and asked him to marry her.

Remarks: The victim's statement makes it evident that the two are in a love connection and that the sexual conduct engaged between them was voluntary. Although the victim is a juvenile, and therefore her permission has no legal weight, the court believes that the fact of a consenting connection grown out of love should be taken into account when granting bail.

¹⁰⁰ 2022 LiveLaw (Del) 1077

In this situation, ignoring the victim's account and allowing the guilty to languish behind bars would be a perversion of justice.

While granting bail to the accused, the court said that the purpose of POCSO was to protect children under the age of 18 from sexual exploitation. It was never intended to criminalise young adult consenting love relationships. However, this must be determined based on the facts and circumstances of each instance. In certain situations, a victim of a sexual crime may be compelled to settle due to pressure or stress.

5.11.3. Veekesh Kalawat v. State of Madhya Pradesh and Anr.¹⁰¹

Facts: An application for bail has been submitted in this matter in connection with Crime No.161/2018, recorded at Police Station- Isagarh, District Ashok Nagar, for an offence punishable under Sections 363, 366-A, 376(2)(N), 376(2)(H) of the IPC and Sections 5L/6, 5(J)(ii)/6 of the POCSO Act.

On April 26, 2018, the applicant is accused of kidnapping the prosecutrix. The FIR was filed at Police Station Isagarh, District Ashok Nagar, for an offence punishable under Section 363 IPC. Following that, on 10/09/2020, the prosecutrix and applicant, together with a boy born to them on 26/06/2020, were apprehended by police from the home of one Prabhulal Kalawat (now the prosecutrix's father-in-law). The petitioner was detained on September 10, 2020, and is now in jail awaiting trial.

Remarks: The prosecutrix has been branded hostile since she did not help the prosecution's case. She has denied knowing the applicant, much alone eloping with him. She has cleared the applicant of rape and disputed that the applicant fathered her child.

While granting bail to the accused, the Hon'ble HC noted that **this may be a case of statutory rape rather than forced rape** because the prosecutrix was under the age of consent on the day she eloped with the applicant.

¹⁰¹ MISC. CRIMINAL CASE No. 4521 of 2023

Request to the Law Commission of India by the High Court: The High Court made a request to the Law Commission of India in its bail order, stating that the oppressiveness of the POCSO in its application to the marginalised sections of society reeling under the combined negative effects of illiteracy and poverty is most pronounced in the state of Madhya Pradesh. This Court believes it is necessary to bring to the attention of the Hon'ble Law Commission of India how the operation of the POCSO in certain cases is disrupting and devastating families in rural Madhya Pradesh by sending the sole breadwinner in the family to jail for a minimum of ten years. When the prosecutrix is jobless, as is usually the case, her alternatives for subsistence are limited to prostitution and criminality. The POCSO imposes no responsibility on the state to provide for the bare necessities of existence for the so-called "survivor." The application of the POCSO to such circumstances in its current form is grossly unfair.

A natural affinity between genders for the maintenance and continuation of the human race has been criminalised by law. The legislature's goal was definitely laudable, spurred by the horrific Nirbhaya Case, which proved to be the proverbial "last straw" for a community appalled and rattled by the sheer extent of its savagery, unlike any other, ever before. The case increased the need of enacting a new legislation to supplement the current rape statute, the terms of which would be deterrent by being severe. As a result, POCSO Act, 2012 was enacted. The POCSO, on the other hand, does not distinguish between 'Rape' and 'Statutory Rape'.

A considerable proportion of the Indian population is illiterate, and as a result, they are unable to understand or grasp the severe provisions of the POCSO and remain completely unaware of them. According to the World Bank, India's literacy rate for individuals aged fifteen and above was 74% in 2018. TIME magazine (January 2014), citing a UNESCO assessment, said that 37% of the world's illiterates were from India, and with 287 million illiterate adults, India had the biggest number of illiterate adult population in the world in 2014.

The POCSO is gender agnostic, and the term "Child" is defined in s. 2(d) as "any person under the age of eighteen." So, how does the court proceed when both the girl and the boy are under the age of eighteen and there is indisputable de facto consent?

In such a scenario, when both parties are under the legal age of consent, how would the court establish who is the victim and who is the offender? Will the legislation force both to be prosecuted as minors, or will there be no prosecution under the POCSO? These are grey zones that beckon the opening of Pandora's Box.

In circumstances of penetrative sexual, aggravated penetrative sexual assault (rape), sexual assault, and sexual harassment of a minor, the requirements of the POCSO are reasonable and suitable if the criminal is an adult and de facto consent is missing. However, its regulations make no distinction between rape (as in without consent) and statutory rape (as in with consent but penalised because the victim is under the age of eighteen). The POCSO has a tendency to destroy families in cases of statutory rape, where the victim, usually on the cusp of majority, elopes with the accused, marries, has children, and later, the accused is put on trial, convicted, and sentenced to a minimum of ten years rigorous imprisonment, which can be extended to twenty.

As a result, the Hon'ble Law Commission of India is urged to kindly examine the following and recommend to Parliament (if the Hon'ble Commission finds it appropriate), to provide discretion to the Special Judge when;

- a) Where the prosecutrix is under the age of consent but de facto consent is evident, the Special Court (usually a senior Session Judge with more than twenty years of judicial experience) has the discretion to impose a sentence based on the facts and circumstances of the case, which can extend up to twenty years.
- b) Where the prosecutrix is under the age of consent and the connection has resulted in marriage (with or without children), the Special Court should be permitted to impose alternative penal techniques such as community service, etc.

5.11.4. Tarun Vaishnav v. The State of Rajasthan and Anr.¹⁰²

Facts: This is an unusual case in which a FIR (being FIR No.260/2022) was registered by the Station House Officer, Devnagar, Jodhpur City West, based on the statement of a minor girl who delivered a baby boy in a Government Hospital under the provisions of Section 376 IPC and Sections 3 and 4 of the POCSO Act, 2012.

The case is around a juvenile girl named 'D' and her personal connection. On 4 August, 2022, when 'D' complained of severe stomach ache, her parents took her to Government Hospital and were shocked to know that their daughter, still a minor and unmarried, was pregnant and about to deliver.

'D' gave birth to a baby boy despite the fact that she was just 16 years old. When the Investigating Officer learned of this information, she recorded her statement in which it was discovered that throughout the course of her love affair with the accused, she freely cohabited with him, resulting in her pregnancy.

Given the circumstances, the Investigating Officer acted quickly and filed the aforementioned FIR against the offenders.

Remarks: It was said in court that the conduct was voluntary and that neither the prosecutrix nor her parents had any grievance or animosity towards the petitioner.

While emphasising that the impugned FIR (No.260) was registered on his own initiative, learned counsel submitted that the parents of 'D', as well as 'D' herself, had reached an agreement with the petitioner and approached this Court for a quashing of the FIR by invoking the Courts' powers under Section 482 of the Code of Criminal Procedure.

While neither side wants the petitioner to be prosecuted/punished, the continuance of the prosecution under the circumstances of the current case would be unjust. The court said that it is aware of the legal position that, in situations involving sexual acts with minors, permission has no legal validity and cannot be utilised as a defence.

¹⁰² 2022 SCC OnLine Raj 2237

Needless to say, this Court cannot and does not approve or condone the petitioner's sexual conduct with the prosecutrix, but it is a harsh truth that their love affair has crossed legal and moral boundaries, resulting in the birth of a child.

This Court cannot remain quiet or turn its back on the beleaguered family. If the impugned FIR is not invalidated, the petitioner would be imprisoned for at least ten years. The error or gaffe, which would ordinarily constitute an infraction, was perpetrated owing to the immature act and uncontrollable emotions of two people, one of whom is still a minor.

The petitioner's prosecution and conviction will lead to pain and tears in the eyes of the family members of both the parties and future of two families, and above all, an innocent child will be in peril, whereas, if the impugned FIR is quashed, it would serve the ends of justice.

After considering it as an exceptional case, the Court has allowed the petition and thereby the FIR against petitioner is quashed.

Special Leave Petition before Supreme Court: The State of Rajasthan has filed a Special Leave Petition before the Supreme Court challenging the HC's ruling quashing the FIR. After hearing the parties, the Hon'ble Supreme Court declined to intervene with a High Court ruling quashing a POCSO FIR based on a consensual relationship between a man and a minor girl, and thereby, dismissed the petition.¹⁰³

5.11.5. Silvestar Khonglah v. State of Meghalaya¹⁰⁴

Facts: In the current case, the mother of a little girl filed a FIR on December 18, 2020, alleging that the accused sexually molested her minor daughter. The mother said that her young daughter, who was discovered missing from her room by the instructor at the school where she was studying and who promptly reported the problem to her, described being sexually attacked by the accused on two occasions, namely on 11-12-2020 and 16-12-2020. The accused was apprehended by police under S. 5(1)/6 of the POCSO Act, and he was granted bail after being detained for almost ten months. The evidence on file show that the mother's underage daughter was having an affair with the accused. The accused and the underage girl's mother submitted this plea on mutual agreement for the dismissal of the FIR.

¹⁰³ SLP(CrI) No. 1890/2023

¹⁰⁴ 2022 SCC OnLine Megh 575

The petitioners' counsel claimed that the underage girl in her declaration under S. 161 CrPC in addition to S. 164 CrPC confessed that the accused was her lover and that her connection with him was voluntary and consenting.

The petitioners' counsel further submitted that the fact that both the accused and the mother of the young girl jointly and on mutual agreement filed the current petition before the Court demonstrated the petitioners' good faith. The petitioners' counsel also contended that "this is a case where two teenagers are involved in a romantic relationship and, unaware of the legal restrictions, had indulged in a physical relationship out of their own free will and consent," and thus no case of sexual assault could be brought under the provisions of the POCSO Act.

Remarks: Because of the severity of the sanctions given by the Act, the Hon'ble HC decided that it is also necessary for this Court to draw the thin line that demarcates the character of conduct that should not be made to come within the purview of the Act. Justifiably so, since if acted on quickly or recklessly, it might do irreversible harm to the reputation and livelihood of young people whose activities were benign. In light of the facts of the case, the argument advanced, the authorities cited, and in the interest of justice, the Court quashed the FIR and criminal proceedings under the POCSO Act and absolved the accused of any liability in the aforementioned criminal case."

CHAPTER 6

COMPARATIVE STUDY OF LAWS PROTECTING CHILDREN FROM SEXUAL ABUSE

When human civilizations recognised the significant rights of children and the need to preserve such rights, states started to establish distinct laws in their local jurisdiction and at the international level. International treaties are without a doubt among the most significant human rights resources for recognising fundamental rights and liberties.

Sexual offences already have their own category in criminal law, with harsh consequences in case of conviction. A number of notable improvements in this field of law have occurred in recent years, representing substantial progress towards updating the law to reflect current situations across all jurisdictions throughout the globe. A comparative study of sexual laws is conducted with Western culture nations in order to highlight the conditions that exist there regarding terrible crimes such as sexual abuse. In that setting, we shall study two countries: the United Kingdom and the United States of America.

6.1. CHILD SEXUAL ABUSE IN UNITED KINGDOM

One in every twenty youngsters in the UK has been sexually abused.¹⁰⁵ according to Operation Hydrant¹⁰⁶ which is managing complaints from the Goddard probe. Justice Lowell Goddard is in charge of 13 investigations involving organisations such as the Church of England,

¹⁰⁵ Child abuse and neglect in the UK today Research into the prevalence of child maltreatment in the United Kingdom, available at: <https://www.nspcc.org.uk/services-and-resources/research-and-resources/pre-2013/child-abuse-and-neglect-in-the-uk-today/> Last Accessed on 31May,2023.

¹⁰⁶ Operation Hydrant is a coordination hub established in June 2014 to deliver the national policing response, oversight, and coordination of non-recent child abuse investigations concerning persons of public prominence, or in relation to those offences which took place historically within institutional settings.

Westminster, the borough of Lambeth, and a detention camp in Durham, as well as claims of child sexual exploitation in Rochdale, Devon, Cornwall, Oxford, and Rotherham.¹⁰⁷

The following are the characteristics of the Sexual Offences Act of 2003:

1. Applies to Northern Ireland, Wales and England.
2. Sets the age of a "child" at 18, amending the Protection of Children Act 1978, and provides a defence for all sexual offences when the child is 16 or over and the relationship is consensual.
3. Classifies any sexual intercourse with a child aged 12 or younger as rape.
4. Establishes a draft of new criminal offences including crimes involving familial sexual abuse, offences involving adult relatives and offences designed to give protection to persons with a mental disorder.
5. Re-enacts the offences of abuse of a position of trust towards a child. This act prohibits children under 18 yrs. of age in school, college or residential care to have sexual contact with adults.
6. Makes it an offence to give someone a substance without their consent and with the intention of stupefying or overpowering them so that any kind of sexual activity can take place.
7. Creates several new initiatives to protect children and the general public from sex offenders by including legislations such as Crime and Disorder Act 1998, Sex Offenders Act 1997.
8. Introduces risk of sexual harm orders, specifically designed to protect children, and also creates foreign travel orders, which can be used to prevent an offender with a conviction for a sex offence against a child from visiting other countries where he may indulge in abusing children.
9. A new offence of voyeurism relating to those who observe others doing private acts without their knowledge for sexual gratification.
10. Decriminalizes a series of sexual acts including the offences of gross indecency, buggery and soliciting by men (cruising).
11. Makes necrophilia and bestiality crimes.

¹⁰⁷ We've been ignoring an epidemic of child sex abuse in Britain, available at: <http://www.telegraph.co.uk/women/life/weve-been-ignoring-an-epidemic-of-child-sex-abuse-in-britain/> Last Accessed on 31May,2023.

The statute described above does not apply in Scotland, however The Sexual Offences (Scotland) Act 2009 does. In a number of areas, the Sexual crimes (Scotland) Act 2009 altered the legislation dealing to rape and other sexual crimes. First, it establishes a larger, statutory definition of rape; second, it defines consent and eliminates the Morgan defense¹⁰⁸; and lastly, it handles the problem of victim alcohol and drug usage.

The Sexual crimes (Scotland) Act 2009 is a significant step forward in the reform of the legislation governing sexual crimes. It shifts the focus from the complainer's actions to that of the accused person, which is appropriate since the complainer is not the one on trial. The problem of holding the complainant liable in some manner penetrates our culture and is likely a contributing reason to Scotland's low reporting and conviction rates. Unfortunately, the problem of bringing the complainer's history into the frame persists and is not addressed by the 2009 Act. According to a startling figure from the Scottish Government Social Research, seven out of 10 complainants were questioned in court about their sexual history.¹⁰⁹

6.1.1 Child Pornography: Legal Perspective

1. Protection of Children Act 1978

The principal piece of law in England and Wales dealing with child pornography charges is the Protection of Children Act 1978.⁷⁹ It has been revised and updated multiple times since 1978. It now includes the charges of taking, manufacturing, and distributing child pornography. Possession of obscene images of minors was not criminalised until 1988, as will be detailed further down. Following demands from Mary Whitehouse, Chairwoman of the National Viewers and Listeners Association, in 1977, the 1978 Act was adopted in response to the issue of child pornography.

¹⁰⁸ There were many cases in the nineteenth century, which made it clear that the lack of consent instead of force was the key element of rape and so sex with a woman who was too drunk or asleep could be classed as rape. Men were not found guilty of rape if they believed that the women had consented, no matter how unreasonable the belief was, this was known as the “Morgan Rule” or the “Morgan Defence”. Ref. DPP v Morgan [1975] UKHL 3.

¹⁰⁹ Opinion: The Sexual Offences (Scotland) Act 2009 by Michaela Guthrie, available at: <https://abdnlaw.wordpress.com/2011/07/17/opinion-the-sexual-offences-scotland-act-2009/> accessed on 31May,2023

Since then, the 1978 Act has been amended four times: by the Criminal Justice Act 1988, which introduced the possession offence, as the original version of the 1978 Act only criminalised taking indecent photographs of children and distributing such photographs; by the Criminal Justice and Public Order Act 1994, which introduced the concept of computer generated pseudo-photographs; and by the Criminal Justice and Court Services Act 2000, which extended the possession offence.

2. Emerging trends of Pseudo Photograph¹¹⁰

Both the 1978 and 1988 laws, as amended by the CJPOA in 1994, criminalise a new kind of child pornography known as computer produced child pornography. The 1978 Act was revised to make it a crime to "make indecent pseudo-photographs of children." According to section 7(7) of the CJPOA 1994, a pseudo-photograph is a picture that seems to be a photograph, whether created by computer graphics or otherwise. Section 7(8) of the 1978 Act addresses the impression created by Pseudo-photograph.¹¹¹

6.2. CHILD SEXUAL ABUSE IN USA

Child Abuse Prevention and Treatment Act (CAPTA) defines the Child abuse and neglect as "any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, sexual abuse or exploitation; or an act or failure to act that presents an imminent risk of serious harm."

¹¹⁰ Pseudo-photographs are technically photographs, but they are created by a variety of ways including by computers by the use of photo/image software. For example, a child's face can be superimposed on an adult body or to another child's body together with the alteration of the characteristics of the body. A pseudo-photograph can also be created by taping together two photographs and then making a photocopy of that taped photograph. The photograph on the photocopy could be regarded as a pseudo-photograph. Pseudo-photographs and images can also be created entirely by software without using any real images.

¹¹¹ According to section 7(8) of the 1978 Act: If the impression conveyed by a pseudo- photograph is that the person shown is a child, the pseudo-photograph shall be treated for all purposes of the 1978 Act as showing a child and so shall a pseudo-photograph where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult.

6.2.1. Historical Context

1. **CAPTA (1974)**: The first Child Abuse Prevention and Treatment Act (CAPTA) was approved by Congress in 1974. The following are some highlights of this historic legislation:

- Authorised child maltreatment programmes and services, including financing for states that satisfy CAPTA standards
- The National Centre on Child Abuse and Neglect (NCCANI) and the National Clearing house on Child Abuse and Neglect Information (NCCANI) were established.
- States are required to disclose statistics on the number and sources of child abuse and neglect reports, investigation dispositions, kinds of maltreatment, and other pertinent information.
- Allows for the publication of the National Incidence Study of Child Abuse and Neglect (last published in 2008). This study contains information from almost 5,600 community workers who have had interaction with abused children.

2. Indian Child Welfare Act (ICWA)

The Indian Child Welfare Act (ICWA) was introduced to CAPTA in 1978. The purpose of this measure was to safeguard Native American children in the child welfare system.

3. CAPTA (2010)

CAPTA has been amended by the CAPTA Reauthorization Act of 2010. There are a number of additional national and local regulations that assist child welfare in addition to CAPTA. These are some examples:

- Social Security Act
- PROTECT Act (Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003)
- Foster Care Independence Act

- Promoting Safe and Stable Families Act
- Keeping Children and Families Safe Act (2003)
- Adoption Promotion Act (2003)

4. Preventing Sex Trafficking and Strengthening Families Act (2014):

This legislation requires governments to put in place methods for reporting and collecting data on sex trafficking, as well as identifying minors who may be at risk of becoming victims. Furthermore, the legislation enhances current regulations concerning adoption incentives and the provision of assistance to foster parents.

6.2.2. Development of Pornography Law in United States

Child pornography has long been a source of worry in the United States, as well as in England, Wales, and other Western countries. Following the revisions established by the Child Pornography Prevention Act 1996, the United States has seen a significant constitutional challenge to child pornography legislation at the Supreme Court level. The Act established the idea of computer-generated pictures and criminalised anything that represents minors engaged in sexually explicit behaviour, regardless of whether the content featured actual children. These prohibitions were the subject of the constitutional challenge, and in April 2002, the Supreme Court¹¹² knocked down two of the three articles of the 1996 Act dealing to virtual child pornography.

6.2.3. Child Pornography Prevention Act, 1996

Until October 1996, sexually explicit pseudo-photographs and computer-generated pictures involving minors were not covered by US law. Such filthy pseudo-photographs were subject to the Miller obscenity test¹¹³ and other federal obscenity regulations, but were not considered child pornography.

¹¹² Ashcroft, Attorney General, et al. v. Free Speech Coalition et al., 535 U.S. 234 (US)

¹¹³ Miller v. California 413 U.S. 15 (1973)

The Child Pornography Prevention Act of 1996 (CPPA) was enacted to criminalise media depicting children engaged in sexually explicit behaviour, regardless of whether the content involves actual children. The new approach "shifted from defining child pornography in terms of the harm done to real children to determining that child pornography was evil in and of itself, whether it involved real children or not."¹¹⁴

The Bill was the subject of heated discussion in June 1996, and it was included as part of the Omnibus Consolidated Appropriations Act 1996, which President Bill Clinton signed into law. On September 30, 1996, it was approved by the United States Senate.

Through the newly introduced section 2256(8)(B), the CPPA 1996 expanded the federal prohibition on child pornography to include not only pornographic images made with actual children, as in 18 U.S.C. 2256(8)(A), but also any visual depiction, including any photograph, video, picture, or computer-generated image or picture that is or appears to be of a minor engaging in sexually explicit conduct.

The CPPA 1996 also included section 2256(8)(D), which specifies that any sexually explicit photograph that is "advertised, promoted, presented, described, or distributed in such a way that conveys the impression depicts a minor engaging in sexually explicit conduct" is prohibited. Thus, section 2256(8)(B) prohibited a variety of sexually explicit images known as "virtual child pornography" or "indecent pseudo photographs" that appear to depict minors but were created using methods other than actual children, such as the use of youthful-looking adults or computer-imaging technology.

The American Civil Liberties Union (ACLU) criticised the 1996 Act, claiming that the new definitions and provisions were clearly unconstitutional because they criminalised images produced without the involvement of an actual child.¹¹⁵

¹¹⁴ Free Speech Coalition v. Reno, 198 F3d 1083, 1097 (9th Cir. 1999) available at www.https://m.openjurist.org Last Accessed on 31May,2023

¹¹⁵ ACLU Cyber-Liberties Update, Senate Ready to Hatch "Virtual" Child Porn Bill", 10 July 1996 available at <http://www.aclu.org>, Last Accessed on 31May,2023.

The ACLU argued that its position was supported by the Supreme Court's decision in *Ferber*,¹¹⁶ which stated that restrictions on child pornography were justifiable because the government had a compelling interest in preventing the physical and sexual abuse of children. The ACLU explicitly alluded to the Supreme Court's opinion that child pornography lacks First Amendment protection because genuine portrayals of child exploitation and abuse have an impact on the wellbeing of children involved in its creation. The ACLU contended that *Ferber* demonstrated that the government's purpose was in protecting children from genuine damage, rather than insulating the entire public from such pictures. Furthermore, it asserted that the law would severely restrict constitutionally protected expression.

The US Judiciary Committee rejected the ACLU's claims, stating that the government was interested in outlawing computer-generated child pornographic representations due to existing or potential future damage to children.

6.2.4. PROTECT Act, 2003

Congress attacked pandering and solicitation of child pornography in the PROTECT Act (Prosecutorial Remedies and Other Tools to End Child Exploitation Today), and the law applied regardless of whether the material consisted of computer-generated images or even adults who looked like children, or even if the material was fraudulent or did not exist at all.

The Protect Act was approved in April, 2003¹¹⁷, in part in reaction to the Supreme Court's ruling in *Ashcroft v. Free Speech Coalition*¹¹⁸. It was proposed in the US Senate in January 2003, and passed by a vote of 84 to zero in February 2003. In March 2003, the House of Representatives proceeded to propose a companion measure called the Child Obscenity and Pornography Prevention Act. By a vote of 410 to 14, the Bill was approved.

¹¹⁶ 458 U.S. 747 (1982).

¹¹⁷ Dugan, K., „Regulating What's Not Real: Federal Regulation in the Aftermath of *Ashcroft v. Free Speech Coalition*” (2004), 48 Saint Louis University Law Journal 1063 (Spring)

¹¹⁸ 535 U.S. 234, 152 L. Ed. 2d 403, 122 S. Ct. 1389 (2002). available at [www.https:// m.openjurist.org](http://www.m.openjurist.org) Last Accessed on 31May,2023

A compromise version of the 2003 Protect Bill was submitted, with altered sentence measures, and passed the House on 10 April 2003 by a vote of 400-25 and the Senate by a vote of 98-0. On April 30, 2003, the President signed the measure into law, declaring:

The new legislation addresses an evil that is all too frequently a cause of child abuse and abduction in America: child pornography. Prosecutors have previously been hampered by a lack of all the instruments required to convict offenders who generate child pornography. We've seen photos of minors, even those made using computer technology, become criminal under the Protect Act, offering prosecutors a vital new weapon. Obscene photos of children, no matter how they are created, promote abuse and put children in peril and will not be accepted in America.¹¹⁹

A secure, healthy, and supportive environment is the most fundamental requirement of all children worldwide. The governments across the globe have broad obligations to protect and prevent children from exploitation and abuse, as well as to provide them with a stronger response. Despite tremendous achievements in child survival and education, comprehensive child protection remains elusive in both wealthy and developing nations. Current focus in the recent decade has been to safeguard child rights as much as possible in the international context. It is widely acknowledged that the position of children is the same in wealthy and developing nations; they face the same protection issues, there is also acknowledgment of the link between increased child safety and the achievable achievement of the Millennium Development Goals. Such approaches help to demonstrate that ample opportunities exist to draw attention to national development plans, accompanied by the rule of law, as well as other sectors that encourage and make efforts to make such social protection issues a reality through public-spirited responses. The comparative study of laws for the protection of children from sexual abuse will help in understanding the problem faced in other countries regarding implementation and functioning of these laws and this study will also help in developing a better law and providing a safe and healthy environment to our children.

¹¹⁹ <http://www.whitehouse.gov/news/releases/2003/04/20030430-6.html>. Last Accessed on 31May,2023

CHAPTER 7

CONCLUSION AND SUGGESTIONS

7.1. Conclusion

India has a population of over one billion people, including over 400 million children. It is clear that violence against children is not an isolated incident, but rather a complicated issue with deep roots. The events and circumstances that led to the development of such hostility, as well as those who promoted such conduct via apathy and inactivity, are always the cause of this origin. In this milieu, some children grow more aggressive than others, and they forgive themselves. The way we handle child-related offences will have a direct influence on future families and communities.

The primary watchdogs for child sexual abuse are the legal framework and the criminal justice system. Both organisations will only investigate child sexual abuse after it has happened. Furthermore, both are focused more on providing justice to child sexual abuse victims rather than preventing it. As a result, it does not focus on classification solutions to mitigate or eliminate the detrimental effects of child sexual abuse.

The POCSO Act is a godsend for addressing the issue of CSA in India since it is substantial, clearer, and more suitable. It has a distinct and distinct domain in criminal activity that mostly impacts youngsters as in sexual behaviours. There were many instances, some of which were recorded, but they quickly demonstrated the influence of the Act on society by modifying the current legislative system via criminal amendment, educating or raising public awareness. An subject is so delicate that people normally do not discuss it, but with the introduction of the Act, reporting an infraction such as sexual abuse is not only recognised by society, but it is also a mandatory component of the legislation. The laws have distinguishing characteristics and are also highly extensive in nature.

Despite the fact that the Act is new and one of its kind, it is specifically meant to protect minors from sexual assault. Several stakeholders may emphasise the need for training to deal with instances of POCSO and associated issues; they have not received any specific training in the past to deal with situations of child psychology, unique cases involving children, and so on.

It is stated that in order to protect the child's best interests, a comprehensive strategy including everyone is required. However, a profusion of papers masquerading as laws have been produced; however, they do not always fulfil the requirements for affording adequate justice to child sexual assault victims, and criminals are free to depart. Some of the major challenges of the current day include a culture of silence around this major problem, a fast growth in child sexual abuse cases, no appropriate application of legislation, and a lack of sufficient mechanisms to control child sexual abuse, especially in impoverished regions.

The POCSO Act attempts to safeguard children at all stages of the judicial process and emphasises the concept of 'best interests of the child.' Despite having significant provisions, the Act was poorly implemented. As a consequence of a lack of awareness, it failed to fulfil the aim for which it was implemented in the first place. The section creating special courts was also maintained as a citation in the Act.

POCSO courts were established in several district courts, with separate chambers set aside for particular matters. As a consequence, the number of POCSO and regular cases pending has skyrocketed.

This Act had the socio-legal mandate to curb the brutal exploitations of Child Sexual Abuses in the Indian Subcontinent, as well as to protect the larger Child Masses from the brutal atrocities and other forms of dangerous Sexual Sabotage being committed against Child Victims, including the various minor Girl Child and the Male Child on a larger scale.

The POCSO Act of 2012 is envisioned as "a self-contained comprehensive legislation" to protect children from a variety of sexual offences and "safeguarding the interest and well-being of the child at every stage of the judicial process, incorporating child-friendly procedures for reporting, recording of evidence, investigation, and trial of offences, and provision for the for the speedy trial of such offences by the establishment of Special Courts under the Act. When dealing with the cases under the POCSO Act, it specifies various procedural protections.

Compliance with these procedural safeguards ensures that due process is followed, that children feel supported and secure throughout the court process, and that secondary victimisation is avoided.

Child sexual abuse prevention, victim protection, justice delivery, and victim rehabilitation are not separate concerns. To attain these goals, all important stakeholders, including the police, prosecution, courts, medical institutions, psychologists and counsellors, and organisations that offer social assistance to children, must work together. To safeguard children from violence and abuse, an integrated and coordinated strategy is required. Needless to say, identifying and understanding each of these experts' duties is critical to avoiding redundancy and promoting successful convergence. The duty of assisting children who have been sexually abused should be shared by the whole community, but specialists in this sector play a critical role in facilitating the healing process. It is critical for societal development that children be healthy, educated, loved, and given several chances to shine. Every person in India has a responsibility to address child abuse and neglect as early as possible, since today's children will be tomorrow's leaders.

As a consequence, harsh measures to prevent and control child sexual abuse must be undertaken. In addition to legislative procedures and rules, parents may protect their children by recognising warning signals in them. It is critical that the whole human race band together to end child sexual abuse.

7.2. Suggestions

Any child protection system's principal purpose should be to develop a fair system that fulfils the individual needs of the children who come into touch with it. A system like this would not only prevent violence against children, but would also guarantee that when abuse does occur, children get adequate reparation.

The goal of this research is not to cast fingers at stakeholders, administrators, or the judges, but to better understand the difficulties that plague the child protection system and to find ways in which it might be improved. The sections that follow outline various reform suggestions.

i. Child Friendly Training:

It has been shown that most individuals do not report incidences of child sexual abuse because of insensitive police behaviour and victimisation. With this in mind, it is advised that all stakeholders, i.e., police personnel, whether particularly assigned as Juvenile Police or Child Protection Unit, get intensive training on dealing with Child Sexual Abuse Cases on a yearly basis. Special sessions with the child psychologist and social workers who work to protect children must be included in the training.

Aside from that, Judicial Officers must be provided with extensive and exhaustive training to deal with child abuse cases, and in such training, judicial officers must be explicitly directed to refrain from making observations and imposing conditions in rape and sexual assault cases, at any stage of judicial proceedings, that trivialise the trauma endured by survivors and adversely affect their dignity. In addition, courts must abstain from imposing "irrelevant, bizarre, or illegal bail conditions."

ii. Monitoring the Implementation of Act:

Section 44 of the POCSO Act 2012 has a particular framework for monitoring Act implementation. However, given the current number of sexual offences against children, it is critical to establish a separate Authority to review the implementation of the Act nationwide, and sub-agencies must be established at the state, district, and taluka levels to ensure that the Act is properly implemented.

iii. Proper Establishment of CWC, SJPU:

Every district should have a CWC and SJPU that is managed by sensitive and qualified individuals. Although regulations permit for the formation of these institutions, the application of the legislation demonstrates a lack of establishment of these bodies in each area.

iv. Decriminalization of Consensual Sexual Intimacy:

Sexual intercourse between two minors or adolescents and adults is forbidden under the POCSO Act 2012, since it is a criminal to have sexual intercourse with someone under the age of 18. However, it is suggested that the age of consent under the POCSO Act should be reduced from 18 to 16 years. The government should reconsider the "age of consent" under the POCSO Act so that a teenager is not unduly pushed into the criminal justice system, whether as a victim or an accused. Prosecuting and sentencing a person found guilty of consenting sexual intercourse with a sixteen or seventeen-year-old to a minimum penalty of ten years or twenty years violates the proportionality principle.

v. Awareness about Protection of Children

All children have the right to be safe and treated with respect at home and in the community. This can be accomplished by raising parental and other stakeholders' awareness of their rights, particularly their right to protection, enacting legislation to punish those who abuse and exploit children, and taking the necessary steps to strengthen accountability among government and nongovernmental organisations, as well as civil society. Collaboration with the media to develop and raise understanding of relevant legislation, as well as to fight attitudes and negative gender stereotypes that perpetuate and condone violence against children in all forms.

Steps must be done to raise public knowledge about the provisions of the POCSO Act that assist even the most marginalised members of society in dealing with the issue of child sexual abuse.

vi. Inclusion of Separate Subject in School Curriculum:

It is critical to include a well guided distinct topic in school curriculum for educating children about good and bad touches, kinds of child abuse, and techniques to confront the abuser in order to prevent child sexual abuse . Special lessons must be organised for children of all ages to teach them how to use the Internet responsibly and how to recognise whether the person they are speaking with is a Trained Groomer who may use them for child pornography. This topic must be presented in all grades, from 1 to 12.

vii. Address Pendency of Cases:

There are several cases pending in Indian courts that must be resolved as soon as possible. As a result, the delivery of justice in POCSO cases is hampered. As a result, the victim is summoned to court many times, and the victim child fails to recall the occurrence correctly, assisting the accused in obtaining an acquittal or a lighter penalty.

viii. Compulsory Workshops must be conducted by Schools for Parents:

Appropriate government must make mandatory provisions for every school or institution dealing with minors, whether government or private, aided or unaided, to organise at regular intervals Workshops wherein Parents are made aware of the ways of Sexual Abuse of a Child and the effects of such abuse in child's behaviour and other methods as to prevention of child abuse and steps for early detection of any act of child abuse if committed.

ix. Immediate Medical and Economic Aid:

Appropriate provisions must be included into the law to guarantee urgent medical and economic help and assistance to the injured child, where needed.

x. **Setting up more FSL's while improving the capacity and infrastructure of existing ones:**

More forensic science laboratories should be built to prevent delays in report creation, which leads to delays in investigation, chargesheet submission, and, finally, trial.

It is critical to remember that these ideas are only the beginning point for thinking about systemic change in the child protection ecosystem. Any chance for large-scale change rests on a coordinated drive by the above-mentioned players.

The current study's purpose is to contribute to this conversation by emphasising the need of change. By identifying the barriers to the effective implementation of the POCSO Act and making recommendations to address them, this study hopes to contribute to the development of a system that works for one of our society's most vulnerable groups: sexually abused children.

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