

POCSO ACT 2012's EFFECTS ON THE INDIAN SOCIETY: A LEGAL AND STATISTICAL ANALYSIS

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ABSTRACT

The Protection of Children from Sexual Offences (POCSO) Act, 2012 is acclaimed for honoring the rights of children who are succumbed to sexual abuse. When the country was witnessing an upsurge of sexual offenses against children, the 2012 Act was enacted to ensure children's safety and security by establishing judicial authorities to protect their rights and introducing an effective rights enforcement mechanism. Despite the Union Ministry of Law & Justice's great efforts in acknowledging the need to protect children from sexual assaults through legislation and regulations, the taboo of child sexual abuse haunts the Indian society. This necessitates an in-depth legal and statistical investigation of the POCSO Act's scope and influence on Indian society. Therefore, the current research makes an arduous attempt to scrutinize the virtuous as well as vandalizing effects of the POCSO Act on Indian society, as well as to uncover legislative flaws and make useful recommendations for their rectification. The research paper's sole objective is to examine the POCSO Act's historical evolution, highlight expert opinions on the Act, compare it to other relevant legislation such as the Juvenile Justice Act and the Indian Penal Code, determine its scope, and critically examine the impact of its provisions on Indian society. Implications of these findings and inferences for future research, as well as, suggestions for uniform efficacious implementation strategies and analyzing certain disputed provisions of the aforesaid legislation, form the core of this research endeavor.

Keywords: Child Protection, POCSO Act, Child Sexual Abuse, Child Rights.

OBJECTIVE

The research paper aims at scrutinizing the Scope of the Protection of Children from Sexual Offenses Act, 2012 (*hereinafter referred to as 'POCSO Act'*) while analyzing its effects on Indian society. The research paper aims at divulging the opinions of the researcher on various research questions including, *inter alia*,

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1. What is the effect of the Act on Indian Society?
2. Whether the Act has fulfilled its purpose in Indian Society?
3. Whether the Act is being implemented appropriately?
4. Whether the implementation policies of the Central Government are efficacious?
5. Whether the POCSO Act is being misused as a '*weapon of harassment*'?

HYPOTHESIS

The researcher has formulated the following hypothesis which is tested in the research paper further:

1. The POCSO Act is bona fide legislation and has been enforced to safeguard children's rights against sexual abuse and to effectuate international agreements to which India is a party.
2. The POCSO Act has positive effects on Indian Society.
3. The spurt in the Rate of Crime against children throughout India is owing to increased reporting of cases of child sexual abuse and a real increase in the commission of criminal offenses constituting child sexual abuse.
4. The policies formulated by the Central Government for the implementation of the POCSO Act are efficacious.
5. The POCSO Act is being misused as a '*weapon of harassment*'.

RESEARCH METHODOLOGY

The researcher has adopted Doctrinal Research Methodology. The Researcher has made excessive use of primary and secondary data available on the Internet in form of articles, thesis, research projects, blogs, statistical data by the National Crime Records Bureau, and other sundry miscellaneous sources including books, commentaries, legal research databases which are duly accredited with appropriate citations hereunder.

INTRODUCTION

*"Childhood should be carefree, playing in the sun; not living a nightmare in the darkness of the soul."*¹ India is in first place, accounting for 11.1% of all global reports of online material

¹ DAVE PLEZER, A CHILD CALLED "IT" 98 (1995, Simon and Schuster).

which is sexually abusive to children.² As per the 2011 All India Census, 39% of the population residing in India are children³ but many of these children are susceptible to Child Sexual Abuse (CSA)⁴. The Rate of Crime against children across the nation increased from 21.1 in 2015 to 28.9 in 2017 as reported by National Crime Records Bureau (NCRB).⁵ The period of childhood is the foundational period which is ought to be safe, secure, and jovial but for some of the children, the reality of childhood is altogether different. Children look up to adults to ensure their safety and care but they often unknowingly fall prey to the exploitation termed as CSA. A child who has been exposed to CSA has serious consequences in his or her life, since CSA harms the victim child's mental and social development, leading to mental problems. Poverty, violence, discrimination, conservative community structure, and social prejudices are the primary impediments in their path to justice which makes them the "most innocent and vulnerable casualties of exploitation". They are facing various challenges from the day they are born and subjected to physical, psychological, emotional, and sexual abuse. Child abuse is a violation of basic child rights that adversely affects the well-being of children.⁶

CSA is a social menace that is quite pervasive in Indian society as is explicit from the reports of NCRB. The World Health Organisation (1999) defines CSA as follows;

"Child sexual abuse is the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust, or power, the activity being intended to gratify or satisfy the needs of the other person. This may include but is not limited to:

² RAMYA KANNAN, *Most Online Content on Child Sexual Abuse from India*, THE HINDU (Apr. 18, 2020, 22:28 PM IST) <https://www.thehindu.com/news/national/most-online-content-child-sexual-abuse-material-from-india/article31377784.ece>

³ MINISTRY OF WOMEN AND CHILD DEVELOPMENT, GOVERNMENT OF INDIA, ANNUAL REPORT 2020-2021, <https://wcd.nic.in/annual-report> (last visited on Dec. 1, 2021).

⁴ NATIONAL CRIME RECORDS BUREAU, GOVERNMENT OF INDIA, *Crimes in India*, <https://ncrb.gov.in/en/crime-in-india> (last visited on Dec. 1, 2021).

⁵ *Id* at p. 95; NCRB defines Rate of Crime against Children as "number of crimes registered against children per 1,00,000 population of children".

⁶ Nidhi Marothiya, Sarita Saini, & Deepika Vig, *An Appraisal of Awareness Regarding the POCSO Act, (2012) among Primary School Teachers of Punjab*, 5 IJSHW 59, 59-61 (2019).

1. *the inducement or coercion of a child to engage in any unlawful sexual activity;*
2. *the exploitative use of a child in prostitution or other unlawful sexual practices;*
3. *the exploitative use of children in pornographic performance and materials.*⁷

To successfully address the heinous crimes of child sexual abuse and exploitation through less ambiguous and more stringent legal provisions, the Ministry of Women and Child Development championed the introduction of the 'Protection of Children from Sexual Offenses (POCSO) Act, 2012'.⁸ The Protection of Children from Sexual Offenses (POCSO) Act, 2012 was enforced to facilitate the implementation of legislation to protect children from sexual offenses. POCSO Act is a gender-neutral Act and it promotes victim-friendly prosecution. People who traffic children for sexual purposes are also punishable under the provisions relating to abetment in this Act. This Act shields the child from offenses of sexual assault, sexual harassment, and pornography and operates to watch the best interest of the child during every stage of the judicial process. All of this is ensured through the adoption of a child-friendly method for reporting, documenting evidence, and investigation along with the speedy trial of offenses through designated special courts (POCSO Act, 2012).⁹ The act penalizes six types of sexual offenses and prescribes appropriate punishment for the same: Penetrative Sexual Assault¹⁰; Aggravated Penetrative Sexual Assault¹¹; Sexual Assault¹²; Aggravated Sexual Assault¹³; Sexual Harassment¹⁴; and Using Child for Pornographic Purposes¹⁵.

⁷ WORLD HEALTH ORGANISATION, *Guidelines for Medico Legal Care for Victims of Sexual Violence*, [https://apps.who.int/iris/bitstream/handle/10665/1878/AFR.RC54.15%20Rev.1.pdf?sequence=1%26isAllowed=y#:~:text=Child%20sexual%20abuse%20\(CSA\)%20is,or%20social%20taboos%20of%20society%E2%80%9D](https://apps.who.int/iris/bitstream/handle/10665/1878/AFR.RC54.15%20Rev.1.pdf?sequence=1%26isAllowed=y#:~:text=Child%20sexual%20abuse%20(CSA)%20is,or%20social%20taboos%20of%20society%E2%80%9D), 75 (last visited on Dec. 1, 2021).

⁸ Nidhi Marothiya, Sarita Saini, & Deepika Vig, *An Appraisal of Awareness Regarding the POCSO Act, (2012) among Primary School Teachers of Punjab*, 5 IJSHW 59-60, 59-61 (2019).

⁹ *Id* at 60.

¹⁰ The Protection of Children from Sexual Offenses Act, 2012, § 3, No. 32, Acts of Parliament, 2012 (India).

¹¹ The Protection of Children from Sexual Offenses Act, 2012, § 5, No. 32, Acts of Parliament, 2012 (India).

¹² The Protection of Children from Sexual Offenses Act, 2012, § 7, No. 32, Acts of Parliament, 2012 (India).

¹³ The Protection of Children from Sexual Offenses Act, 2012, § 9, No. 32, Acts of Parliament, 2012 (India).

¹⁴ The Protection of Children from Sexual Offenses Act, 2012, § 11, No. 32, Acts of Parliament, 2012 (India).

¹⁵ The Protection of Children from Sexual Offenses Act, 2012, § 13, No. 32, Acts of Parliament, 2012 (India).

HISTORICAL BACKGROUND

Crimes against children include physical and emotional abuse, neglect, and exploitation, such as through child pornography or sex trafficking of minors.¹⁶ Numerous protective and preventive special and local laws were enforced before the POCSO Act which specifically mentioned the offenses wherein children are victims of sexual abuse including, *inter alia*, the Indian Penal Code (IPC), 1860; Prohibition of Child Marriage Act, 2006; Transplantation of Human Organs Act 1994; Child Labour (Prohibition & Regulation) Act, 1986; Immoral Traffic (Prevention) Act, 1956; and Juvenile Justice (Care & Protection of Children) Act, 2000 [later succeeded by the Act of 2015].¹⁷ Indian Penal Code penalized the offenses of Rape *u/s* 376, Assault on Girl Child with Intent to Outrage her modesty *u/s* 354, sexual harassment *u/s* 354A, use of criminal force to Girl Child *u/s* 354B, Voyeurism *u/s* 354C, Stalking *u/s* 354D, Insult to the Modesty of Girl Child *u/s* 509, Procurement of Minor Girls *u/s* 366A, Importation of Girls from Foreign Country *u/s* 366B, Buying of Minors for Prostitution *u/s* 373, and Selling of Minors for Prostitution *u/s* 372. Not only the aforesaid legislations but the Constitution of India accords the highest priority to the safety and well being of children under Article 15(3), 21, 21A, 23(1), 24, 39(f), 41, 45, 47, and 51A(k). Later, on 20th January 2006 the Central Government notified the Commissions for Protection of Child Rights Act, 2005 which constituted the National Commission and State Commissions for proper enforcement of children's rights and effective implementation of laws and programs relating to the children.¹⁸

Journal of Legal Research and Juridical Sciences

However, the aforementioned legislations were insufficient to meet the urgent need for prompt and effective relief in cases of child sexual abuse because these penal provisions lacked a clear definition of modesty, only outmoded peno-vaginal intercourse was included in the definition of rape, and only female victims were given priority, many criminals slipped through the gaps of technicalities and went unpunished, and other legislations lacked any explicit provision dealing with specific crimes involving sexual offenses against children.

The following schedule divulges the increasing trend of the rate of crime (all India) against the children before the enactment of the POCSO Act:

¹⁶NATIONAL CRIME RECORDS BUREAU, GOVERNMENT OF INDIA, *Crimes in India (2015)*, <https://ncrb.gov.in/en/crime-in-india> (last visited on Dec. 1, 2021).

¹⁷ *Id.*

¹⁸ NATIONAL CRIME RECORDS BUREAU, GOVERNMENT OF INDIA, *Crimes in India (2007)*, <https://ncrb.gov.in/en/crime-in-india> (last visited on Dec. 1, 2021).

Table 1: Rate of Crime against Children and No. of Victims of Child Sexual Abuse in India during 2006-2012

<i>During (In Years)</i>	<i>Rate of Crime against Children (All India)</i>	<i>No. of Victims of Child Sexual Abuse* (All India)</i>
2006	1.7	11,237
2007	1.8	11,381
2008	2.0	12,344
2009	2.1	12,679
2010	2.3	13,624
2011	2.7	15,407

Source: National Crime Records Bureau Statistical Reports from the calendar year 2006-07 to 2011-12

Journal of Legal Research and Juridical Sciences

***Note:** Only the statistics related to the following offenses have been considered for the calculation from 2006 to 2012: Rape, Procuration of Minor Girls, Buying of girls for Prostitution, Selling of Girls for Prostitution & Other Crimes.

The Child Sexual Abuse report of 2007 by the Ministry of Women and Child Development stated that there is a deep silence around the issue and the majority still feels that this is a western issue and does not happen in India. Lack of awareness, conservative community structure, poor implementation strategies at the ground level, and corruption could be the primary reasons for such setbacks. The rising rate of crime against the children prompted the need for specific legislation that can safeguard their interests efficiently.

INTERNATIONAL PRESSURE

In 1989, all the leaders across the world made a historic commitment to the children across the world by adopting the United Nations Convention on the Rights of Child (UNCRC). UNCRC is an international agreement on childhood that aims at safeguarding the fundamental human rights of children throughout the world.¹⁹ It is the most widely ratified human rights treaty in the history of manhood and has helped transform children's lives. Article 19 of the convention states that,

“1. State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of the social programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial development.”²⁰

Furthermore, Article 34 of UNCRC provides that,

“State Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, State Parties shall in particular take all appropriate national, bilateral and multimedia measures to prevent:

(a) The inducement of coercion of a child to engage in any unlawful sexual activity;

¹⁹UNICEF, <https://www.unicef.org/child-rights-convention#:~:text=In%201989%2C%20world%20leaders%20made.an%20international%20agreement%20on%20childhood> (last visited on Dec. 1, 2021).

²⁰ OHCHR, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (last visited on Dec. 1, 2021).

(b) The exploitative use of children in prostitution or other unlawful sexual practices; and

(c) The exploitative use of children in pornographic performances and materials.”²¹

India acceded to the CRC on 11th December 1992 and Article 51(c) of the Indian Constitution bestows the duty of enforcement of foreign agreements on the Government of the State and Article 253 further confers the power on the Central Government to enact any legislation for enforcement of an International Agreement.

Judicial Advancements

In the case of *Sakshi v. Union of India*²² the Hon’ble Supreme Court expressed the need for specific legislation to safeguard children’s rights against child sexual abuse. The judgment order written by the bench comprising Hon’ble Justice Rajendra Babu (Former Chief Justice of India) & Hon’ble Justice G.P. Mathur dated 26th May 2004 stated that,

“The cases of child abuse and rape are increasing at alarming speed and appropriate legislation in this regard is, therefore, urgently required.”

The Court mentioned that the aforesaid directions are in addition to the directions given in the case of *State of Punjab v. Gurmeet Singh & Ors.*²³ wherein the Court emphasized the need for maintaining the confidentiality of information of a rape victim and maintaining the anonymity of the victim of the crime as far as possible during prosecution to save the victim from further harassment.²⁴ It can be said that the case recognized the rights of a rape victim including the right to privacy, the right to live with dignity, the right to personal liberty, the right to *in camera* trial. All these rights were further enshrined in the POCSO Act too. It was further reiterated in the following decisions: *Independent Thought v. Union of India*²⁵, *Shreemati Vishakha Devi v. State of Rajasthan*²⁶, and *K.S. Puttaswamy v. Union of India*²⁷.

²¹ OHCHR, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (last visited on Dec. 1, 2021).

²² *Sakshi v. Union of India*, Writ Petition (CrI.) 33 of 1997 (SC).

²³ *State of Punjab v. Gurmeet Singh & Ors.*, 1996 SCC (2) 384.

²⁴ *Id.*

²⁵ *Independent Thought v. Union of India*, Writ Petition (Civil) No. 382 of 2013 (SC).

²⁶ *Shreemati Vishakha Devi v. Union of India*, AIR 1997 SC 3011.

²⁷ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

ENACTMENT OF THE BONA FIDE LEGISLATION

The International developments and judicial advancements motivated the Central Government to devise law for the protection of children from sexual abuse. It thus prepared the draft POCSO Bill in 2012 to give effect to Articles 19 & 34 of the UNCRC. The POCSO Act received the assent of the President on 19th June 2012 and was enforced on 14th November 2012 which is celebrated as National Children's Day in India. It aims at the protection of children from sexual assault, sexual harassment, and pornography. It also establishes special courts for the trial of such offenses and other matters concerned therewith. It safeguards children's right to protection from sexual offenses and their fundamental rights ensured under Article 19, 21, 21A including, *inter alia*, the Right to Privacy, the Right to Education, the Right to Live with Dignity to ensure the proper development of children in the country.²⁸

FURTHER AMENDMENTS

The Hon'ble Supreme Court of India took *suo moto* cognizance of the alarming rise in the number of reported child rape incidents in the *suo moto* writ petition (Criminal) No. 1/2019 wherein it directed the central government to make amendments. Accordingly, the POCSO Act, 2012 was amended in 2019 by the Protection of Children from Sexual Offenses (Amendment) Act, 2019. The Amendment Act specifically penalized "*child pornography*" via digital media²⁹ and forced consumption of drugs, hormones or any chemical substance³⁰. It also guaranteed compensation to the victim for the medical expense incurred by him or her as well as rehabilitation fees. The punishment for certain heinous offenses was increased in the light of the spurting rate of child sexual abuse.³¹ The amendment Act prescribed strict punishments including, *inter alia*, capital punishment for "*aggravated penetrative sexual assault*" of children.³² In addition to this, it had provisions to guard children from assault in times of disasters, natural calamities, and communal or sectarian violence.³³ Although the

²⁸ The Protection of Children from Sexual Offenses Act, 2012, No. 32, Acts of Parliament, 2012 (India).

²⁹ The Protection of Children from Sexual Offenses (Amendment) Act, 2019, § 2(a), No. 25, Acts of Parliament, 2019 (India).

³⁰ The Protection of Children from Sexual Offenses (Amendment) Act, 2019, § 6, No. 25, Acts of Parliament, 2019 (India).

³¹ The Protection of Children from Sexual Offenses (Amendment) Act, 2019, § 3 & 4, No. 25, Acts of Parliament, 2019 (India).

³² The Protection of Children from Sexual Offenses (Amendment) Act, 2019, § 5(1), No. 25, Acts of Parliament, 2019 (India).

³³ The Protection of Children from Sexual Offenses (Amendment) Act, 2019, § 6, No. 25, Acts of Parliament, 2019 (India).

POCSO Act was enacted to oust the menace of child sexual abuse from the Indian Society since there hasn't been a significant decline in the crime rate so far it becomes crucial to scrutinize the impact of the stringent provisions of the legislation on Indian Society.

ANALYSIS & INTERPRETATION

Statistical Progression of the Act

“Abuse is never contained to a present moment, it lingers across a person’s lifetime and has pervasive long-term ramifications.”³⁴ Child sexual abuse is a social menace which often gets unreported and the victim suffers abuse merely owing to fear of society. The conditions turn worst when the offender is one of the known ones. In the last few years, the Nation has witnessed an alarming increase in the number of incidents of child sexual abuse as is elucidated in the schedule below:

Table 2: Rate of Crime against Children and No. of Victims of Child Sexual Abuse in India during 2012-2018

<i>During (In Years)</i>	<i>Rate of Crime against Children (All India)</i>	<i>No. of Victims of Child Sexual Abuse* (All India)</i>
2013	13.23	26,952
2014	20.1	45,051
2015	21.1	46,027
2016	24	**
2017	28.9	1,29,032 [#]
2018	**	1,41,764 [#]

³⁴ LORRAINE NILON, BREAKING FREE FROM THE CHAINS OF SILENCE: A RESPECTFUL EXPLORATION INTO THE RAMIFICATIONS OF PAEDOPHILIC ABUSE 1st ed. (2017, Lorraine Nilon).

2019	**	1,48,185 [#]
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Source: National Crime Records Bureau Statistical Reports from the calendar year 2013 to 2019; [#]Status of POCSO Cases in India Report, 2021 by Kailash Satyarthi Children's Foundation

*** Note:** Only the statistics related to the following offenses have been considered for the calculation from 2013 to 2019: Rape, Procurement of Minor Girls, Assault against women, Insult of women to outrage her modesty, Buying of girls for Prostitution, Selling of Girls for Prostitution, Protection of Children from Sexual Offenses Cases & Other like Crimes.

****Appropriate Data not available on NCRB website.**

The above schedule shows a sudden increase in reporting of crimes against children from 15,407 in 2011 to 26,952 in 2013. This increase is majorly owing to the enactment of the POCSO Act which penalized child sexual abuses. But it can be further observed that from 2013 to 2015 the cases have increased from 26,952 to 46,027 which symbolizes two things that either the increase can be due to increasing awareness among people promoting reporting of cases or it can be owing to a real increase in crimes even after enactment of the POCSO Act. Furthermore, an exponential increase in the number of reported cases can be observed during the period 2015-2017 from 46,027 to 1,29,032. This sudden increase in reporting of cases symbolizes increasing awareness among people as various awareness programs were initiated by the Central Government and various Non-Government Organisations. The increase in the number of victims from 1,29,032 in 2017 to 1,48,185 in 2019 depicts a real increase in the commission of sexual offenses against children. The schedule shows that the people of Indian Society have accepted the legislation constructively and progressively manner but still, the rate of crime against children is increasing incessantly.

The number of child victims of offenses penalized under the POCSO Act in 2019 increased by 18% from 40,810 victims in 2018 to 48,043 in 2019.³⁵ The total no. of victims are more than the number of cases registered which shows that in some cases an F.I.R. entails more

³⁵ KAILASH SATYARTHI CHILDREN'S FOUNDATION, STATUS OF POCSO CASES IN INDIA 4 (2021, Kailash Satyarthi Children's Foundation).

than one child victim.³⁶ 55% of the total cases registered under the Act were u/s 4 & 6 read with Section 376 of the I.P.C. in 2019 where 99% of the victims were females. In the proportion of boys and girls victim of child sexual abuse weight has been much more on girls' end since past several decades but however there has also been a rise in the number of male child victims of "*penetrative sexual assault*". In 2018, the number of male child victims increased by 25% from 183 male child victims in 2017 to 229 in 2018 which further increased by 17% in 2019 from 229 male child victims in 2018 to 268 in 2019.³⁷ The reports do not divulge the ground reality. Studies have shown that male child victims mostly refrain from reporting the crime owing to "*shame and fear resulting from social stigma*".³⁸

POSITIVE EFFECTS ON SOCIETY

Unlike the existing legislations, POCSO Act is wider in scope since the word "*person*" brings every person ordinarily residing within the country within the ambit of the legislation irrespective of their gender identity or sexual orientation. Thus, the liability for any offense committed by any person will be equally attributed to all genders be it male, female or transgender. The legislation framers have emphasized the deterrent theory while inscribing the penal provisions for commission and abetment of sexual assault, sexual harassment, and pornography but regard has been also made to the degree of the crime for attributing criminal liability on the offender.

Section 19 of the Act prescribes the procedure for reporting the offenses penalized under the Act. A CSA case must be reported to either the Special Juvenile Police Unit or the local police unit in writing with an entry number which shall be recorded in a book kept by the respective Police Unit.³⁹ The report shall be recorded in the language and manner such that the child victim can easily understand the report filed by him or her.⁴⁰ The Police unit may, if deems necessary in light of the facts and circumstances, provide care and protection to the child victim or may refer the matter to the Child Welfare Committee (CWC), Special Court or Sessions Court, as the case maybe, within 24 hours of registering the report.⁴¹ *Section 21*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ The Protection of Children from Sexual Offenses Act, 2012, § 19(1) & (2), No. 32, Acts of Parliament, 2012 (India).

⁴⁰ The Protection of Children from Sexual Offenses Act, 2012, § 19(3) & (4), No. 32, Acts of Parliament, 2012 (India).

⁴¹ The Protection of Children from Sexual Offenses Act, 2012, § 19(5) & (6), No. 32, Acts of Parliament, 2012 (India).

of the Act further ensures that no offense remains off-record by penalizing the personnel who, by any reason whatsoever, failed to register the complaint. Furthermore, *Section 23* abhors the practice of ‘*malicious prosecution*’ to prevent the legislation from being a tool of harassment.

‘*Victim-friendly prosecution*’ is another praiseworthy feature of the legislation. Confidentiality of personal information of the child victim safeguards the Right to Privacy of the child victim and helps in evading media interference.⁴² Further, Chapter VI of the Act prescribes an effective procedure for recording the statements of the child victim. The statements of a child victim shall be recorded in daytime at the residence of the victim by a woman police officer, not below the rank of sub-inspector, who should not be in uniform while recording the statements.⁴³ It is also to be ensured that the child victim in no manner comes in contact with the accused.⁴⁴ Also, the statements shall be recorded in the presence of the parents or trusted guardians of the child victim.⁴⁵ The statements may also be recorded by a Magistrate under Section 164 of the Criminal Procedure Code, 1973 (Cr.P.C.).⁴⁶ Specific provisions have been enshrined for physically handicapped and lunatics in the Act to ensure fair prosecution.⁴⁷ Section 26 (4) of the Act further provides that,

*“Wherever possible, the Magistrate or the police officer, as the case may be, shall ensure that the statement of the Child is also recorded by audio-video electronic means”.*⁴⁸

The aforesaid provision was inserted to ensure transparency. Furthermore, the Act provides the procedure for medical examination of the child victim under Section 27. It provides that the medical examination of the child victim shall be conducted according to the provisions of Section 164A of Cr.P.C. and in presence of the parents of the victim.⁴⁹ If the victim is a girl

⁴² The Protection of Children from Sexual Offenses Act, 2012, § 24(5), No. 32, Acts of Parliament, 2012 (India).

⁴³ The Protection of Children from Sexual Offenses Act, 2012, § 24(1) & (4), No. 32, Acts of Parliament, 2012 (India).

⁴⁴ The Protection of Children from Sexual Offenses Act, 2012, § 24(3), No. 32, Acts of Parliament, 2012 (India).

⁴⁵ The Protection of Children from Sexual Offenses Act, 2012, § 26, No. 32, Acts of Parliament, 2012 (India).

⁴⁶ The Protection of Children from Sexual Offenses Act, 2012, § 25, No. 32, Acts of Parliament, 2012 (India).

⁴⁷ The Protection of Children from Sexual Offenses Act, 2012, § 26 & 38(2), No. 32, Acts of Parliament, 2012 (India).

⁴⁸ The Protection of Children from Sexual Offenses Act, 2012, § 26(4), No. 32, Acts of Parliament, 2012 (India).

⁴⁹ The Protection of Children from Sexual Offenses Act, 2012, § 27(1), No. 32, Acts of Parliament, 2012 (India).

then the examination shall be conducted by a woman doctor.⁵⁰ Amidst trial, only the Court may ask the questions from the Child which are placed before it by the Public Prosecutor or Counsel for Accused for examination-in-chief, cross-examination, or re-examination.⁵¹ Moreover, the Court is empowered to take the assistance of a translator or interpreter, wherever necessary, while recording the evidence of the child.⁵² This entire procedure ensures a victim-friendly prosecution.

The most important feature of this legislation is the establishment of “*Special Courts*” to ensure speedy trial of the offenses penalized under Section 28 of this Act. This feature differentiates the POCSO Act from the previous legislations. The Special Court is deemed to be a “*Court of Sessions*”.⁵³ The jurisdiction of the special courts is not limited to offenses under the Act but also to other offenses with which the accused is charged under the Cr.P.C. at the same trial.⁵⁴

Another noteworthy feature of the Act is “*presumption of guilt*”. Section 29 of the Act states that where a person is being prosecuted for committing or abetting or attempting to commit an offense penalized under the Act then “*the Special Court shall presume, that such person has committed or abetted or attempted to commit the offense, as the case may be unless the contrary is proved*”.⁵⁵ This provision is founded on the legal maxim, ‘*ei incumbit probatio qui dicit, non qui negat*’ which means the *onus probandi* (the burden of proof) lies on the accused rather than the victim unlike other legislations. Unless the accusations against the accused are proved fallacious “*beyond reasonable doubt*”⁵⁶, the Special Court will assume the accused as ‘*guilty*’.⁵⁷

The Act also imposes a reasonable time limit for the Special Court to complete the trial which is one year.⁵⁸ It ensures an effective and efficient trial of the offense. Also, to ensure confidentiality of personal information of the child victim, the Act mandates the Special

⁵⁰ The Protection of Children from Sexual Offenses Act, 2012, § 27(2), No. 32, Acts of Parliament, 2012 (India).

⁵¹ The Protection of Children from Sexual Offenses Act, 2012, § 33, No. 32, Acts of Parliament, 2012 (India).

⁵² The Protection of Children from Sexual Offenses Act, 2012, § 38(1), No. 32, Acts of Parliament, 2012 (India).

⁵³ The Protection of Children from Sexual Offenses Act, 2012, § 31, No. 32, Acts of Parliament, 2012 (India).

⁵⁴ The Protection of Children from Sexual Offenses Act, 2012, § 28(2), No. 32, Acts of Parliament, 2012 (India).

⁵⁵ The Protection of Children from Sexual Offenses Act, 2012, § 29, No. 32, Acts of Parliament, 2012 (India).

⁵⁶ The Protection of Children from Sexual Offenses Act, 2012, § 30(2), No. 32, Acts of Parliament, 2012 (India).

⁵⁷ The Protection of Children from Sexual Offenses Act, 2012, § 33, No. 32, Acts of Parliament, 2012 (India).

⁵⁸ The Protection of Children from Sexual Offenses Act, 2012, § 35(2), No. 32, Acts of Parliament, 2012 (India).

Courts to try cases *in camera*.⁵⁹ The *National Commission for Protection of Child Rights* and the *State Commissions for Protection of Child Rights* constituted under Section 17 of the *Protection of Child Rights Act, 2005* are bestowed with the responsibility to monitor⁶⁰ and report the implementation of the provisions of the Act⁶¹. *In toto* the legislation has set up a structure to safeguard rights of child against sexual abuse.

Table 2 shows exponential increase in the reporting of sexual offenses against children. It was owing to the victim-friendly provisions of the Act that reporting of the crime against children became easy and effective but the legislators were unable to keep the legislation aloof of certain cons which had a negative impact on Indian Society.

Negative Effects on Society

Section 29 of the Act states that where a person is being prosecuted for committing or abetting or attempting to commit an offense penalized under the Act then “*the Special Court shall presume, that such person has committed or abetted or attempted to commit the offense, as the case may be unless the contrary is proved*”.⁶² This provision shifts the *onus probandi* (the burden of proof) from the victim to the accused unlike other legislations. Unless the accusations against the accused are proved fallacious “*beyond reasonable doubt*”⁶³, the Special Court will assume the accused as ‘*guilty*’.⁶⁴ Although this provision might appear palpable in light of the increasing crime rate but it is against the principles of criminal jurisprudence. It is a cardinal principle of criminal jurisprudence that the guilt of the accused is to be established by the prosecution beyond the possibility of any reasonable doubt. Even if there may be an element of truth against the accused but considered as a whole there is invariably a long distance to travel and whole of distance must be covered by legal, reliable and unimpeachable evidence before an accused can be convicted.⁶⁵

⁵⁹ The Protection of Children from Sexual Offenses Act, 2012, § 37, No. 32, Acts of Parliament, 2012 (India).

⁶⁰ The Protection of Children from Sexual Offenses Act, 2012, § 44(2), No. 32, Acts of Parliament, 2012 (India).

⁶¹ The Protection of Children from Sexual Offenses Act, 2012, § 44(3), No. 32, Acts of Parliament, 2012 (India).

⁶² The Protection of Children from Sexual Offenses Act, 2012, § 29, No. 32, Acts of Parliament, 2012 (India).

⁶³ The Protection of Children from Sexual Offenses Act, 2012, § 30(2), No. 32, Acts of Parliament, 2012 (India).

⁶⁴ The Protection of Children from Sexual Offenses Act, 2012, § 33, No. 32, Acts of Parliament, 2012 (India).

⁶⁵ Sarwan Singh Rattan Singh v. State of Punjab, AIR 1957 SC 637; Anil W. Singh v. State of Bihar, (2003) 9 SCC 67; Reddy Sampath W. v. State of Andhra Pradesh, (2005) 7 SCC 603; Ramreddy & Rajesh Khanna Reddy v. State of Andhra Pradesh, (2006) 10 SCC 172; Sher Singh alias Partapa v. State of Haryana, 2015 Cr LJ 1118 (SC).

“*Presumption of guilt*” before conviction is one of the major impediments in the path of justice for innocent people who fall prey to malicious prosecution. Since the year of its enactment is being used as a ‘*weapon to harass*’ more than a ‘*tool to get justice*’. The offenses u

nder the POCSO Act are cognizable and thus the innocent people who are charged under the Act suffer unwarranted persecution. Not only this but since the cases are to be disposed off within 1 year of their reporting thus the accused gets merely an year to prove his innocence which is much less *de facto*.

“*Presumption of guilt*” is not palpable with the principles of natural justice. Natural justice “*is not an unruly horse, no lurking landmine, nor a judicial cure-all*”⁶⁶ and the “*courts cannot look at law in the abstract or natural law as a mere artifact*”⁶⁷. One of the principles of natural justice is *audi alteram partem* which means ‘no man should be condemned unheard’.⁶⁸ This principle ensures ‘*right to fair trial*’ and ‘*right to access to justice*’. Also, the Hon’ble Supreme Court in the case of *Union of India v. W.N. Chadha*⁶⁹ held that the rule of *audi alteram partem* may be jettisoned only “*in very exceptional circumstances where compulsive necessity so demands* and not to “*defeat the ends of justice*”. It has to be shown that there was denial of reasonable opportunity.⁷⁰ When an accused is called ‘*guilty*’ without trial and suffers without getting an opportunity of being heard, no prudent person can refute it to be violation of principles of *audi alteram partem*.

In a recent case a 51 year old music teacher named Narendra Babu (a native of Vaikom, Kerala) who was booked under the Act for harassing a students’ counselor at the Model Residential School, Ettumanoor, Kerala committed suicide and left a suicide note stating that he had been wrongly arraigned in the case following a conspiracy hatched by three school employees.⁷¹ Later a division bench of the High Court of Kerala comprising Hon’ble Justice

⁶⁶ Union of India v. W.N. Chadha, AIR 1993 SC 1082.

⁶⁷ *Id.*

⁶⁸ The Collector v. K. Krishnaveni, Writ Appeal (SC) No. 1995 of 2018.

⁶⁹ Union of India v. W.N. Chadha, AIR 1993 SC 1082.

⁷⁰ Chairman Mining Board v. Ramjee, 1977 AIR 965 SC.

⁷¹ THE HINDU, *POCSO Accused teacher commits suicide*, THE HINDU (Feb. 20, 2020, 11:04 IST)

<https://www.thehindu.com/news/national/kerala/posco-accused-teacher-commits-suicide/article30873905.ece>

K. Vinod Chandran and Hon'ble Justice C. Jayachandran while acquitting the accused booked for penetrative sexual assault under POCSO Act held that⁷²,

*“Forensic and semantics apart, child molestation is a shame on society; but if the allegations are false, it is lethal to the life of the accused, more so if the accused is a parent; even if he is eventually acquitted.”*⁷³

Table 3: Reasons Stated in the Final Report for disposal of child sexual abuse cases during the year 2017-2019

Year	Total cases for investigation u/s 4 & 6 (POCSO) r/w Sec. 376 I.P.C. (including previous year backlog)	Total cases for investigation u/s 8 & 10 (POCSO) r/w Sec. 354 I.P.C. (including previous year backlog)	Cases ended with as FIR False	Cases ended as a mistake of fact or law, or civil dispute	Cases true but insufficient evidence, untraced, or no clue
2017	24,144	16,331	556	243	612
2018	29,412	19,893	440	459	663
2019	35,297	23,148	728	448	1147

Source: National Crime Records Bureau Statistical Reports from calendar year 2013 to 2019 & Police Case Disposal Pattern: An Enquiry into the cases filed under POCSO Act in India Report, 2021 by Kailash Satyarthi Children's Foundation

The issue is not “*presumption of guilt*” but if the person is acquitted from the Court of Law then too it becomes difficult for him to resurrect his previous social image. It is thus crucial to ensure that the legislation is not used as a ‘weapon of harassment’ and that no *bona fide* person is accused of vexatious, frivolous and mala fide complaints. Although the Act has a

⁷² THE NEW INDIAN EXPRESS, *False Allegations in child molestation case can be lethal, even if acquitted later: Kerala HC*, THE NEW INDIAN EXPRESS (Nov. 10, 2021, 10:27 PM)

<https://www.newsindianexpress.com/states/kerala/2021/nov/10/false-allegations-in-child-molestation-case-can-be-lethal-even-if-acquitted-later-kerala-hc-2381956.html>

⁷³ *Id.*

staunch provision restricting people to file a vexatious and frivolous complaint inasmuch under *Section 22* but the most effective solution to deal with this problem could be that the personal information of the accused is kept confidential until found guilty.

Furthermore, since the Act does not consider adolescents aged 16 to 18 to be consenting adults, consensual sexual intercourse or sexual relationships between two minors are not recognised. As a result, if a 17-year-old girl or boy engages in consensual sexual activities with a 19-year-old partner, the Act authorizes the 19-year-old partner to be charged under the POCSO Act because the 17-year-old's has no legal validity under the Act. Consensual sexual actions between children are not covered by the Act and even though the POCSO Act makes an effort not to discriminate when it comes to protecting children from sexual abuse because it intends to protect all children, regardless of gender, the Act is not completely devoid of gender biases. The pronoun "he" is used in the Act to refer to the accused or perpetrator. As a result, the Act exempts women from the scope of the POCSO Act's penalties by turning a blind eye to the potential of female sexual offenders. Despite the fact that, unlike rape, the victim of the POCSO Act can be any child of any gender, the accused can only be a male, and females are once again provided a protective shield for inexplicable reasons. It would be false to claim that females do not subject children to forcible sexual assault. It has been observed and witnessed instances of females sexually abusing children.

Another point of observation is that the number of cases that were true but were disposed of owing to lack of evidence have increased from 612 in 2017 to 1147 in 2019 (almost 88% increase) which is an issue of grave concern because even when the case was true and the facts in F.I.R. do *prima facie* constituted an offense but owing to lack of evidence to substantiate the accusations, the cases were disposed of which is gross injustice with the victims.

Many a times due to the act's flaws or a lack of understanding of the issue results in the conflict with the act's Fundamental goals. A recent judgement of the Nagpur Bench of the Bombay High Court has been widely criticised across the country on for the same reason. In *Satish v. State of Maharashtra*⁷⁴, on an appeal from a conviction in a case where the accused had taken a minor girl into his house and pressed her breasts and partially stripped her, Justice Pushpa Ganediwala of the Bombay High Court's Nagpur Bench considered whether

⁷⁴ Satish v. State of Maharashtra, Criminal Appeal No. 161 of 2020.

pressing a child's breasts without removing her top qualifies as sexual assault. "*Sexual Assault*" is defined in Section 7 of the POCSO Act as touching a child's private parts or forcing a kid to touch the accused's or someone else's private parts. In this instance, the judge ruled that in order to establish sexual assault, there must be '*skin to skin*' contact with sexual intent, and since there is no clear detail as to whether the top was used, the accused's actions would not be classified as sexual assault.⁷⁵

IMPLEMENTATION OF THE ACT

The *National Policy for Children, 2013* and *National Plan for Action for Children, 2016* directed stakeholders (including Central and State Governments, National Commission for Children and State Commissions and Child Welfare Committees) to strategise and initiate programs to protect children from 'emerging concerns' including sexual abuses.⁷⁶ In response to the directions, the Central Government has initiated several programs for implementation of the POCSO Act and to ensure protection of children from sexual abuses which are elucidated as follows:⁷⁷

1. The POCSO E-box was launched by the Ministry of Women and Child Development on 26th August, 2016. It is an online complaint portal for easy and direct reporting of sexual offenses against children and for ensuring timely action against the offenders.
2. A short clip was prepared by the Ministry in collaboration with UNICEF which was telecasted on '*Doordarshan*' for one week from 2nd to 9th October, 2019 for spreading awareness regarding POCSO Act and Child Safety.
3. All the educational institutions were directed by the Ministry of Human Resource Development (MHRD) to place a POCSO Box in the premises where any student can drop a complaint on being victim of such a crime. They were also advised to make students aware about the POCSO Act and the Childline Helpline Number '1098'. MHRD also started showing a short movie titled '*Komal*' on Child Safety in all the schools for spreading awareness among children. NCERT has also published Childline Helpline Number '1098' and POCSO E-box details in every textbook.
4. The Ministry of Home Affairs has developed '*Investigation Tracking System for Sexual Offenses*' portal for timely completion of investigations in cases pertaining to

⁷⁵ Satish v. State of Maharashtra, Criminal Appeal No. 161 of 2020.

⁷⁶ MINISTRY OF WOMEN AND CHILD DEVELOPMENT, GOVERNMENT OF INDIA, ANNUAL REPORT 2020-2021, <https://wcd.nic.in/annual-report> (last visited on Dec. 1, 2021).

⁷⁷ *Id.*

Section 4 & 6 of POCSO Act read with Section 376 of I.P.C. Bureau of Police Research and Development is conducting various courses for sensitisation of personnel. States and Union Territories have been advised to send officers for these courses and for timely completion of Investigations of POCSO cases.

5. Department of Justice has formulated *Fast Track Special Courts (FTSC) Scheme* under which a total of 1023 Courts are to be set up out of which 389 will be exclusively for POCSO Cases and will be established in the Districts where the number of pending cases under POCSO exceeds 100, whereas the other 634 will be set up as per the need and pendency of Rape and POCSO Cases. These will be funded from 'Nirbhaya' Fund.
6. POCSO Rules 2020 were notified by the Parliament on 9th March 2020 which prescribes effective rules regarding awareness generation, capacity building, and care & protection of child victims.

LOOPHOLES IN THE IMPLEMENTATION STRATEGIES

The biggest loophole in the implementation strategy is withdrawal of cases at the pre-trial stage. There are primarily three major reasons for closure and cancellation of a case booked under the Act by the Police:

1. *firstly*, mostly the offenders are family members of the victim and in the name of the honor of the family, the victim and their parents turn away from their original statements made during the registration of the F.I.R.⁷⁸ As per the Annual Reports of Ministry of Women and Child Development and Statistical Reports of National Crime Records Bureau, almost 50% of the offenders were relatives or trusted people whom the victim knew and this proportion has been almost identical in last few years⁷⁹;
2. *Secondly*, when the victim is from a poor economic background, he or she always faces the challenge to continue with the original complaint. In many instances, coercion makes the victim hostile or turn away from his or her original statements registered in the F.I.R.⁸⁰; and

⁷⁸ KAILASH SATYARTHI CHILDREN'S FOUNDATION, POLICE CASE DISPOSAL PATTERN: AN ENQUIRY INTO THE CASES FILED UNDER POCSO ACT 3 (2021, Kailash Satyarthi Children's Foundation).

⁷⁹ MINISTRY OF WOMEN AND CHILD DEVELOPMENT, GOVERNMENT OF INDIA, ANNUAL REPORT 2020-2021, <https://wcd.nic.in/annual-report> (last visited on Dec. 1, 2021); NATIONAL CRIME RECORDS BUREAU, GOVERNMENT OF INDIA, *Crimes in India*, <https://ncrb.gov.in/en/crime-in-india> (last visited on Dec. 1, 2021).

⁸⁰ *Id.*

3. *Thirdly*, the rich accused often influences the police to manipulate the report in such manner that the case becomes false. Corruption thus becomes an impediment in the path of justice for the poor and indigent.⁸¹
4. *fourthly*, institutions such as the National and State Commissions for the Protection of Child Rights are obligated to monitor and review the Act's implementation regularly, as well as raise public knowledge about the Act's provisions, under Section 44 and Rule 6 of the POCSO Act.⁸² The operation of such departments, as well as their monitoring and assessment mechanisms, have not, however, been made public. To this end, it is critical to examine the methods established by such groups and assess their effectiveness in producing meaningful results.

Table 4: Trend of Police disposal of cases during the years 2017-2019

Year	No. of cases under investigation during the year	No. of cases in which the investigation was completed during the year	Cases in which final report submitted but not charge sheet		Cases in which charge sheet submitted and sent to Court for trial	
			No.	% of total cases in which investigation was completed	No.	% of total cases in which investigation was completed
2017	44,924	29,817	1,700	6%	28,063	94%
2018	54,924	37,718	2,080	6%	35,568	94%
2019	65,184	45,760	2,984	7%	42,681	93%

Source: National Crime Records Bureau Statistical Reports from calendar year 2013 to 2019 & Police Case Disposal Pattern: An Enquiry into the cases filed under POCSO Act in India Report, 2021 by Kailash Satyarthi Children's Foundation

⁸¹ *Id.*

⁸² The Protection of Children from Sexual Offences Act, 2012, § 44, No. 32, Acts of Parliament, 2012 (India),

It is explicit from the schedule that in the years 2017-18, 6% of the total no. of cases pending for investigation were disposed of at the police level without the filling of the charge sheet. This percentage increased marginally by 1% in the year 2019 to 7% which in figures might appear frivolous but it raises a severe concern as the number of cases which were disposed off in the pre-trial stage were around 2,700s to 3,300 cases.

Another notable point is the percentage cases in which the investigation was completed during the year which increased from 66.37% in 2017 to 68.67% in 2018 and 70.02% in 2019. Increase in the percentage completion of investigation depicts that the training programs being conducted by the Ministry of Home Affairs are yielding fruitful results. Timely completion of investigation will aid administration of justice to the victim.

Differential Disposition of the Act

POCSO Act specifically addresses child sexual abuse unlike other legislations like I.P.C., J.J. Act, etc. and this is the major reason for its differential disposition. The remedies provided under the Act ensure quick relief to the child victim without disseminating his or her personal information. Victim-friendly prosecution and provision for speedy disposal of cases are some features which make this legislation stand out.

SUMMARY & OBSERVATIONS

The POCSO Act was enacted to safeguard children from sexual abuses which encompassed laudable provisions ensuring victim friendly prosecution, safety of child victim, easy and effective reporting procedure and presumption of 'guilt' of the accused which shifts the *onus probandi* from the victim on the accused. Although the Act has motivated children and their guardians for reporting the abuses they face but still a uniform effective implementation policy is awaited which can implement the provisions of the Act in an efficacious manner. There is need for public awareness regarding POCSO Act and reconsideration of certain provisions of the Act including Section 29 & 2(d) so that children do not fear in reporting such abuses.

CONCLUSION

After scrutinising all the provisions of the POCSO Act and statistically analyzing the impact of POCSO Act on Indian Society, the following results are ascertained:

1. The POCSO Act is indeed a *bona fide* legislation and has been enforced to safeguard children's rights against sexual abuse and to effectuate international agreements to which India is a party. Therefore, the first hypothesis tests positive.
2. The POCSO Act indeed has positive effects on Indian Society and therefore, the second hypothesis tests positive.
3. Spurt in the all India Rate of Crime against children is owing to increased reporting of cases of Child Sexual Abuse and a real increase in commission of criminal offenses as is explicit from Table 2. Therefore, the third hypothesis tests positive.
4. The policies formulated by the Central Government are laudable attempt to implement the provisions of the Act but the difference between *de jure* policy making and *de facto* policy implementation has not been spanned yet. Although Central Government has strived a lot to spread awareness among people but this verity cannot be refuted that there is an urgent need for an efficacious implementation policy. Therefore, the fourth hypothesis tests negative.
5. The POCSO Act is being used as a '*weapon of harassment*'. Therefore, the fifth hypothesis tests positive.

RECOMMENDATIONS

Need for Public Awareness

Ignorance of law excuses no man from practicing it. Unawareness of the rule of law is thus a vice as an unaware citizen can neither refrain himself from doing an unlawful activity nor can he enforce his rights in the Court of Law. It is well said that an aware citizen is an asset to the Nation but an unaware citizen is a liability to the Nation. People in India are still unaware of the POCSO Act and its *bona fide* provisions. Although "Child Line" has leaped forth several miles in achieving this goal but still there is a need to aware the younger generation and their guardians about their rights and the methods of their enforcement.

Need for Uniform Efficacious Implementation Policy

There is a need for an efficacious implementation policy to implement the provisions of the Act so that the main purpose of the Act can be fulfilled. For example, recently Uttar Pradesh State Government hired a private company named “Ooumph” which will “keep an eye” on what is being searched on the internet through data by 11.6 million users across the State. If any person, within the territory of the State, searches for any obscene and pornographic content then the analytics team will get the information which will be saved for future reference and an alert & awareness message will be sent to the person.⁸³ As per the plan in initial stages the crime rate is deemed to drop but if somehow still women get harassed then strict actions will be taken against the person by an action team called “1090”.⁸⁴ The project was tested in six districts of Uttar Pradesh and the Government received a positive response from the public. This is how Uttar Pradesh Government is tackling the problem of “pornography” which is one of the major factors which incite the commission of sexual offenses. This is the perfect epitome of an efficacious implementation policy.

Similarly, the central government must devise some innovative methods to deal with the increasing crime rate in India which focuses on the root causes of commission of crime like increased exposure to obscene content over the World Wide Web, social stigmas and prejudices, poverty, indigence, corruption, conservative community structure, unawareness regarding provisions of the Act. It could be done in collaboration with private enterprises which can make it efficient or by introducing online redressal mechanism, or by introducing no cost prosecution mechanism where the case is not frivolous, vexatious or derived out of mala fides.

Also, in the March 2021 Report on “*Status of POCSO Cases in India*” prepared by the Kailash Satyarthi Children’s Foundation recommended that “since women and children constitute one of the most vulnerable sections of society, they deserve special attention and the crimes against them need to be treated on priority and with utmost sensitivity. Instead of ‘coercive policing’, ‘compassionate policing’ is needed to deal with such cases. Therefore, there is a need for a dedicated unit headed by the Additional Superintendent of Police (ASP) and the Deputy Commissioner of Police (DCP) including experts from forensics from

⁸³ Qazi Faraz Ahmed, *UP Government to “Keep an Eye” on Internet Search Data, Surfing Porn Can Land Viewers in Trouble* (Feb. 13, 2021, 23:17 IST) <https://www.news18.com/news/india/up-govt-to-monitor-search-data-of-millions-of-internet-users-in-state-and-alert-porn-viewers-3430520.html>

⁸⁴ *Id.*

investigating sexual offenses against women and children. The unit is required to have adequate workforce, infrastructure, and equipment so that these cases are investigated thoroughly and on priority” which will supervise and aid in investigation of reported cases.⁸⁵

Need for Reconsideration of Certain Provisions

Section 29 of the Act which mandates the Special Courts to presume culpability of the accused shall be reconsidered as it is not palpal with the principles of natural justice and criminal jurisprudence and some relaxations shall be provided for application of the aforesaid provision in certain cases such as: (i) where there is no sufficient evidence to constitute a *prima facie* offense; or (ii) where it is proven that the victim or his/her relative(s) has/have filed the complaint out of mala fides in personal grudge or vengeance; or (iii) when it is proved that the complaint is vexatious, frivolous, or has been filed with the intent to harass the accused; or (iv) where the accused is a *bona fide* citizen of India who does not have any prior record of committing a crime of equitable disposition.

The personal information of the accused shall not be disclosed to general public to ensure fair trial lest it will be lethal for the social image of an accused who is acquitted by the Court and the accused will be exposed to unwarranted persecution.

Although the Act provides for a limitation period for disposal of cases but in reality the Court hearings are conducted at variable intervals. Thus, a fixed interval shall also be prescribed within which at least one Court hearing shall take place to ensure that reasonable opportunity is available with the accused to prove his or her innocence. Presence of accused in every hearing shall be made mandatory to avoid delay in the proceedings.

Furthermore, the definition of “*child*” in the Act must be reconsidered. Section 2 (d) defines “*child*” as a “*person below the age of eighteen years*”. The Parliamentary Standing Committee headed by Congress M.P. also recommended to the Union government that the juvenile delinquency age be reduced from 18 to 16, and that all accused persons over the age of 16 be tried as adults in cases filed under the POCSO Act.⁸⁶ Although this definition is merely biologically sound but it does not take into account such person who is suffering from

⁸⁵ KAILASH SATYARTHI CHILDREN’S FOUNDATION, STATUS OF POCSO CASES IN INDIA 9 (2021, Kailash Satyarthi Children’s Foundation).

⁸⁶ UTKARSH ANAND, *Decoding the proposed changes in the POCSO Act*, HINDUSTAN TIMES (Mar. 23, 2021, 06:54 AM) <https://www.hindustantimes.com/india-news/decoding-the-proposed-changes-in-the-pocso-act-101616387029216.html>.

psychological or physical disability. Hon'ble Supreme Court in a recent case where a woman whose biological age was 38 years and mental age was 6 years was raped held that the legislators felt it appropriate to define the term "age" by biological age to be the safest yardstick, rather than referring to a person having mental retardation.⁸⁷ It was argued that "failure to consider the mental age will be an attack on the very purpose of the Act". The Court further held that while 'awarding maximum compensation' to a mentally retarded rape victim who is not mature enough to understand the nature of the offense not only the physical age but mental age must also be taken into consideration but not otherwise.⁸⁸

Also, a reasonable limitation period shall be imposed on making of complaint of an act of abuse lest any act since the enforcement of the Act can be reported at any point of time which not only makes investigation difficult but the cause of action also turns obsolete with the time. Alternatively, reasonable fine can be imposed on causing an inordinate delay in reporting of the crime. People may take advantage of this lacuna and may use it for filing malicious prosecution.



⁸⁷ THE TIMES OF INDIA, *Is a 40 year old woman with mental age six entitled to compensation under POCSO Act*, THE TIMES OF INDIA (Mar. 3, 2017, 08:26 IST) <https://m.timesofindia.com/india/is-a-40-year-old-woman-with-mental-age-of-six-entitled-to-compensation-under-pocso/articleshow/57441310.cms>

⁸⁸ *Id.*

REFERENCES

1. *Books and Commentaries*

- a. DAVE PLEZER, *A CHILD CALLED "IT"* (1995 , Simon and Schuster).
- b. LORRAINE NILON, *BREAKING FREE FROM THE CHAINS OF SILENCE: A RESPECTFUL EXPLORATION INTO THE RAMIFICATIONS OF PAEDOPHILIC ABUSE* 1st ed. (2017, Lorraine Nilon).

2. *Other Sources*

- a. KAILASH SATYARTHI CHILDREN'S FOUNDATION, *POLICE CASE DISPOSAL PATTERN: AN ENQUIRY INTO THE CASES FILED UNDER POCSO ACT* (2021, Kailash Satyarthi Children's Foundation).
- b. KAILASH SATYARTHI CHILDREN'S FOUNDATION, *STATUS OF POCSO CASES IN INDIA* (2021, Kailash Satyarthi Children's Foundation).
- c. MINISTRY OF WOMEN AND CHILD DEVELOPMENT, GOVERNMENT OF INDIA, *ANNUAL REPORT 2020-2021*, <https://wcd.nic.in/annual-report>.
- d. NATIONAL CRIME RECORDS BUREAU, GOVERNMENT OF INDIA, *Crimes in India*, <https://ncrb.gov.in/en/crime-in-india>.
- e. Nidhi Marothiya, Sarita Saini, & Deepika Vig, *An Appraisal of Awareness Regarding the POCSO Act, (2012) among Primary School Teachers of Punjab*, 5 IJSHW 59, 59-61 (2019).
- f. OHCHR, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.
- g. Qazi Faraz Ahmed, *UP Government to "Keep an Eye" on Internet Search Data, Surfing Porn Can Land Viewers in Trouble* (Feb. 13, 2021, 23:17 IST) <https://www.news18.com/news/india/up-govt-to-monitor-search-data-of-millions-of-internet-users-in-state-and-alert-porn-viewers-3430520.html>.
- h. THE HINDU, *POCSO Accused teacher commits suicide*, THE HINDU (Feb. 20, 2020, 11:04 IST) <https://www.thehindu.com/news/national/kerala/posco-accused-teacher-commits-suicide/article30873905.ece>.
- i. THE NEW INDIAN EXPRESS, *False Allegations in child molestation case can be lethal, even if acquitted later: Kerala HC*, THE NEW INDIAN EXPRESS (Nov. 10, 2021, 10:27 PM) <https://www.newsindianexpress.com/states/kerala/2021/nov/10/false-allegations-in-child-molestation-case-can-be-lethal-even-if-acquitted-later-kerala-hc-2381956.html>.

- j.* THE TIMES OF INDIA, *Is a 40 year old woman with mental age six entitled to compensation under POCSO Act*, THE TIMES OF INDIA (Mar. 3, 2017, 08:26 IST) <https://m.timesofindia.com/india/is-a-40-year-old-woman-with-mental-age-of-six-entitled-to-compensation-under-pocso/articleshow/57441310.cms>.
- k.* UNICEF, <https://www.unicef.org/child-rights-convention#:~:text=In%201989%2C%20world%20leaders%20made,an%20international%20agreement%20on%20childhood>.
- l.* WORLD HEALTH ORGANISATION, *Guidelines for Medico Legal Care for Victims of Sexual Violence*, [https://apps.who.int/iris/bitstream/handle/10665/1878/AFR.RC54.15%20Rev.1.pdf?sequence=1%26isAllowed=y#:~:text=Child%20sexual%20abuse%20\(CSA\)%20is,or%20social%20taboos%20of%20society%E2%80%9D](https://apps.who.int/iris/bitstream/handle/10665/1878/AFR.RC54.15%20Rev.1.pdf?sequence=1%26isAllowed=y#:~:text=Child%20sexual%20abuse%20(CSA)%20is,or%20social%20taboos%20of%20society%E2%80%9D).
- m.* UTKARSH ANAND, *Decoding the proposed changes in the POCSO Act*, HINDUSTAN TIMES (Mar. 23, 2021, 06:54 AM) <https://www.hindustantimes.com/india-news/decoding-the-proposed-changes-in-the-pocso-act-101616387029216.html>.
- n.* RAMYA KANNAN, *Most Online Content On Child Sexual Abuse From India*, THE HINDU (Apr. 18, 2020, 22:28 PM IST) <https://www.thehindu.com/news/national/most-online-content-child-sexual-abuse-material-from-india/article31377784.ece>
- 3. Cases Laws Referred**
- a.* *Anil W. Singh v. State of Bihar*, (2003) 9 SCC 67
- b.* *Chairman Mining Board v. Ramjee*, 1977 AIR 965 SC.
- c.* *Independent Thought v. Union of India*, Writ Petition (Civil) No. 382 of 2013 (SC).
- d.* *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.
- e.* *Ramreddy & Rajesh Khanna Reddy v. State of Andhra Pradesh*, (2006) 10 SCC 172
- f.* *Reddy Sampath W. v. State of Andhra Pradesh*, (2005) 7 SCC 603
- g.* *Sakshi v. Union of India*, Writ Petition (Crl.) 33 of 1997 (SC).
- h.* *Sarwan Singh Rattan Singh v. State of Punjab*, AIR 1957 SC 637
- i.* *Sher Singh alias Partapa v. State of Haryana*, 2015 Cr LJ 1118 (SC).
- j.* *Shreemati Vishakha Devi v. Union of India*, AIR 1997 SC 3011.
- k.* *State of Punjab v. Gurmeet Singh & Ors.*, 1996 SCC (2) 384.

l. The Collector v. K. Krishnaveni, Writ Appeal (SC) No. 1995 of 2018.

m. Union of India v. W.N. Chadha, AIR 1993 SC 1082.

4. Statutes Referred

a. Constitution of India, 1950 (India)

b. The Protection of Children from Sexual Offenses (Amendment) Act, 2019, No. 25, Acts of Parliament, 2019 (India).

c. The Protection of Children from Sexual Offenses Act, 2012, No. 32, Acts of Parliament, 2012 (India).

d. The Indian Penal Code, 1860

e. The Criminal Procedure Code, 1973

f. The Juvenile Justice Act, 2015.

5. Citation Style

a. Harvard Bluebook (20th ed.)

