

**A STUDY ON THE PROTECTION OF CHILDREN
FROM SEXUAL OFFENCES (POCSO ACT, 2012)**

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LL.M

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DECLARATION

I, here by declare that the dissertation entitled “A Study on the Protection of Children from Sexual offence (POCSO ACT,2012)” is based on original research undertaken by me and it has not been submitted in any University for any degree or diploma.

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This is to Certified that the dissertation entitled – “A Study on the Protection of Children from Sexual Offences (POCSO ACT, 2012)” has been prepared by (**MS. RIYA KUMARI**), pursuing LL.M from School of Law, Galgotias University under my supervision and guidance. I recommend it for evaluation.

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LIST OF ABBREVIATIONS

1. POCSO - Protection of Children from Sexual Offences
2. IPC - Indian Penal Code
3. SC - Supreme Court
4. HC - High Court
5. CJ - Chief Justice
6. FIR - First Information Report
7. NCPCR - National Commission for Protection of Child Rights
8. NGO - Non-Governmental Organization
9. CBI - Central Bureau of Investigation
10. DNA - Deoxyribonucleic Acid
11. ASI - Assistant Sub-Inspector
12. NGO - Non-Governmental Organization
13. NCRB - National Crime Records Bureau
14. UN - United Nations
15. CRC - Convention on the Rights of the Child
16. ICCPR - International Covenant on Civil and Political Rights
17. ICESCR - International Covenant on Economic, Social and Cultural Rights
18. CEDAW - Convention on the Elimination of All Forms of Discrimination
Against Women
19. ILO - International Labour Organization
20. UNICEF - United Nations Children's Fund
21. SIT - Special Investigation Team
22. RTI - Right to Information
23. IT Act - Information Technology Act
24. CIC - Central Information Commission
25. NALSA - National Legal Services Authority
26. NHRC - National Human Rights Commission
27. NCW - National Commission for Women
28. SPCA - Society for the Prevention of Cruelty to Animals
29. PETA - People for the Ethical Treatment of Animals
30. UNDP - United Nations Development Programme
31. UNFPA - United Nations Population Fund

32. UNODC - United Nations Office on Drugs and Crime
33. WHO - World Health Organization
34. SSA - Sarva Shiksha Abhiyan
35. UGC - University Grants Commission
36. RTE - Right to Education
37. ICDS - Integrated Child Development Services
38. NREGA - National Rural Employment Guarantee Act
39. JJ – Juvenile justice

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CHAPTER 1

INTRODUCTION

The Protection of Children from Sexual Offences Act, 2012 was enacted on 16 July 2012 and enforced on 14th November 2022, on the occasion of Children's Day.¹ It was enacted as a consequence of India's ratification of the UN Convention on the Rights of the Child in 1992.² An overview of the study on the protection of children from sexual offences under the POCSO Act, 2012. It highlights the importance of addressing this issue due to the vulnerability of children to sexual abuse. The intersectional issues of caste, gender and class further complicate the landscape of sexual offences, disproportionately affecting marginalized children. Additionally, the standard of consent in rape law has been a subject of critical examination, with discussions on the need for an affirmative standard of consent in rape law has been a subject of critical examination, with discussion on the need for an affirmative standard of consent and the influence of extraneous circumstances on the determination of consent. The act comprehensively covers all the aspects regarding sexual offenses against children, and by children, in this legislation, it means anyone who is under 18 years of age. The much-needed act of POCSO is a result of a lot of effort but still, there's a lot to be done in this regard which we will discuss in detail in this research.

This legislation addresses the prevalence of child sexual abuse, providing mechanism for reporting, investigating, and prosecuting offenders to ensure the safety and well-being of minors. The implementation of the POCSO Act signifies a crucial step towards creating a protective environment for children, emphasizing the need for proactive measures to prevent and address instances of sexual violence against minor. The Act "Protection of Children from Sexual Offence"(POCSO) is significant because it clearly communicates the purpose of the legislation. It emphasizes the state's responsibility to protect children and the specific nature of the offence being addressed. Sexual abuse has been said to be the 'cornerstone of violence' against children, due to its pervasiveness and the fact that its effects often persist into other areas of the child's life.

¹ The Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012 (India).

² Convention on the Rights of children, 1989. (<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>).

One such effect of abuse is the trauma suffered from the act itself. Various studies of sexually abused children have confirmed the presence of Post-Traumatic Stress Disorder (PTSD),³ with approximately 60% of sexually abused children meeting the diagnostic criteria, a figure which is higher than that seen in adult victims of trauma. Depression, disturbance in mood, and general psychological disturbance are also common reactions to sexual violence.

The Protection of Children from Sexual Offences Act, 2012 has been enacted in line with the Convention on the Rights of the Child, which was adopted at United Nations by their General Assembly.⁴ India had ratified this Convention on 11-12-1992. The member States are supposed to follow all necessary bilateral measures, national measures and multilateral measures. The said Convention sets certain standards that needs to be followed by all the member States so as to secure the rights and interests of the children. Some of the measures as stated by the said Convention are: -

- i. Every State should ensure that no child is induced or coerce a child in any form of sexual activity.
- ii. Every State should ensure that no child is sexually exploited by pushing the child in prostitution.
- iii. Every State should ensure that no child is used in pornographic material or performance.⁵

Any form of sexual abuse or sexual exploitation of children amounts to heinous crimes and therefore, it must be ensured by every State that they are effectively addressed.

For proper development of children, it is necessary to protect confidentiality and privacy rights including care and respect by all in the society. In this area, even the role of judiciary is of utmost importance. It is necessary to ensure that children are protected emotionally, physically, mentally i.e. for overall development of the child.

Going by sui generis, India enacted its own comprehensive legislation for providing protection to children from sexual offences thereby ensuring safeguard of their well-

³ 12-2021 Karin Ensink & Christina Marquez, Post-traumatic stress disorder in Sexually Abused Children: Secure Attachment as a Protective Factor- Psychol., 27 July 2021

⁴ Team, ClearIAS. "POCSO Act (Protection of Children from Sexual Harassment Act, 2012)." ClearIAS, 24 Jan. 2022, <https://www.clearias.com/pocso-act/>. Accessed 18 Apr. 2023.

⁵ Team, Byjus. ("convention-on-the-rights-of-child-uncrc") (<https://byjus.com/free-ias-prep/convention-on-the-rights-of-child-uncrc/>)

being, rights and interests every time and all stages. The Act also provides for procedures to be followed from informing the case till end, a child friendly procedure. Which means, at every stage of judicial process from filing of FIR, reporting, investigation, statements, evidence etc. child friendly procedures need to be followed and the identity of the child shall be kept confidential at every stage.

The Act provides for establishment of child friendly Courts i.e. special Courts meant for children for speedy trial of such cases.

On June 19, 2012, the President's approval was granted to the special Act meant for the protection of children. In order to guarantee teenagers against crimes such as sexual harassment, indecent actions and suggestive diversion, the Act was resolved at a very simple level. The Government of India cleared a POCSO Act order in April 2018, whereby the death penalty will be granted to those convicted of assaulting a child up to 12 years of age.⁶

The need for the POCSO Act has been reflected in numerous examinations. An inquiry led by the Ministry of Women and Children in 2007, in which 12,500 adolescents earned a premium across 13 states, found that 53 percent of children said they were faced with one form of sexual harassment in any situation. During the year 2011, a sum of 33,098 occasions of child sexual abuse (CSA) is represented differently compared to 26,694 discovered in the previous year 2010 that is clobbering 24 percent extension.⁷

Given the fact that various enactments in India have arrangements that could be enforced for offences against children, these arrangements are common in nature and there was no clear law in India to successfully resolve sexually oriented cases related to kids. Section 375⁸ (Rape) under IPC, for example, did not recognize offences. Furthermore, there were no provisions in Cr. P.C. for the delegation of exceptional courts for a preliminary, touchier legal system, special public examiners, case optimization or even the security needed for such preliminaries.

⁶ Protection of Childrens Human Rights in India. (<https://www.legalserviceindia.com/legal/article-protection-of-childrens-human-rights-in-india.html>). Accessed 18 Apr. 2023.

⁷ "Violence against Children." UNICEF, <https://www.unicef.org/protection/violence-against-children>. Accessed 18 Apr. 2023.

⁸ Indian Penal Code, (1860),s-375.

Such valid barriers gave rise to an unprecedented and strong agreement to regulate the risk of child violence, harassment and sexual offences in India. The lead Indian enactment that forestalls offenses against Children has a few significant to provide shelter and security to kids.

The Act characterizes:

Section 3: This section describes abuse that is physical in nature thereby resulting into penetration.⁹

Section 4: This section describes the abuse of the child in physical form.¹⁰

Section 5: This section is related to minimum form of punishment in the form of imprisonment that needs to be accorded in the cases of rape that results into penetration. The imprisonment under such circumstances is minimum for seven years i.e. the punishment of imprisonment shall not be less than seven years.¹¹

Section 7: As for aggravating form of rape is concerned, this section deals with such form of rape that results into penetration.¹²

Section 8: This section deals with punishment for abuse that is physical in nature i.e. sexual in nature.

Section 11: This section explains what harassment that is physical i.e. sexual in nature.¹³

Section 13: This section explains pornography of kids.¹⁴

Section 19(1): This section very clearly states that it is compulsory to report issues that are related to child abuse.¹⁵

Section 29: This particular section is associated with evidence related to accused person.

Section 31: This section is associated with selection of special public prosecutor.

⁹ The Protection of Children from Sexual Offences Act, (2012),S-3,S-4,S-8,S-11

¹⁰ Ibid

¹¹ Ibid

¹² Ibid

¹³ Ibid

¹⁴ Ibid

¹⁵ Ibid

Apart from all this and a lot more conditions that would dissuade anybody from submitting such offenses.

Notwithstanding above reformatory area, the enactment additionally endorses measures that are extraordinarily intended to manage affectability of casualties. The POCSO Act and rules specify Child inviting cycles. It orders regard for the pride and independence of the youngster at each phase of the lawful cycle. It accommodates youngster strategies for clinical assessment, to record the saying of the kid by the policemen as well as judicial officers including Magistrate.

Apart from all this, any issue reported by a child should be noted and recorded by the concerned authorities in police as well as judiciary. Utmost care should be taken to ensure, whatever has been noted is as was informed by the child. Help of a certified interpreter or transcription should be provided to the kid so that the child can freely communicate the incident in his or her language. At the time of seeking such information from the kid it should be ensured that at that time the parents or caretakers or any other person or individual on whom the kid has trust should be present, during techniques including clinical assessment, recording explanations, or giving declarations in court.

Before any clinical assessment is led, assent by or in the interest of the kid must be acquired. Clinical assessment can be led independent of any recording of statement or FIR. In case the victim is young lady, assessment has to be finished by lady specialist. Additionally, kid shouldn't be carried vis-à-vis while giving any statement before the police. In the event that vital, a help individual should likewise be given to a youngster to help him/her during the examination and preliminary. By no means can the youngster be approached to stay in the police headquarters around evening time. Kid casualties who are discovered to be needing dire clinical consideration are qualified for get crisis clinical consideration inside 24 hours accepting data relating to wrongdoing.¹⁶

Kid casualty might get between time remuneration for guaranteed requirements for alleviation of restoration of loss caused. The Government of the State is responsible to

¹⁶ Section 24-Recording of statement of a child— 4) No child shall be detained in the police station in the night for any reason.

arrange for compensation to victims as a security and it should be provided within 30 days when the order is passed by the Court.¹⁷

HYPOTHESES

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

- 1.The POCSO Act is justified legislation that has been implemented to protect children from sexual abuse and to follow out global agreements that India is a party to.
- 2.Pocso act being a child special legislation is unable to justify the consensual intercourse.
- 3.The laws related to child sexual offences are not implemented enough in a way to reduce the numbers of the crime.
- 4.The POCSO Act is being misused as a ‘weapon of harassment’.

OBJECTIVES

The study's primary goals are to:

The purpose of this study is to examine the scope of the Protection of Children from Sexual Offences Act, 2012 (often known as the "POCSO Act") and analyse its implications for Indian society. The study seeks to identify this problem in society and to reveal the researcher's thoughts on a range of research topics.

- To study the various forms of sexual offences in India and legislations to combat the same.
- To critically analyse the provisions of the POCSO Act, 2012, and evaluate their effectiveness in protecting children from sexual offenses in India.
- To evaluate critically the Supreme Court judgments to understand whether such judgments have deterrent effect upon the perpetrators.
- To study POCSO Act, 2012 as well as similar types of international to understand whether the implantation of the said Act is strong in India.

¹⁷ The Protection of Children from Sexual Offences Act, 2012, §§ 5(b), 5(c), 24-28, 33, 37, No. 32 of 2012.

LITRATURE REVIEW

The Protection of Children against Sexual Offences (POCSO) 2012 has been the enactment of a special law which criminalizes set of activities such as harassment, rape of a child, physical harassment of a child for pornography etc. For securing the rights of the kids intact, this acted as an important step thereby protecting the children against any kind of abuse. It is important to keep in mind that every sexual assault case is a medical emergency for which free treatment at public or private hospitals is required. Children have been easy target because of their tender age and at such a tender age, they are not able to distinguish between what is good or bad or right or wrong for them. This is turn becomes easy as far as a perpetrator of a kid is concerned to manipulate the kid's sentiments and making him or her an easy target. The 'POCSO Act', no doubt in 2012, authorized intention to shield kids from sexually oriented offenses, for example, rape, inappropriate behaviour and porn. This Act additionally accommodates the foundation of extraordinary judiciary towards preliminary or basic sexually oriented maltreatment issues related to the children. During previous era, as far as India is concerned, it has been found that India had very high cases of reported rape cases against children. The efforts of the Government cannot be ignored, which took genuine endeavour to ensure that every matter related to sexually oriented misuse related to kids is addressed properly under the said Act and as far as effect related to enactment is concerned, its stay is not yet clear.

Abajobir et al. (2017) states that "The researchers" states that the research is focused on the gender differences which are based on the association between the childhood sexual abuse and the risky sexual behaviour. A systematic meta-analysis and review has been conducted on the basis of preferred reporting items to generate pooled odds ratio. It was found during the research that the magnitude of sexual abuse was similar in both the males as well as females.

Jindal, N. (2019). "Addressing Child Sexual Abuse in India: A Review of the POCSO Act." *Child Abuse & Neglect*, 98, 104178.

This article provides a review of the POCSO Act, 2012, and its role in addressing child sexual abuse in India. The author also discusses the need for a comprehensive approach to addressing the issue, including prevention, intervention, and support for survivors.

Balusamy (2018) states that the said POCSO Act came into being instituted as an effort of the legislature thereby shielding kids from offenses of rape, lewd behaviour and erotic entertainment by joining kid amicable instrument. Scholarly pioneers being the foundation of the kid improvement in the school assumes a significant part in dispersing the law of kid. A superior comprehension of educators' information about POSCO act will permit us to set up key beginning stages from which to use the framework for avoidance. A cross sectional investigation was directed to survey the Awareness of scholastic pioneer with respect to POCSO act. Scholastic pioneers being a spine in the school must be improved with mindfulness program to engage youthful age. Nursing calling is an as basic partners in stretching out administrations to grant information to class partners.

Mukherjee, M. (2018). "Child Sexual Abuse in India: A Critical Analysis of the POCSO Act." *Journal of Law, Policy and Globalization*, 76, 13-19.

The article critically analyses the POCSO Act, 2012, and its effectiveness in addressing child sexual abuse in India. The author highlights some of the limitations of the act and discusses the need for a more comprehensive approach to addressing the issue.

Jain, V. (2016). "Implementation of the POCSO Act: A Step Towards Child Protection in India." *International Journal of Social Science and Economic Research*, 1(11), 355-361.

This article examines the effectiveness of the Protection of Children from Sexual Offences (POCSO) Act, 2012, in addressing child sexual abuse in India. The author discusses the implementation of the act and highlights some of the challenges faced in its implementation.

RESEARCH QUESTIONS

1. Is the implementation of POCSO Act weak? Has it failed to address the abuses and exploitations meted out to the children?
2. Are the present laws not enough to have deterrent effect on the perpetrator?
3. Whether the introduction of capital punishment in the legislations would reduce crime against children?

RESEARCH METHODOLOGY

Emphasis the case laws, arranging, ordering, and systematizing legal concept and studying legal institutions are all part of doctrinal research. But it goes further by legal reasoning or rational inference, it develops law and its fundamental tools, the current study is based on a doctrinal research method.

The researcher has drawn help from various international, regional and domestic legal instruments, books, articles, essays, magazines, newspaper, reports of ministry, commissions, committees and judicial decisions. The researchers have thoroughly analysed case laws, legislations outcomes of international and national conferences, conventions and treaties, various progress reports and articles available online. The topic of study is opted keeping in mind both the interests of the researchers and need and importance of the subjects. The researcher is of the view that understanding the concept of protection of children from sexual offences (POCSO ACT,2012).

TENTATIVE CHAPTERISATION

CHAPTER 1: INTRODUCTION

The research problems, the necessity and importance of the study, the goal, the hypothesis, the methodology, and the literature review are all covered in this chapter, which also acts as an introduction to the work. Together with a strong Défense, it also outlines the study's scope, analysis, and structure.

CHAPTER 2: PROTECTION OF CHILDREN FROM SEXUAL OFFENCES

This chapter discusses the pocso act's history in India. We also discuss the historical basis of pocso and its legitimacy in India. This chapter also covers the act's numerous shortcomings and obstacles, as well as how they differ from one another.

CHAPTER 3: LEGISLATIVE FRAMEWORK FROM CHILD ABUSE IN INDIA

In this chapter, we will talk about the different laws, act which are dealing with same offences. child protection laws in India aim to create a a secure environment for children, stop abuse, and offer legal redress when violations happen. However, there is still much work to be done to improve the well-being of our nation's children. we will also look the different the provision for child abuse in India

CHAPTER 4: INTERNATIONAL CONVENTIONS AND PROTOCOLS ON CHID PROTECTION IN INDIA

This chapter will cover national policies and international agreements put in place by governments to protect children under the age of eighteen. Describe how the legal frameworks work to protect children from harm, maintain a safe environment for them, and offer remedies in the event that laws are violated.

CHAPTER 5: JUDICIAL INTERPRETATION

This chapter outlines the judicial role where the amendments made by judges for the better effective of the act.

It also includes the landmark judgements which this delivered by the different court of India. which are as follows:

1. Ujjain Rape Case, 2023
2. Aftab Ahmad v. State of Uttar Pradesh (2021) 2 SCC 290

CHAPTER 2

PROTECTION OF CHILDREN FROM SEXUAL ABUSE

2.1 History and Background

Caste, class, gender, indigeneity, ethnicity, religion, sexual orientation, and their intersectionality all contribute to the complexity of the problem of child abuse in India (Kaushal, 2020; Virani, 2000)¹⁸. It is one of the most talked-about but "unknown" aspects of Indian social and legal life, shrouded in secrecy and surrounded by a conspiracy of silence (Gangoli, 1996).¹⁹ Indeed, most Indians have a long-standing notion that there is no child abuse in India, and especially no child sexual assault. In India, there are fundamental differences that make certain children more vulnerable to maltreatment, exploitation, and disrespect than others. The POCSO statute, which addresses situations of child sexual abuse, is the result of legal and sociopolitical changes that have occurred during the previous fifty years. It is necessary to know those elements in order to comprehend how this policy came to be.

POCSO Act 2012 is based on the "United Nations Convention of Rights of Child" (UNCRC 1989), which India ratified on 11th December 1992.²⁰ India also took part in the World Summit for Children 1990 and its declaration and plan of action which was adapted and approved by the General Assembly. India is therefore under international obligation to protect the children from all forms of sexual exploitation and sexual abuse. The Indian Penal Code (IPC) and other laws addressed child sexual abuse in various forms previous to the POCSO Act's enactment.²¹ The provisions, however, were not expressly designed to address how minors are particularly vulnerable to sexual offences. The necessity of specific laws aimed at preventing child sexual abuse was becoming more widely established. The POCSO law, which addresses situations of child sexual abuse, is the result of legal and sociopolitical changes that took place

¹⁸ Kaushal, R. (2020). Intersectionality and complexity of child abuse in India.

¹⁹ Gangoli, G. (1996). Historical and sociocultural perspectives on child abuse.

²⁰ World Declaration on the Survival, Protection, and Development of Children, World Summit for Children, U.N. Doc. A/45/625 (1990).

²¹ Singh, A., & Sharma, R. (2013). The Evolution of Child Protection Laws in India: A Historical Perspective, *Indian Journal of Social Work*, Vol. 74, No. 3, pp. 305-325.

during the fifty years before it. It is necessary to understand those elements in order to understand how the policy came to be.²²

There are numerous reports of police prison rapes in India, which occur during the pre-trial phase of sexual violence cases. Such occurrences represent an intersection between the state's power over female citizens and the social dominance of men over women and girls. Victims of sexual assault endure additional acts of abuse while in court. Given that the victims in these cases of child sexual abuse are minors, the implications of these crimes are thought to be significantly bigger.

During the 1970s-80s, In India, there was a rise of feminist activism and growing awareness of the problems of sexual violence centered around victims, including female child victims. The debates on the implications of the criminal process and the criminal justice system in addition to the experience of victimization of those who are the objects of sexual violence also surfaced.

Feminist Movements, Law Commission Report, and the 1983 Amendments (1970s-1980s)

According to Gangoli and Rew (2018), a public discourse about rape was started by three occurrences that occurred in the late 1970s and early 1980s.²³ The discussion fueled India's burgeoning feminist movement and sparked a national anti-rape campaign. The Indian Penal Code, 1860 (IPC) rape laws were finally amended as a result of this in 1983. While police officers were involved in all three of the rape incidents, the most well-known one included Mathura, an orphan tribal farm labourer who was a young girl between the ages of 14 and 16. Two police officers inside the police station sexually assaulted her.²⁴

The Bombay High Court rejected the sessions court's decision to acquit the accused, finding them guilty on the grounds that she would not have invited them to fulfil her sexual fantasies as they were "foreigners" in her eyes. The High Court used the stranger danger paradigm of sexual abuse in its ruling, even though it was in Favor of the minor victim. If the accused had been someone she knew or had been related to, as is

²² The Protection of Children from Sexual Offences Act, 2012.

²³ Kumar, R. (1993). *The History of Doing: An Illustrated Account of Movements for Women's Rights and Feminism in India*.

²⁴ Tuka Ram And Anr vs State Of Maharashtra 1979 AIR 185, 1979 SCR (1) 810.

frequently the case in situations of child sexual abuse, the conviction might not have been obtained. Then, the Supreme Court overturned the ruling of the High Court and cleared them, citing the lack of injuries in the medical report, the "peaceful affair" nature of the sexual encounter, and the victimization of the child's silence.

The following concerns were brought up by these cases and the feminist movement of the time, necessitating changes to the procedural criminal laws, the substantive laws, the evidence rules, the criminal justice institutions, and the conduct of their staff:

Substantive laws:

- Expansion of rape beyond peno-vaginal penetration.²⁵
- Declaring custodial rape as a specific form of male power over women.²⁶
- Legal recognition of marital rape, particularly rape in child marriages.²⁷

Procedural and evidence laws:

- Prohibition of using victim's prior sexual behaviour and stigmatization.²⁸
- Women police interviewing and questioning assaulted women.²⁹
- In-camera trial of rape cases.
- redirecting the burden of proof on the defendant.³⁰

All these issues were relevant to female child sexual violence as much as they were to sexual violence against adult women. These victims of sexual assault had faced obstacles reaching justice due to the underlying conditions.

In its 84th report, the Law Commission of India (1980) (LCI) examined the effects of sexual offenses on female victims, including minors, in relation to the aforementioned issues after receiving a request from the government to conduct a special examination

²⁵ Agnes, F. (1995). Reformulating Rape. *Economic and Political Weekly*, Vol. 30, No. 40.

²⁶ Baxi, P. (1985). *The Rape of J. Uma Devi: Legal Justice*.

²⁷ Roy, S. (2002). *Marital Rape: Consent, Marriage, and Social Change in Global Context*.

²⁸ Menon, N. (2005). *Re-Victimisation of Women Under Trial: A Note on Some Recent Indian Decisions*.

²⁹ *The Code of Criminal Procedure, 1973*.

³⁰ *Ibid*

of rape legislation.³¹ The LCI observed that rape victims experience two crises: the first is related to the rape, and the second is related to the trial, acknowledging that the criminal justice system as a whole has a chance of inflicting more victimization. It argued, with a specific focus on the trial, that she is being forced to relive the painful experience under the spotlight in a foreign environment, with the entire criminal justice system's equipment and paraphernalia cantered on her.

As a result, worries over the trial process's possible negative consequences for rape victims including minors and children. There was compelling evidence to support an exception to the normal rule of public trial in situations involving sexual offenses. The Criminal Procedure Code was changed in 1983 in response to the feminist movement of the 1970s and 1980s and the LCI's proposal.³² It required that sexual offenses be investigated and tried in camera. The report continued further claiming that the victims required empathy, and public awareness of these requirements in order for people to report such offenses without feeling afraid. The report also mentioned the pre-trial phase of women's treatment by the police as the starting point for challenges, and the male-dominated criminal justice system as a means of emphasizing the underrepresentation of women inside it.

The 1980 LCI report reform recommendations incorporated several feminist demands to modify substantive, procedural, and evidence legislation, reflecting feminist conceptions of rape (Gangoli & Rew, 2018).³³ LCI gave in to the feminist demand that marital rape be made a crime. It suggested that just having sex with a child wife—that is, anyone younger than the legal marriage age of eighteen should be illegal. The parliamentary joint committee recommended that section 376³⁴ of the IPC be amended to specifically recognize rape of minors as a crime. It made the case that, compared to other types of child rape, the rape of a little girl within a marriage should be seen as a less serious act. However, feminists demanded that marital sexual assault of children carry more severe penalties than other types of child sexual abuse. However, in the parliamentary debate, there was opposition to making it a crime for a husband to rape a minor wife while dressed in Indian cultural wear. The criminalization of sexual

³¹ Law Commission of India, 84th Report (1980).

³² Ibid

³³ Gangoli, G., & Rew, M. (2018).

³⁴ Indian Penal Code, 1860

offenses against minors has been greatly influenced by the legal relationship among the age of consent, marriageable age, and legitimacy of marriages involving minor children. Ultimately, the Indian Parliament translated, interpreted, and largely adopted the LCI recommendations. These concerns are related to broader discussions of underage marriage and consent age, as well as the tension between governmental and patriarchal control over a child's sexuality and autonomy over their body. In order to uphold the adult normativity of kinship and marriage, Baxi contends that the history of rape legislation in India "testifies to the suppression of the rights of female children".

One could contend that there are numerous approaches to comprehending the differences between adult and kid sexual assault. It might have to do with the kind and causes of the injury, whether the law of consent applies, and how much harm could potentially be done. Youngsters are obedient and reliable toward those they know, who frequently pose the most risk to them. Legally, a child's permission to sexual activity is irrelevant. There was no talk about amending the substantive laws to put male victims of sexual assault on par with female victims, despite the fact that several substantive and evidence laws were changed and most of them overlapped with regard to sexual violence against adult women and girls. In addition, barely any consideration was given to procedural laws that might facilitate speedier and more accessible to children justice in cases involving child sexual abuse. The next part will show how judicial and parliamentary recommendations caused the reforms to veer in the direction of these modifications.

1990S-2000S: JUDICIAL RECOMMENDATIONS, LAW COMMISSION REPORTS, AND THE GOVERNMENT'S STEPS

During this period, reform considerations started focusing on child victims, despite their gender. The area of child sexual abuse intervention provides several kinds of assault. One of the main causes of these interventions was India's 1992 acceptance of the UN Convention on the Rights of the Child, 1989 (CRC).³⁵ The CRC's Article 34 requires Member States to protect children from all types of sexual abuse and exploitation. The continuing efforts of organizations working for the rights of women and children, such "Sakshi," was another motivator.³⁶ The gender-neutral substantive

³⁵ General Assembly of the United Nations on 20 November 1989.

³⁶ ClearIAS- "Child Sexual Abuse in India." (<https://www.clearias.com/child-sexual-abuse>)

and procedural reforms pertaining to child sexual violence were the main issues, with a focus on developing child-friendly trials for such cases.

FAILURE OF THE 1983 LEGAL REFORMS

According to Gangoli, "feminists rapidly understood that the 1983 IPC amendment did not result in any meaningful reform in judicial or police procedures, nor did it have beneficial outcomes at the level of women's lives".³⁷ She argues that societal views have a significant role in the criminal justice system, impacting women's access to justice in rape trials because their bodies are perceived as stores of shame and honour from their families or communities.³⁸

The Supreme Court stated in 1996 discussing the 1983 amendments that trial courts appear to be unaware of the amendment or to be underestimating its significance, even though the amendment requires them to hold rape proceedings in private. It was further stated that there are very few instances in which the court has handled the investigation and trial of a rape case in secret. Furthermore, until the POCSO Act of 2012, male children were not even considered to be the legal subject of non-penetrative sexual assault. Many sexual activities against children were not covered by the IPC or any other legislation, and sexual offenses against children were not sufficiently addressed by the laws that were in effect. (Virani, 2000).³⁹

LAW COMMISSION OF INDIA REPORTS:

In order to have all forms of penetration included in the definition of "sexual intercourse" under section 375 of the Indian Penal Code, "Sakshi" filed a writ petition before the Indian Supreme Court in 1997. The Law Commissions of India were ordered by the Court to address the concerns brought forward in the case. Furthermore, the results of empirical studies on child sexual abuse conducted in the 1990s and 2000s (Segal, 1992; Virani, 2000) underscored the pressing need for the state to take more effective action.⁴⁰

³⁷ Gangoli, G. (2012). Indian feminisms: Law, patriarchies and violence in India.

³⁸ Ibid

³⁹ Gangoli, G. (2012). Indian feminisms: Law, patriarchies and violence in India.

⁴⁰ Segal, - Child sexual abuse: Issues & concerns (1992).

The 172nd LCI Report, 2000, took into account the aforementioned court recommendations and concentrated on both substantive and procedural changes to rape laws in the context of child sexual abuse. According to the report, sexual assault on children is a crime that should be prohibited by strict laws since it causes the victim long-term psychological harm.⁴¹

This study promoted a feminist interpretation of "sexual penetration," i.e., a definition that goes well beyond peno-vaginal penetration to encompass a variety of child abuse scenarios. It further stated that youngsters are unable to distinguish between the degree to which an orifice is invaded, and that most people who sexually abuse children are well-known to them.

STEPS BY THE GOVERNMENT

One-fifth of the world's children live in India, according to the 2001 census, emphasizing the necessity of addressing child sexual abuse. Approximately 440 million people, or more than a third of the total population, were under the age of 18.⁴² Forty percent of Indian children, it was assumed, need care and protection. India launched a fast-track court program in April 2001 as part of an institutional reform mechanism to try and reduce the backlog of criminal cases of all kinds clogging up the country's inferior criminal justice system. The Commission for Protection of Child Rights (CPCR) Act was passed in 2005 in accordance with this plan.

Although it did not particularly address child victims of sexual abuse, this Act was the first to focus on children who had been the victims of criminal offenses as a distinct legal topic. The entire legislation contained two children's court-related provisions, both of which were seriously carried out.⁴³

⁴¹ Law Commission of India, Review of Rape Laws, Report No. 172 (2000)

⁴² Ministry of Women and Child Development, Government of India. (2007).

⁴³ Ibid

1.2 Difference between “Child” and “Juvenile”

1.2.1 Child, Children and their Welfare

According to the Act, a child is defined as an individual who is under the age of eighteen. It also defines various forms of sexual abuse, such as penetrative and non-penetrative attacks, inappropriate behaviour, and erotic entertainment. A rape is considered "disturbed" when certain conditions are met, such as when the victim of the abuse is mentally ill or when the abuse is perpetrated by an adult who holds a position of trust or authority against the victim, such as a family member, police officer, teacher, or expert. Under the agreements, those who engage in the trafficking of children for sexual purposes are also accountable for their aid and encouragement.⁴⁴

The aforementioned Act suggests severe punishment that is examined based on the seriousness of the offense and carries an extremely long duration of complete detention together with a fine. In keeping with the highest international standards for child safety, the aforementioned Act also provides for the mandatory reporting of sexual offenses. This raises questions about the legal duty for someone who knows that a child has been intentionally mistreated to report the incident; if he fails to do so, he may face a fine and a half-year period of imprisonment.

As per the Constitutional provisions in Article 39⁴⁵ of the Constitution of India, the national policy is in place which deals with the welfare of the Child. The provisions further state that for the well-being of the children, it is necessary that the growth and development of entire community be considered. And as far as children are considered, they are the asset of any nation.

The future of a country is on kids as such their growth and proper development needs to be taken care of, therefore, it is necessary that special care be provided to the children, which in turn can infill protection and confidence in kids. Children due to their tender age, also are not mature enough to understand various things and are also incapable to look after themselves. This is the reason that the children should be brought up in an atmosphere of care, affection and love thereby giving special attention to their tender age. This will help in boosting the self-respect and self-confidence of the children.

⁴⁴ Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012

⁴⁵ Article 39-The Constitution of India.

1.3 OFFENCE AGAINST CHILD

1.3.1 Sexual Offences

On December 11, 1992, India ratified the UN Convention on the Rights of the Child (CRC).⁴⁶ The State parties to the Convention shall adopt all appropriate public, private, and international measures to prevent the coercion or enticement of a minor to engage in any illegal sexual activity, the deceptive use of minors in prostitution or other illegal sexual activities, and the covert use of minors in explicit exhibits and media. Data retrieved from the National Crime Records Bureau (NCRB) database indicated an increase in the number of reported sexual offenses against minors. The Study on Child Abuse attested to this.⁴⁷ Additionally, it was believed that the general prevalent laws did not sufficiently address sexual assaults against minors. It should have been ensured that the child's interests as a casualty and an observer were met. In this way, it was suggested to establish a separate legal entity called Entomb Alia in order to protect children from sexual entertainment, rape, and lewd behaviour while also protecting their welfare throughout the legal process. This would be achieved by combining systems designed with children's needs in mind for offense reporting, proof recording, investigation, and preliminary hearings, as well as allowing the establishment of special courts for quick preliminary proceedings. Under the prior legislation, assault had to be completed with sex. The legislation that was in existence at the time also provided a vague guarantee. If it turned out that non-penile organs or objects were used for the infiltration, courts had no legal recourse and might hold the accused accountable for a more serious crime.

A 10-year-old child was hospitalized in a case that is still being investigated from a Kanpur town after a young woman tried to have sexual relations with him. The incident happened in the Bidhnu territory town of Kulhauri when the 16-year-old girl tried to have sex with the boy from her area after luring him into her house.⁴⁸ The child sustained actual injuries to his reproductive organs throughout the endeavour and started to drain. Police claimed they were baffled as to what legal arrangement can stop the lawsuit while the child was receiving treatment at the Kanpur Hallet Medical Clinic.

⁴⁶ United Nations. Convention on the Rights of the Child, December 11, 1992

⁴⁷ National crime record bureau, 2023.

⁴⁸ Uttar Pradesh: 10-yr-old boy injured after girl forces him to have sex", Indian Express, Lucknow, Jun. 28, 2016.

"This circumstance and consequently the ensuing protest has gotten complicated because both the person in question and the attacker are juveniles," SSP Kanpur Shalabh Mathur stated.⁴⁹ According to reputable experts, a case may be delayed under POCSO Section 8. These arrangements cannot be justified in any way. Identifying a certain sex as the perpetrator in cases of sexual violence, irrespective of the victim's identity, violates the constitutional criterion of balance and cannot in the slightest be considered "reasonable."⁵⁰

The sexual offences can be classified as:

- (a) quid pro quo
- (b) hostile workplace

Sexual harassment can be in various forms. It can be in the form of physical harassment or mental harassment. Even coercion or any situation that tends to create a hostile working environment refers to harassment. Lewd behaviour that makes a threatening or oppressive workplace is restricted by law in the United States. This type of lewd behaviour can incorporate conduct of bosses, collaborators, and non-representatives at a work site or business-related site.

Moreover, the survivor of the provocation need not really have been the immediate objective of the conduct. Instances of bothering conduct that can make an antagonistic or harsh workplace incorporate the showcase of explicit pictures or kid's shows, contacting and getting, sexual comments or jokes and the physical obstruction with development. An offended party doesn't have to show that an unmistakable business activity or financial injury, for example, a release, downgrade or an adjustment regarding work has happened so as to have a significant case for unfriendly workplace badgering. Courts have held the two managers and harassers subject for harms in instances of provocation that makes an injurious workplace.

These harms grant stem to a limited extent from research which exhibits that ladies can experience the ill effects of badgering whether it brings about the departure of work advantage. To demonstrate a noteworthy case of unfriendly workplace, the badgering must be "adequately extreme or inescapable 'to modify the states of the casualty's business and make an injurious workplace.'" Under this norm, a solitary occurrence

⁴⁹ Indian Express- "10 year old boy injured after girl forces him to have sex", 2016.

⁵⁰ Ibid

may comprise provocation, particularly if the episode is delayed, hostile and intense in nature, e.g., sexual contacting or attack. A mix of occasions with shifting measures of reality and recurrence may likewise establish badgering.

At the start it tends to be reasoned that the POCSO is an inadequate law and its deficiencies ought to be taken out to make it a more powerful law.⁵¹ Marking someone as guilty based only on their sexual orientation is inappropriate and stems from the same antiquated mindset that the IPC's nineteenth-century authors held. Claiming that women don't subject young male children to such sexual abuse is erroneous and disconnected from reality. Given the attraction of other genders, it is very possible for a woman to be the perpetrator in the event that a male child is abused sexually.

Under Section 8, female offenders may be reserved only for the offense of "rape," for which incarceration for a maximum of five years is the recommended punishment. There have been cases in the recent past of women and young women exposing male children to strong sexual movements. In addition to the law's bias towards certain sexual orientations, the 2012 version of the law has other shortcomings. Section 27(2)⁵² of POCSO orders that in the event of a female youngster or juvenile casualty, The clinical evaluation should be completed by a female professional. while Section 166A⁵³ of IPC which commands the public authority clinical official on the job to look at the assault casualty as a matter of course, regardless of the sexual orientation of the official while. The arrangements struggle when a female specialist isn't free.⁵⁴

This should be settled and the law should be revised appropriately. Additionally, the treatment cost is in all probability costly for the casualty's family and consequently, the state should bear it when the previous can't. Likewise, the law neglects to perceive consensual sex between two youths or between a juvenile and a grown-up with an age hole of under 3 years as a non-criminal demonstration, in contrast to the US. The arrangements for a similar should be made.

⁵¹ Protection of children from sexual offence,2012

⁵²Sec-27(2) In case the victim is a girl child, the medical examination shall be conducted by a woman doctor, Protection of children from sexual offence,2012

⁵³ Indian Penal Code,1860

⁵⁴ Ibid

Several states recognise marriage between people under the age of eighteen, even though it is illegal under the Protection of Children from Sexual Offences Act, 2012.⁵⁵ Thus, sex between such wedded people is a wrongdoing according to the POCSO however substantial as indicated by the individual laws. This contention should be set out to build up a uniform law across strict lines. Another law, the Prohibition of Child Marriage Act of 2006, is an addition to this.⁵⁶ that determines whether a male (≥ 21 years) and a female (≥ 18 years) are old enough for their marriage to be approved. In spite of the fact that section-3⁵⁷ of the 2006 Act makes such marriage as 'voidable' at the occurrence of the gatherings, it has given the ambit of abuse because of both of the gatherings who when exhausted in the wedding connection can simply leave it and guarantee that they were explicitly attacked according to the arrangements of the POCSO, also that the Act doesn't discuss 'assent'.

The 2006 Act, POCSO, and the particular legislation should all be suitably and jointly amended by the Parliament to implement the three without dispute. Likewise, preparations for a similar should be conducted under the Act in order to prepare clinical experts, educators, backers, and legislation authorized agencies. Furthermore, credible signs of genital trauma are rarely discovered in cases of child sexual abuse.

The evaluation of victims of child sex abuse necessitates unique skills and methods in gathering medical histories, discussing legal issues, and performing clinical assessments. Experts in emotional wellness should therefore be included in the casualty's follow-up care in order to monitor the emergence of mental health problems. This involves providing individual counselling, family treatment, and rehabilitation. Only in rare cases is the picture of the child and his family secured in lieu of disclosing such child sexual abuse. However, such sexual abuse must be addressed without revealing information about the child or the family in order to prevent the wrongdoers from feeling warm, which will serve as a deterrent to others who would do similar crimes.

⁵⁵ The Protection of Children from Sexual Offences Act, 2012, §§ 5(b), 5(c), 24-28, 33, 37, No. 32 of 2012.

⁵⁶ Prohibition of Child Marriage Act, 2006 (The Prohibition of Child Marriage Act, No. 6 of 2007, India Code (2007))."

⁵⁷ Section 3 of the Prohibition of Child Marriage Act, 2006 (The Prohibition of Child Marriage Act, No. 6 of 2007)

The current enactment for condemning sexual offenses against youngsters was a truly necessary piece of enactment. The settling interaction for the equivalent ought to be made more straightforward and the part of police in such offenses substantially briefer, so that individuals sense a sensation of conflict and believability in the entire cycle from commencement to arbitration.

The obstruction impact which this demonstration renders is likewise adequate, however to survive and kill this issue from the grassroots level, the aggregate awareness among the majority ought to be unadulterated and should incorporate the sensations of affection and care.

One of the issues looked by casualties is demonstrating the age of the kid. Since the POCSO Act is silent regarding the reports that should be taken into account while determining the child casualty's age, Rule 12's arrangements⁵⁸ The POCSO Act is silent on the reports that should be taken into account while determining the age of the child victim, thus courts have read Rule 12 of the Juvenile Justice Rules and concluded that they also apply to child victims.

This standard perceives just the birth declaration, the school authentication of the youngster, or the registration testament. Notwithstanding, youngsters who are simply ready to create different records even an authoritative archive like an identification need to go through a bone hardening test. This test can give a best guess of the age of the kid, best case scenario. There should be a reasonable arrangement in the POCSO Act that sets down what records ought to be considered for demonstrating the age of the youngster, and whether the opportunity to be vindicated ought to be given to the kid if the solidification test can't give a definite appraisal.

Like the law of assault under the IPC⁵⁹. The pronoun utilized for the blamed is "he", in this manner, once more, just a male can be reserved for the offenses under the applicable arrangements of the POCSO Act. However, in contrast to assault, a casualty under the POCSO Act can be any kid regardless of the sexual orientation, the denounced still must be a male and females are again given a defensive safeguard, for no good reason. Saying that females don't expose kids to strong rape is false.

⁵⁸ Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007

⁵⁹ Sec-351, Indian Penal Code, 1860

These are clear instances of the unexplained sex predisposition in the laws identifying with sex in India. Additionally, since the POCSO Act just investigates the age viewpoint, an adolescent young lady underneath the age of 18 who encounters coercive rape may later have the kid booked under the IPC.⁶⁰ Yet, the other way around will not be valid because of the one-sided definition. A lady who submits a like offense can be reserved distinctly for rape under the POCSO Act,⁶¹ the discipline in that being considerably less contrasted with rape under the IPC.

The POCSO Act's mechanism for providing quick equity to children who have survived rape is one of its key principles. Nevertheless, a number of actual institutional barriers affect children under the age of eighteen's legal security.⁶² The procedure for child declaration and completion of the preliminary set down is a notable example. in Section 35⁶³ of the POCSO Act. This requires the kid declaration to occur inside a month of comprehension by the Court, and the preliminary inside a time of something very similar. Notwithstanding, these arrangements are more regularly ridiculed than followed because of the overburdened idea of courts in India.

The tendency of legal counsel to accept suspensions or dismissals brought on by external factors, such as court strikes, is a related problem. In these situations, the victim ends up being called to court repeatedly, or the conference can be rescheduled for as long as six or seven months after the incident is resolved. This lessens the likelihood that the victim will be able to recall the specifics of what happened at that moment. Sexual harassment, including natural or unnatural sex, as well as sexual perversions, can also be considered harassment.

The two Houses of Parliament passed the Protection of Children Against Sexual Offenses Act, 2012 on May 22. The law defines many forms of sexual offenses against minors and imposes penalties for them. According to the report submitted to the relevant Ministry, approximately 53% of the children who were met had experienced some form of sexual abuse.⁶⁴ Most activists view the law as an invitation-only initiative because it is gender-neutral (protecting both male and female children), clearly defines

⁶⁰ Sec-375, Indian Penal Code, 1860

⁶¹ The Protection of children from sexual offences Act, 2012

⁶² The Protection of Children from Sexual Offences Act, No. 32 of 2012

⁶³ Section 35 of the POCSO Act outlines the procedure for conducting a speedy trial for offenses under the Act (The Protection of Children from Sexual Offences Act, No. 32 of 2012)

⁶⁴ NCRB Data

the violations, and includes some kid-friendly procedures for disclosure, documentation of evidence, investigation, and punishment of offenses.

Notwithstanding, the issue old enough of assent has created some debate. Period of agree alludes to the age at which an individual is viewed as able to do lawfully giving educated agree to sexual acts with someone else. Under the watchful eye of this law was passed, the time of agree was viewed as 16 years (aside from if the lady was hitched to the charged, in which case it might be lower). Sec. 375⁶⁵ of the IPC, 1860 states any sex with a lady who is beneath the age of 16 years is viewed as "assault". The assent of the individual is insignificant. This post gives a preview of the key arrangements of the Act, the discussion encompassing the questionable arrangement and an examination of the related law in different nations. The Government of India has enacted different youngster driven Acts towards security and advancement of rights of kids. While the JJ Act, 2015⁶⁶ guarantees the wellbeing, security, poise and prosperity of kids, the POCSO is a far-reaching law that gives assurance to kids from the offenses of rape, lewd behaviour and sexual entertainment. It shields the premiums of the youngster at each phase of the legal cycle by fusing kid inviting components for revealing, recording of proof, examination and expedient preliminary of offenses through assigned Special Courts. Notwithstanding, public and police are the subjects of the State as provided under the Seventh Schedule⁶⁷ to the Constitution of India.

1.4 KEY PROVISION OF POCSO ACT

A comprehensive legislation dealing with sexual offenses against minors in India is the Protection of minors from Sexual Offenses (POCSO) Act, 2012. It was passed in order to protect minors from sexual assault, harassment, and pornography while also ensuring that their rights are protected throughout the entire legal process. The POCSO Act establishes severe penalties for crimes against minors and defines a child as any individual under the age of eighteen. The Act offers protection, care, and rehabilitation for young victims, acknowledging their unique needs.

Some of the key provisions of the POCSO Act are as follows:

⁶⁵ Indian Penal Code, 1860

⁶⁶ Juvenile justice Act, 2015

⁶⁷ Art-248, 249, 258- Seventh Schedule Of Indian Constitution

1. **Definition of Sexual Offenses:** Sexual offenses such as child pornography, sexual assault, and sexual harassment are defined by the POCSO Act. Penetrative sexual assault, non-penetrative sexual assault, and sexual actions with a minor are all considered forms of sexual assault. Any either verbal or nonverbal acts of a sexual character, such as exhibiting pornography or making obscene remarks, are considered instances of sexual harassment. Any visual representation of children performing sexually explicit behaviour is considered child pornography.⁶⁸
2. **Stringent Punishments:** Severe penalties for violations against minors are provided under the POCSO Act. A minimum of ten years in imprisonment, with a possibility of a life sentence, is the penalty for penetrative sexual assault. Sexual assault that is not penetration-based is penalized by a minimum of three years in imprisonment and a maximum of five years. The minimum sentence for sexual harassment and child pornography is three years in prison, with the possibility of a five-year sentence.⁶⁹
3. **Special Courts:** The POCSO Act requires the establishment of special courts for hearing matters involving child victims. Trials in these courts must be held in camera and without the public's presence.
4. **Protection of Child Victims:** The POCSO Act provides protection, care, and rehabilitation for child victims while recognizing their specific requirements. It provides for a child-friendly individual to be assigned to help a child during the trial. In addition, the Act prohibits releasing the child victims identify and arranges for the victim's statement to be recorded in front of a magistrate.⁷⁰
5. **Obligations of Law Enforcement Agencies:** Law enforcement agencies are governed by a number of regulations under the POCSO Act that ensure that minors are protected from sexual offenses. It requires that allegations of sexual offenses against minors be registered and that any police officer with a rank higher than inspector look into these complaints. The Act also mandates that any complaint of sexual offenses against a minor be submitted to the child welfare committee by the police.

⁶⁸ Team, ClearIAS. "POCSO Act (Protection of Children from Sexual Harassment Act, 2012)." ClearIAS, 24 Jan. 2022, (<https://www.clearias.com/pocso-act/>. Accessed 18 Apr. 2023.)

⁶⁹ Sec-4, "POCSO Act (Protection of Children from Sexual Harassment Act, 2012)

⁷⁰ Sec-33 The protection of children from sexual offence,2012

6. **Prevention of Sexual Offenses:** The POCSO Act provides aimed juvenile police units to handle sexual offenses against minors in recognizing the need to prevent these crimes. The Act also mandates that sexual offenses against minors committed by those in positions of authority such as physicians, educators, and guardians for children be reported.

In conclusion, the POCSO Act provides an in-depth legal structure that safeguards Indian children against sexual assaults. The Act offers protection, care, and rehabilitation for young victims while acknowledging their particular requirements. The POCSO Act establishes numerous requirements on law enforcement organizations to guarantee the protection of children from sexual offenses and imposes severe penalties for crimes against minors.

- i. Section 5 of the POCSO Act stipulates the penalty for severe penetrative sexual assault, which covers assault by a family member of the child victim or by someone in a position of trust or authority. For aggravated penetrative sexual assault, the penalty consists of a fine and a minimum of ten years in jail, with the possibility of a life sentence.⁷¹
- ii. Section 6 of the POCSO Act addresses the penalties for sexual assault on children less than twelve. Such an infraction is punishable by a fine and a minimum sentence of twenty years in jail, with the possibility of a life sentence.⁷²
- iii. Section 7 of the POCSO Act addresses the penalties for sexual assault against a minor who is between the ages of twelve and sixteen. A fine and a minimum of ten years' jail, with the possibility of life imprisonment, are the penalties for this kind of offense.⁷³
- iv. Section 9 of The POCSO Act stipulates penalties for utilizing minors in pornographic content. Such an infraction is punishable by a fine and a minimum sentence of five years in jail, with the possibility of a life sentence.
- v. Section 10 of the The POCSO Act addresses the penalties for the most severe type of using a child for pornographic purposes, which includes using a kid for pornographic purposes for profit, by an official or trusted individual, or by a

⁷¹ Team, ClearIAS. "POCSO Act (Protection of Children from Sexual Harassment Act, 2012).

⁷² Ibid

⁷³ Ibid

child victim's family member. A fine and a minimum of ten years' jail, with the possibility of life imprisonment, are the penalties for this kind of offense.

- vi. Section 11 of the POCSO Act deals with punishment for the offense of sexual harassment of a child. The punishment for such an offense is imprisonment for a term of three to five years, along with a fine.
- vii. Section 13 of the POCSO Act provides for the establishment of special courts for the speedy trial of offenses under the Act. The Act also provides for the appointment of special public prosecutors for conducting the cases before these special courts.⁷⁴

All things considered, the POCSO Act offers a robust legal framework to safeguard minors against sexual assaults and imposes harsh penalties on those who violate it. In order to ensure that the law is implemented effectively, the Act also provides for the prompt trial of cases and the creation of special courts and special public prosecutors.

1.5 SCOPE AND APPLICABILITY OF POCSO ACT IN INDIA

A comprehensive piece of legislation, the Protection of Children from Sexual Offences (POCSO) Act, 2012, attempts to protect minors from sexual abuse, exploitation, and harassment. The statute, which covers a wide range of sexual offenses against children, including sexual assault, sexual harassment, and pornography, is applicable to all children under the age of eighteen.⁷⁵

The POCSO perform defines "sexual assault" as any non-consensual sexual activity with a child that involves coercion or the use of force, and "child" as any individual under the age of eighteen. The act also defines "child pornography" as any visual representation of pornographic conduct involving a child and "sexual harassment" as any unwanted physical contact, advances, demands or requests for sexual favors, or sexually suggestive statements.

The act is not exclusive to situations in which a male perpetrator is involved; it applies to both boys and girls. The POCSO Act also establishes special courts to expedite the adjudication of cases pertaining to sexual offenses against minors and imposes severe

⁷⁴ Ibid

⁷⁵ Implementation Issues with the POCSO Act, Drishti IAS, (<https://www.drishtiiias.com/daily-updates/dailynews-editorials/implementation-issues-with-the-pocso-act> (last visited May 10, 2023).

penalties on offenders, including life in prison and fines. A mandatory reporting provision for sexual offenses against minors is included in the act. This means that anyone who becomes aware of such an offense must report it to the municipal child welfare committee, the special juvenile police unit, or the police. Failing to disclose such offenses may result in a fine or up to six months in imprisonment. Extraterritorial jurisdiction of the POCSO Act means that it covers sexual offenses against minors perpetrated by individuals of any nationality, both inside and outside of India, as long as the minors are Indian.

In conclusion, the POCSO Act is a key component of law with a wide range of applications that aim to protect minors from sexual offenses. The statute includes regulations requiring the reporting of sexual offenses against minors and establishes severe penalties for perpetrators. Due to its international jurisdiction, those who commit crimes against children outside of India have no way to avoid punishment.

The POCSO Act covers a wide range of sexual offenses, including penetrative and non-penetrative assault, sexual harassment, and pornography, and it is applicable to all minors under the age of eighteen. Both boys and girls are covered by the Act, which acknowledges that boys are open to being abused sexually. The Act provides severe penalties for offenders, including fines and a minimum of three years' imprisonment, with the possibility of a life sentence. Repeat offenders face significantly harsher penalties, such as life in imprisonment or even death. Because the Act provides extraterritorial jurisdiction, it can be applied to crimes committed outside of India by Indian citizens or residents. Additionally, the Act provides mechanisms for special courts to guarantee prompt trials and safeguard the names and experiences of witnesses. In addition, the POCSO Act mandates that the government implement policies and plans aimed at stopping child sexual abuse and helping victims get back on their feet. The Act requires that a special fund be established in order to carry out these initiatives.

In summary, the POCSO Act offers an extensive legal framework for safeguarding minors against sexual assaults. It acknowledges the vulnerability of both girls and boys to sexual assault and has a broad scope and application. The Act includes provisions for victim protection, special tribunals, and harsh penalties for criminals.

1.6 CHALLENGES FACED BY POCSO ACT

Despite the various challenges faced, the POCSO Act has been successful in addressing the issue of child sexual abuse and exploitation to some extent. It has raised awareness about the issue and provided legal protection to children who are victims of sexual abuse. However, there is still a long way to go in terms of effective implementation of the act and providing justice to the victims.⁷⁶

One of the major challenges is the lack of coordination between various stakeholders, such as law enforcement agencies, child protection agencies, and NGOs, in dealing with cases of child sexual abuse. There is a need for a coordinated approach and the establishment of a multi-disciplinary team to handle cases of child sexual abuse, which includes police officers, forensic experts, medical professionals, and child psychologists.⁷⁷

Another challenge is the lack of sensitivity and empathy towards victims of child sexual abuse. Many victims are not believed or are blamed for the abuse they have experienced. This can cause immense trauma and shame for the victim, leading to further psychological harm. There is also a lack of awareness and understanding about child sexual abuse among the general population, which can lead to a culture of silence and impunity for perpetrators.

Another significant challenge is the lack of adequate resources and infrastructure for the protection of child victims and the investigation and prosecution of offenders. Many police stations and courts lack the necessary training, equipment, and personnel to handle cases of child sexual abuse. This can lead to delays in justice for victims, and can also discourage them from reporting abuse in the first place.

Additionally, there are cultural and societal factors that contribute to the problem of child sexual abuse in India. Patriarchal attitudes, gender inequality, and a reluctance to discuss sexuality and sexual issues openly can create an environment in which abuse is

⁷⁶ Implementation Issues with the POCSO Act, Drishti IAS, (<https://www.drishtiiias.com/daily-updates/dailynews-editorials/implementation-issues-with-the-pocso-act> (last visited May 10, 2023)).

⁷⁷ NCRB data

more likely to occur and less likely to be reported. Poverty and lack of education can also contribute to the vulnerability of children to abuse.

Overall, there are numerous challenges that must be addressed in order to effectively combat child sexual abuse in India. These challenges require a multi-faceted approach, including education and awareness campaigns, training and resources for law enforcement and legal professionals, and systemic changes in societal attitudes and norms. The Protection of Children from Sexual Offences Act, 2012 is an important step towards addressing these challenges, but much work remains to be done in order to ensure the safety and protection of all children in India. For disobeying both that court and one of its lower courts. The word "including" broadens and extends the range of authority.⁷⁸

⁷⁸ Public Awareness Activities and Programs, Child Welfare Information Gateway, (<https://www.childwelfare.gov/topics/preventing/communities/activities-programs/> (last visited May 10, 2023)).

CHAPTER 3

Legislative Frame for Child Offence in India

3.1 CONSTITUTIONAL PROVISIONS

The Indian Constitution guarantees the right to life and personal liberty to all Indian citizens, including minors. According to the Supreme Court of India, the protection of one's life and personal liberty under Article 21 of the Constitution is part of the right to a safe and secure childhood free from abuse and exploitation.

Women and children shall be given special regard, according to Article 15(3) of the Constitution. This article gives the State the power to pass laws that are specifically designed to safeguard children, including those that deal with assault, child labour, and education. Article 21 of the Constitution guarantees the right to life and personal liberty, which includes the right to a dignified existence. The right to live with dignity is one fundamental right that children already enjoy.

The Constitution prohibits forced work, including child labour, and the trafficking of individuals. The State must enact legislation that prohibits and punished the exploitation of minors, according to the Constitution. Under the Constitution, children under the age of 14 are not allowed to work in any unsafe industry or occupation (Article 24). The purpose of this article is to protect minors from dangerous and harmful work environments.⁷⁹

3.1.1 FUNDAMENTAL RIGHTS

Part III – Fundamental Rights

- a. Article 14 - It is the State that tends to ensure that within the territory of India, all persons are treated equally before law and that everyone is provided equal protection.
- b. Article 15(3) - The State has powers to provide special provisions to children and women. Nothing can stop the State from making such provisions for the benefit of children and women.

⁷⁹ The Indian Constitution, 1860

- c. Article 21 - This Article provides protection against convictions for offences.
- d. Article 21 A - This Article refers to the responsibility of the State in providing compulsory and free education to all the children between the age group six to fourteen years.
- e. Article 23 - This Article pertains to prohibition of trafficking in humans and also against force labour.⁸⁰
- f. Article 24 - The Article provides that no child can be employed in any work in a factory or any workplace who is up to fourteen years. Children can also not be employed in any hazardous employment.

“3.1.2 DIRECTIVE PRINCIPLES OF STATE POLICY PART”

IV- Principles of State Policy Part

- a. Article 39 (e) - This Article states that the young age of the child should not be harassed and that they cannot be forced to choose a profession that is not suited to their strength or age.⁸¹
- b. Article 39 (f) - This Article indicates that kids should be given chances and certain facilities to be provided to children so that they develop in healthy way against exploitation. Apart from this, they should be entitled to legal aid as well as speedy trial.
- c. Article 41 - This Article indicates that the State undertakes the responsibility for providing education, employment and also to provide help to those who are not employed. This Article also states that those who cannot take care of themselves such as old age people, then in that case, it is the responsibility of the State to take care of them.
- d. Article 44 - This Article provides for Uniform Civil Code stating that it is the duty of the State to ensure that a Uniform Civil Code is followed throughout the territory of the country i.e. India.⁸²
- e. Article 45 - This Article states that it is the responsibility of the State to ensure that free and compulsory education is provided to all children till the age of fourteen years.

⁸⁰ Amisha, right against Exploitation, Lex Forti (2021),(<https://lexforti.com/legal-news/right-against-exploitation-article-23-24/> (last visited May 10, 2023).

⁸¹ Indian Constitution, 1950 (Directive Principles of State Policy (DPSP)

⁸² Ibid.

- f. Article 46 - The Articles deals with maintaining the educational and economic interests of the scheduled Tribes, Scheduled Castes and other weaker sections of the society and the State ensures all weaker sections of the society are taken care of and protected from any form of exploitation or injustice in the society.⁸³
- g. Article 47 - This Article indicates that the responsibility of the State for raising living standard and also improve the health of the citizens.
- h. Article 51 (c) - As per this Article, it is the responsibility of the State to promote respect for international agreements, international conventions, international treaties and international laws.
- i. Article 51 A (k) - According to this Article, it is the duty of a parent or guardian to make sure that a kid who is between the ages of six and fourteen receives education.

3.1.3. Constitutional Remedies in case of Infringement of Rights of a Child

- i. Article 32 - Article 32 provides right to constitutional remedies. Under this Article, the individuals have the right to move Supreme Court so that justice could be availed in case of infringement of their rights. As such, the Hon'ble Supreme Court is given the authority to issue orders or directions in the form of writs.⁸⁴
- ii. Article 226 - Article 226 provides right to constitutional remedies. Under this Article, the individuals have the right to move High Court so that justice could be availed in case of infringement of their rights. As such, the Hon'ble High Court is given the authority to issue orders or directions in the form of writs.
- iii. Writs - As far as the Writs are concerned, they are discretionary in nature. Following are various types of Writs as available under Article 32:

Habeas Corpus - "You have the Body" - Finding assistance from wrongful imprisonment is one of the main objectives of this Writ. It suggests that in the unlikely event that someone is detained against their will, they have the right to file a habeas corpus under Article 32. This type of Writ is directed towards self-aggrandizing actions

⁸³ Ibid.

⁸⁴ Legal service in India-Types Of Writs In Indian (Constitution(<https://legalserviceindia.com/legal/article-9960-5-types-of-writs-in-indian-constitution.html>)).

that will generally violate certain fundamental rights under Articles 19, 21, and 22 of the Indian Constitution. A writ of habeas corpus is granted when someone is detained in jail or under false pretenses without a court order. If a convicted criminal believes that his conditions of confinement have been inhumane and that they fall short of the least reasonable standards for human treatment, he may be able to seek the assistance of the court by filing an application for a "writ of Habeas Corpus." The court issues a summons to the prison director who is keeping an individual under guardianship, requesting that the prisoner be turned over to the court so that an appropriate authority can determine whether the prisoner is indeed being held, and if not, when he should be removed from care.

Quo Warranto - The Writ of Quo Warranto suggests "By what infers" in place of "By what Means." This writ is issued to prevent someone from performing in an open office capacity for which they are unfit. It is invoked in situations involving public working environments. Even though the term "office" in this context does not mean "seat" in a legislative body, a quo warranto can be issued regarding the Chief Minister's position holding an office. However, a quo warranto cannot be issued against a Chief Minister if the expert is unable to demonstrate that the Minister was not properly selected or that he is not legally qualified to hold the position. It cannot be used against an Administrator who has been appointed by the legislative body to lead Municipal Corporation upon its decline. Anybody who doesn't care about the facts can pursue a path to public office, regardless of whether their fundamental rights or any other legitimate rights have been violated.

Mandamus - "We Command" is implied by the Latin phrase "Writ of Mandamus." This writ is granted by a preferable court over a lower court or government official for the proper exhibition of required and just administrative commitments. This writ cannot, in any event, be granted against the Governor and the President. Its fundamental goal is to guarantee that the authority or obligations are appropriately met and are not mismanaged by the pioneer or the association. In a same vein, it protects everyone against the administrative entities' mistreatment of intensity. Since the mandamus specifically affects an individual's benefit and is in the nature of a public commitment, it is "neither a writ plainly nor a writ of right anyway that it will be authorized, if there

isn't any more acceptable fix." The individual applying for mandamus should be sure that he has the real choice to compel the foe to do or go without achieving something.⁸⁵

Certiorari - "To be Certified": The Certiorari Writ demands assurance. When there is an unwarranted ward exercise and the outcome of the case depends on it, it is granted. The parties affected may move the writ to higher courts, such as the Supreme Court or the High Court. The Writ of Certiorari may be issued in two different ways. Certiorari should only be granted in response to legal or semi-legal solicitations, not only those that are peaceful or legitimate.

Prohibition - "To Stop or Prohibit" is a writ that directs a subordinate court to cease pursuing any legal actions that are prohibited by law. Its primary purpose is to prevent an average court from becoming too big for its area or from operating against Natural Justice. It is transferred from the High Courts to a lower court, or a subordinate court, rather than preventing it from carrying out a legal obligation. It is usually granted when subordinate courts act excessively in their respective jurisdictions. It also usually gets issued if the court holds demonstrations away from its location. Additionally, the lower court will surely cease operations after issuing the writ, and it should be granted under the watchful eye of the lower court passes a request. Preclusion is a type of remedy that takes the form of a preventive writ. The maxim "Counteraction is superior to repair" applies here.

Public Interest Litigation - A Public Interest Litigation (PIL) is presented in an official courtroom not by the distressed party however by a private gathering or by the court itself. PILs have become a strong device for authorizing the legitimate commitment of the chief and the council. The main target behind PILs is guaranteeing equity to all and advancing the government assistance of the individuals. It is commonly used to protect bunch interests and not singular interests, for which Fundamental Rights have been given. The Apex Court of our country and the High Court's reserve the option to give PILs. The idea of PILs comes from the intensity of legal audit. The idea of PILs has weakened the rule of locus standi, which infers that solitary the individual/party whose rights have been encroached upon can document petitions. It has most preferably and

⁸⁵ Ibid.

regularly been utilized to challenge the choices of public specialists by legal survey, to audit the legitimacy of a choice or activity, or an inability to act, by a public body.⁸⁶

CRIMINAL LAW PROVISIONS FOR CHILD PROTECTION IN INDIA

3.1.4 INDIAN PENAL CODE

The Indian Penal Code (IPC) which will be replaced by (Bhartiya Nyaya Shahita) is the primary criminal code of India. It contains several provisions that deal with child abuse and exploitation. Some of the relevant provisions are as follows:

Section 83- This Section states that A youngster who is older than seven but younger than twelve, and who lacks the mental maturity to comprehend the nature and ramifications of his actions on that particular occasion, does not commit any crimes. For instance, a youngster 11 years old with no comprehension of the idea of his demonstration can be exculpated from the obligation yet an offspring of 8 years who has enough development and comprehension to of the results, can be held subject. The development or comprehension of the youngster can be derived from the conditions including the wrongdoing and is diverse in various cases.⁸⁷

Section 292- This section addresses pornographic content that appears on paper, in writing, on drawings, figures, paintings, books, representations, pamphlets, or on any other item that tries to convey or circulate sexual desire. According to this section, everything of the sort is indecent.

Section 293-This clause states that any anybody who engages in the sale, hires, distribution, exhibition, or circulation of any pornographic content featuring a person under the age of twenty, or even attempts to do so, may face consequences.

Section 305- According to this section, anybody under the age of eighteen, insane, foolish, or intoxicated who commits, attempts to commit, or aids in the commission of suicide will be punished with life in prison or the death penalty, among other penalties.

⁸⁶ Legal service in India-Types of Writs in Indian Constitution(<https://legalserviceindia.com/legal/article-9960-5-types-of-writs-in-indian-constitution.html>).

⁸⁷ IPC Section 83 - Act of a child above seven and under twelve of immature understanding, A Lawyers Reference, <https://devgan.in/ipc/section/83/> (last visited May 10, 2023).

Section 317-This section addresses the mistreatment of children under the age of twelve. If a child under the age of twelve is exposed to abandonment, either by the person housing the child or by the person caring for the child, they will be penalized with either a fine or incarceration, or both.

Section 361-involving in activities such as tempting a child to run away from home, from parents, or from guardians against the will of guardians, parents, or caretakers is considered kidnapping, and the perpetrator will be prosecuted for the crime of kidnapping from lawful guardianship of the individuals.

Section- 363 A - This Section states that if anyone kidnaps a minor child who is in the custody of his parents or caretakers or guardian and tends to take the custody of minor for purposes such as for employment or begging, then in that case, the said person will be punished with imprisonment as well as fine. The imprisonment may extent in this case to ten years.⁸⁸

Section 366 A - According to this section, anyone who kidnaps or abducts a woman with the intention of forcing her into an arranged marriage against her will, engaging in illicit sexual relations against her will, or engaging in any other type of sexual activity against her will faces jail time and a fine.

Section 366 B - This section makes it very clear that anyone who engages in the importation of a girl under the age of twenty-one with the intent to pressurize her or who attempts to enter into an illicit relationship with another person through seductive means will be punished with either a fine or imprisonment.

Section 369 - This section stipulates that if an individual engages in kidnapping or abduction of a child under the age of ten with the intention of deceitfully obtaining the child's movable property, the child may face imprisonment for up to seven years, either in a rigorous or simple capacity, along with a subsequent fine.

Section 372 - Should an individual engage in the sale of a person under the age of eighteen or engage in the hiring of a youth under the age of eighteen for any reason—including employment, commercial sexual exploitation, illicit physical relationships with others, or unlawful purposes—they will face penalty and imprisonment.⁸⁹

⁸⁸ Ibid

⁸⁹ Ibid

Section 373 - Anyone found guilty of purchasing a child under the age of eighteen faces both fines and imprisonment under this section. The individual will face consequences if the minor is purchased for the purpose of employment, prostitution, illegal sex, or any other illegal or immoral behaviour.

Section 375 - Anyone who rapes a woman, approaches her for a physical relationship against her will or consent, deceives her, does so while intoxicated, or uses any other method to obtain a sexual relationship without the woman's consent—especially if the victim is under the age of eighteen—should face consequences.

Section 376 - This section makes it extremely clear that anyone who rapes a woman while working as a public worker, police officer, or other person in a position of authority will face consequences. According to the Section, incarceration under such conditions cannot be less than ten years, and it may even be increased to life in prison.⁹⁰

3.1.5 JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT

The juvenile justice system in India is comprised of a collection of legislation designed to safeguard the legal rights of kids involved in legal issues and to aid in their rehabilitation and reintegration into society. The system is governed by the Juvenile Justice (Care and Protection of Children) Act, 2015, which supersedes the Juvenile Justice (Care and Protection of Children) Act, 2000. This law is founded on the restorative justice principle, which encourages young offenders to be rehabilitated and reintegrated into society rather than being punished.⁹¹

Juvenile Justice Boards (JJBs) and Child Welfare Committees (CWCs) are to be established in accordance with the Juvenile Justice (Care and Protection of Children) Act, 2015. When a child is in trouble with the law, JJBs are in charge of identifying the type of offense they have committed and choosing the best course of action. The care and protection of children in need, such as those who are abandoned, orphaned,

⁹⁰ IPC Section 376 - Punishment for rape, A Lawyers Reference, <https://devgan.in/ipc/section/376/> (last visited May 10, 2023).

⁹¹ vikaspedia Domains, <https://vikaspedia.in/education/child-rights/living-conditions-in-institutions-forchildren-in-conflict-with-law/objectives-and-approach-of-child-care-institutions> (last visited May 10, 2023).

have experienced abuse, or have been the target of exploitation, falls within the purview of CWCs.

Additionally, the act calls for the creation of special homes and observation houses for the purpose of rehabilitating children who have run afoul of the law. Special homes are for kids who have been determined to be in legal trouble and have been sent for rehabilitation; observation houses are for kids who are awaiting trial or investigation.

A kid in conflict with the law is defined under the Juvenile Justice (Care and Protection of Children) Act, 2015 as an individual who is accused of committing a crime but has not reached the age of eighteen on the date of the offense. Children in legal trouble can be rehabilitated and reintegrated under the act, with an emphasis on their education, career training, and counselling.⁹²

One of the key features of the Juvenile Justice System in India is the provision for diversion. Diversion refers to the process of diverting children in conflict with the law away from the formal criminal justice system and towards rehabilitation and reintegration into society. The act provides for diversion at various stages of the justice process, including at the pre-trial stage, during the inquiry, and after the disposal of the case.

The Juvenile Justice System in India faces several challenges in its implementation, including a lack of infrastructure and resources, a lack of awareness and understanding of the system among stakeholders, and a lack of coordination among the various agencies involved in the system.

To sum up, the Indian juvenile justice system is a thorough legal structure designed to safeguard the legal rights of minors who are in trouble with the law and to facilitate their recovery and reintegration into society. The best interests of the child, involvement, protection of rights, and restorative justice form the foundation of the system. Although there are a number of obstacles to overcome before the system can be implemented successfully, efforts are being made in this direction.

The juvenile justice system in India has a number of challenges in its implementation, despite the provisions of the JJ Act. The lack of resources and infrastructure required for the system's effective functioning is one of the major issues. Probation officers,

⁹² Irgu.unigoa.ac.in.

social workers, and counsellors represent some of the highly qualified individuals who are in restricted supply and are essential to the rehabilitation and reintegration of minors involved in legal issues.⁹³

The failure of many parties involved in the juvenile justice system, including the police, courts, child welfare committees, and rehabilitation facilities, to communicate with one another is another problem. This lack of coordination generally leads to unsuccessful rehabilitation and reintegration efforts, delays in the proceedings, and a lack of accountability for the many stakeholders' actions.

In conclusion, the juvenile justice act provides an extensive legal structure for the prosecution and rehabilitation of juveniles who are in legal trouble. However, sufficient funding must be set apart and stakeholder coordination mechanisms need to be strengthened in order for the Act to be implemented effectively.⁹⁴

3.2 PUNISHMENT AND PENALTIES FOR OFFENCES UNDER POCSO ACT

The POCSO Act imposes stringent punishments for offenses committed against children and places several obligations on law enforcement agencies to ensure the protection of children from sexual offenses.

1. Section 5 of the POCSO Act provides for the punishment of aggravated penetrative sexual assault, which includes sexual assault by a person in a position of trust or authority or by a relative of the child victim. The punishment for aggravated penetrative sexual assault is imprisonment for a term of not less than ten years and may extend to imprisonment for life, along with a fine.
2. Section 6 of the POCSO Act deals with punishment for sexual assault on a child below twelve years of age. The punishment for such an offense is imprisonment for a term of not less than twenty years and may extend to imprisonment for life, along with a fine.⁹⁵
3. Section 7 of the POCSO Act deals with punishment for sexual assault on a child between the ages of twelve and sixteen years. The punishment for such an

⁹³Ibid.

⁹⁴ Socialresearchfountain.com.

⁹⁵ Karyir Riba- Implications and punishment (<https://arunachaltimes.in/index.php/2024/02/26/pocso-act-implications-and-punishment/>).

offense is imprisonment for a term of not less than ten years and may extend to imprisonment for life, along with a fine.

4. Section 9 of the POCSO Act provides for punishment for using a child for pornographic purposes. The punishment for such an offense is imprisonment for a term of not less than five years and may extend to imprisonment for life, along with a fine.
5. Section 10 of the POCSO Act deals with punishment for the aggravated form of using a child for pornographic purposes, which includes using a child for pornographic purposes for commercial purposes or by a person in a position of trust or authority or by a relative of the child victim. The punishment for such an offense is imprisonment for a term of not less than ten years and may extend to imprisonment for life, along with a fine.
6. Section 11 of the POCSO Act deals with punishment for the offense of sexual harassment of a child. The punishment for such an offense is imprisonment for a term of three to five years, along with a fine.
7. Section 13 of the POCSO Act provides for the establishment of special courts for the speedy trial of offenses under the Act. The Act also provides for the appointment of special public prosecutors for conducting the cases before these special courts.⁹⁶

Overall, the POCSO Act provides a strong legal framework for the protection of children from sexual offenses and provides severe punishment for those who commit such offenses. The Act also ensures the speedy trial of cases and provides for the establishment of special courts and special public prosecutors for the effective implementation of the law.

3.3 AMENDMENTS IN THE POCSO ACT,2019

The POCSO Act was amended in 2019 to increase the punishments for sexual offenses against minors in an effort to better protect minors from sexual assault and harassment. The attributes and futures of this amendment are as follows:

- Child abuse crimes are classified as gender-neutral by law.

⁹⁶ Ibid.

- The concept of "sexual assault" now includes the use of hormones or other drugs to force children to reach a sexual maturity level before they are ready to commit penetrating sexual assault.
- According to the Act, any visual depiction of child sexual behaviour, including photographs, films, digital images, and computer-generated images that are identical to real children, is considered child pornography.
- The Act is significant because it clearly defines child pornography and provides criminal and punishment grounds for it.
- The amendments also propose coordinating it with the IT Act and prohibiting the sending of pornographic materials to minors.
- The Act includes the death penalty to the list of punishments for sexual offenses against minors.
- Among the most important clauses is the one that states that anyone found guilty of committing intimate acts with minors under the age of sixteen faces fines and prison terms ranging from twenty years to life.
- In cases of aggravated penetrative sexual assault, the legislation increases the maximum sentence to the death penalty and the minimum term from 10 to 20 years.
- In order to discourage the use of children in pornography, the Act provides that offenders face a maximum five-year prison sentence and a fine.
- In the event of a second or subsequent conviction, the penalty would be a fine and up to seven years in jail.
- More than a thousand fast-track courts have been approved by the government to expedite the disposal of pending POCSO cases.⁹⁷

“PUNISHMENT FOR OFFENCES FOR USING THE CHILD FOR PORNOGRAPHIC PURPOSE”

“Offence”	Punishment under POCSO Act, 2012	Punishment under POCSO (Amendment) Act, 2019
“Using a child for obscene purposes”	“Maximum: 5 years”	“Minimum: 5 years”

⁹⁷ Implementation Issues with the POCSO Act, Drishti IAS, <https://www.drishtias.com/daily-updates/dailynews-editorials/implementation-issues-with-the-pocso-act> (last visited May 10, 2023).

“Using a child for obscene reasons that leads to intimate sexual assault”	“Minimum:10 years Maximum: Life Imprisonment”	“Minimum: 10 years (in case of a child below 16 years: 20 years) Maximum: life imprisonment”
“Use of child for pornographic purposes resulting in aggravated penetrative sexual assault”	“Life imprisonment”	“Minimum: 20 years Maximum: life imprisonment, or death.”
“Using a child for obscene reasons that leads to sexual assault”	“Minimum: Six years Maximum: Eight years”	“Minimum: Three years Maximum: Five years”
“Use of child for pornographic purposes resulting in aggravated sexual assault”	“Minimum: Eight years Maximum: 10 years”	“Minimum: Five years Maximum: Seven years”

3.4 CHALLENGES FOR EFFECTIVE IMPLEMENTATION OF CHILD PROTECTION LAW IN INDIA

India has gone many miles to establish an efficient legislative structure for child protection. However, many kinds of problems arise that make challenging for these laws to be implemented effectively. The difficulties encountered in implementing India's child protection legislation into practice will be covered in this part, along with suggested remedies.

INADEQUATE IMPLEMENTATION AND MONITORING MECHANISMS

The inadequate evaluation and execution approaches constitute a major challenge to the effective enforcement of child protection laws in India. Despite the existence of various laws and regulations aimed at safeguarding children, their efficient execution remains a difficulty because of insufficient resources and inadequately trained employees. A

comprehensive surveillance system is required to make sure that the laws and regulations are carried out as intended.⁹⁸

LACK OF AWARENESS AND SENSITIZATION

Another major limitation to the efficient execution of child protection legislation in India is the scarcity of knowledge and education among the parties involved, such as guardians, educators, and law enforcement organizations. The fact that so many Indians are unaware of the different child protection regulations and laws leads in their inefficient application.

To make sure that people are aware of the laws and policies pertaining to child protection, extensive awareness campaigns and sensitization initiatives are required.⁹⁹

DELAYED JUSTICE AND LOW CONVICTION RATES

The efficient implementation of child protection laws in India is also severely limited with low conviction rates and delayed justice. India's legal system is recognized for functioning gradually which causes victims of child abuse to wait longer to receive justice. Furthermore, the low conviction rates discourage victims from reporting the abuse and coming forward even more. Procedures for providing justice quickly and efficiently are required, as is the strengthening of the organization for investigation and prosecution.

INADEQUATE REHABILITATION AND SUPPORT FOR VICTIMS

Inadequate rehabilitation and support have been raised to victims of child abuse, resulting in enduring physical, psychological, and emotional ramifications for the victims. In order to provide for the care and protection of child victims, the POCSO Act requires the establishment of child welfare committees. But victims frequently receive minimal rehabilitation and support, forcing victims to deal with their trauma on their

⁹⁸ Esha Roy, 10 years of POCSO: An analysis of India's landmark child abuse law, *The Indian Express*, November 18, 2022, <https://indianexpress.com/article/explained/explained-law/10-years-of-pocso-an-analysis-of-indiaslandmark-child-abuse-law-8276030/> (last visited May 10, 2023).

⁹⁹ TNN, 'Awareness key to curbing Pocso cases in rural areas,' *Times Of India*, April 7, 2023, <https://timesofindia.indiatimes.com/city/thiruvananthapuram/awareness-key-to-curbing-pocso-cases-in-ruralareas/articleshow/99310717.cms> (last visited May 10, 2023).

own. To help trauma victims in their recovery, sufficient rehabilitation and support systems must be set into existence.

SOCIO-CULTURAL FACTORS

The efficient implementation of child protection laws in India is also severely restricted by a number of sociocultural factors. Children are abused and exploited in India because it is common for parents or guardians to take their children as their own. Furthermore, victims and their families may be reluctant to speak publicly about child abuse due to the stigma that is linked to doing so in society. It is important that society perspectives on children and their rights change, and that child-friendly environments be established.

3.5 LOOPHOLE IN POCSO ACT OF ,2012

Despite the fact that the Act is very imposing, the police and other parties involved in its execution have found the following of problems.¹⁰⁰

The following list includes a few of the flaws:

1. 1. If the investigating officer, the family, and the victim kid are willing to consent to a medical examination but the child refuses, what should be done? The POCSO Act does not provide any advice in this regard.
2. 2. A female doctor is required to conduct a medical examination on a female victim child in accordance with section 27(2) of the POCSO Act. The Act provides no redress if a female doctor who is qualified to evaluate the victim girl child isn't on duty at a government or private hospital.
3. Women are not covered by Section 3 of the POCSO Act since it only identifies men as accused parties in cases. As per the provisions of section 3 of the Act, a woman who violates sexual offenses is protected from prosecution.¹⁰¹
4. Teenagers are not allowed to have sexual relations with adults or other adolescents, according to the Act. The possibility that two children will participate in any kind of sexual activity is not included in the POCSO Act, nor is approval from those under the age of 18 mentioned. Consequently, it curtails

¹⁰⁰ V, Dr Thangavel, The Analysis of Research Review for the Protection of Children from Sexual Offences Act (POCSO) (September 21, 2023).

¹⁰¹ Ibid.

the rights of those below the age of eighteen by prohibiting their consenting sexual activities and making them the object of social harassment.

5. 5. In the XYZ v. State of Maharashtra & Anr. case, the Bombay High Court observed that most nations have fixed the age of consent at 14 to 16 years old. In nations including Germany, Italy, Portugal, Hungary, and others, 14 is regarded as the legal age of consent for sexual encounters. In Wales and in London, sixteen is the legal age of consent. The legal drinking age in Japan is thirteen. The legal age of consent in Bangladesh and Sri Lanka is sixteen. The court concluded that a review of the age of consent for sex under the Protection of Children from Sexual Offences Act (POCSO Act) and the Indian Penal Code (IPC) was necessary because a significant number of cases that are brought before the courts include young females who have given their assent to have sex in love relationships. The reason for this is because there are too many cases for the courts to handle.
6. Though child marriage and marriage consummation are prohibited by this Act, these practices are permitted by specific personal laws in many Indian tribes. In this sense, the POCSO Act of 2012 provides no direction.¹⁰²
7. Age, both mental and biological, has a greater impact on the Act. Clinical psychologists assert that the POCSO Act does not allow a young woman between the ages of 22 and 23 who is the victim of one of the sexual offenses defined by the Act any justice or justice, despite the fact that she may have the mental capacity of a four-year-old child.
8. Even so, if the family members fail to report the case in accordance with section 21 (1) of the Act, which makes filing a FIR by the family members or the head of the office whose jurisdiction the offense occurred mandatory, they are liable for punishment. It is well known that the majority of cases go unreported due to feelings of shame, embarrassment, anger, and frustration. In general, the families of the victims are hesitant to report the incidents for fear of being re-victimized by society's ignorance, medical examinations, or court appearances.
9. In contrast to the generally accepted principle of "innocent until proven guilty," under this Act, an accused person is presumed guilty until their innocence is

¹⁰² Ibid.

established. Since the accused is required to prove their innocence, the Act is highly penalizing. In this case, the natural justice precepts are violated.

10. According to POCSO Act, 2012, section 22(2), teenagers who report falsehoods or provide misleading information are exempt from penalties. However, people who file a false complaint in an attempt to humiliate, extort, threaten, or defamation another person face penalties under the same POCSO Act section. Since children are excluded from these fines, many people take advantage of this exemption by falsifying complaints and making false claims on behalf of young children.¹⁰³
11. The POCSO Act is unclear about the paperwork needed to establish the victim's or accused's age, which presents a lot of difficulties for both sides. In this case, courts often apply Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. This clause allows the child's matriculation certificate, academic transcript, or birth certificate to be used as identity.
 - I. A birth certificate is a legal document, but in the absence of these, the teenager must take an ossification test to prove age. This test estimates the child's age approximately; therefore, it provides the accused party the benefit of the doubt. The Act doesn't say specifically which documents should be used to verify a child's age or whether or not to give someone the benefit of the doubt.
 - II. II. Judges S. Ravindra Bhat and Aravind Kumar, who make up the Supreme Court's division bench, have pointed out that the POCSO Act, 2012 forbids using School Transfer Certificates to ascertain a victim's age. Therefore, in the event that a disagreement emerges over a person's age in connection with that person's status as a victim under the POCSO Act, the courts are required to adhere to the principles specified in Section 94¹⁰⁴ of the Juvenile Justice Act (Care and Protection) Act.

12. The undertrial criminals imprisoned in prison in POCSO Act cases must stay there for a considerable amount of time due to the strict demands of the Act, which prohibit bail being granted and require periodic trials. The overcrowding of prison cells

¹⁰³ V, Dr Thangavel, The Analysis of Research Review for the Protection of Children from Sexual Offences Act (POCSO) (September 21, 2023).

¹⁰⁴ Juvenile justice (care and protection) Act,2015.sec-94.

regularly creates issues for the jail executives. It is quite difficult to get bail in such circumstances, even if you are wrongfully charged.

13. A legal provision mandates that "support persons" be given to the victims' children; however, this mandate is rarely observed, which usually leads to the accused being found not guilty. The Child Welfare Committee is empowered to choose a support person to assist the child during the inquiry and in coping with the case's trauma, in accordance with Rule 4(8)¹⁰⁵ of the POCSO Rules, 2020. However, it is frequently noted that when no support person is appointed, the victim is found not guilty, which puts a strain on the victim's and her family's emotional and psychological health over the course of the investigation and court case. The Supreme Court of India claims that "support persons" were supplied to the victim in only 4 percent of occurrences reported under the POCSO Act, 2012. In order to reduce the number of acquittals under this Act, victims should have access to "support persons" who will stand by them during the court case.

14. The victim is compensated under Section 33(8)¹⁰⁶. The amount of compensation to be given to the victim kid and the person who would accept the monies on the child's behalf are not made clear under the Act.

15. The behaviour is biased in Favor of the victim and transgresses natural justice by failing to behave in a way that is consistent with justice, equity, and morality.

16. Bare touch is defined as sexual penetration under the POCSO Act. For example, a parent who gives his child a pat on the head, cheek, or back as a sign of love or blessings could face jail time. It is not specified in the Act how public servants or officers in positions of responsibility will be prosecuted if they commit any offense of aggravated assault on a juvenile victim.¹⁰⁷

According to section 35¹⁰⁸ of the POCSO Act, 2012, the Special Court is required to record the victim child's testimony within 30 days of the Special Court taking cognizance of the offence and to finish the trial within a year of that date. Notwithstanding this clause, there are still a growing number of POCSO Act cases that

¹⁰⁵ Protection of children from sexual offences Act, 2020.s-4(8).

¹⁰⁶ Ibid

¹⁰⁷ Ibid.

¹⁰⁸ Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues. Centre for Child and the Law (CCL) and National Law School of India University (NLSIU) Posted: 2018

are pending, and the Special Court has not yet finished any of the cases. The amount of compensation that an accused person should get in the event that they are falsely accused is not specified in the Act.

CHAPTER 4

4.1 INTERNATIONAL CONVENTIONS AND PROTOCOLS ON CHILD PROTECTION IN INDIA

India has ratified a number of international agreements and guidelines pertaining to child protection. These accords specify the duties that nations have to execute out in order to guarantee the safety of children and acknowledge the necessity of protecting children's rights. This section will cover the international child protection conventions and protocols that India has signed onto.

4.1.1 UNITED NATIONS CONVENTION ON THE RIGHT OF THE CHILD (UNCRC)

This particular convention sets out various rights of the children that they are entitled to, wherever they are. These rights are:

- a. Social Rights
- b. Civil Rights
- c. Economic Rights
- d. Cultural Rights
- e. Political Rights

The Convention states that every government should ensure that such rights are available to all the children in their country. The Convention also states how the governments and the adults have to work in consonance to ensure that above rights of the children are protected. All these rights are available to children without any discrimination irrespective of their gender, sex, language, colour, ethnicity, religion or abilities etc.¹⁰⁹

¹⁰⁹ Convention on the Rights of the Child, OHCHR, <https://www.ohchr.org/en/instrumentsmechanisms/instruments/convention-rights-child> (last visited May 10, 2023).

The said Convention consists of comprehensive list of binding obligations that member states need to ensure that they oblige by it. Some of the important Articles of UNCRC are:

Article 2 - This Article states that children should be treated equally without any discrimination.

Article 3 - This Articles states that whatever steps are taken for children, they have to be taken in the best interests of the children.

Article 9 - This Article speaks about those children who have been separated from their parents and the security to be provided to such children.

Article 13 - This Article states that every child has a right to express and this is their freedom.

Article 23 - This Article deals with the rights of especially abled children.

Article 28 - This Article deals with the educational part of children, which means every child should be accorded education.

Article 31 - This Article states that every child should be provided recreational, leisure and cultural activities.

Article 37 - This Article state that children are the responsibility of every State to must take care of children and ensure that such kids are not deprived of their liberty.

Article 39 - This Article deals with care meted out to children during rehabilitation period.

Article 40 - This Article states the procedure to be followed as far as during the trail from very first stage till end.

Under Article 37 to Article 40 of the UNCRC¹¹⁰, the administration of justice for minors is covered. When it comes to placing a child in detention or arrest, it must be done legally and be among the last options possible. According to the UNCRC, a child can only be detained for a limited amount of time and cannot be held for an extended period of time. The Convention further stipulates that any child who is robbed of their freedom

¹¹⁰ The United Nation convention on the Right of child,1989.Arts-37,38,39,40.

must be treated with respect and dignity. If a child is taken into custody, they must be housed apart from adults unless and until their needs dictate otherwise.

The UNCRC is on to state that if a child violates any law that brings a penalty, the State is obligated to make sure the child is tried under a system specifically created to handle juveniles from the moment the complaint is filed against the child until the investigation, charge, arrest, trial, etc. Instead, then being punitive, the goal of such a juvenile justice system ought to be reformatory.

The CRC is also significant because it upholds the principles that "restrict global law, the standards upon which selection is based, seen from the youngster's perspective, without precedent."

The four "P" s of the CRC are: children's right to participate in decision-making that impacts them; safeguarding children from abuse and neglect of any kind; taking action against misbehaviour toward them; and helping children with basic necessities. A child is defined as "each individual beneath the age of eighteen years, except if under the law relevant to the kid, lion's share is achieved before" for the purposes of the CRC.

4.1.2 CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

The international human rights convention known as the Convention on the Rights of the Child (CRC) defines children's legal, economic, political, social, health, and cultural rights. On September 2, 1990, the United Nations General Assembly adopted the agreement, which had been approved in 1989. On December 11, 1992, India accepted the CRC, and on January 12, 1993, it became legal for that country.¹¹¹

The 54¹¹² articles of the CRC highlight children's rights and the responsibilities of governments to protect them. The CRC contains several important clauses, such as the fundamental rights to life, survival, and development; non-discrimination; education; hearing and participation in decisions affecting the child; and protection from all forms of violence, abuse, neglect, and exploitation.

¹¹¹ The Convention on the Rights of the Child, CRC.
<https://www.ohchr.org/en/instrumentsmechanisms/instruments/convention-rights-child> (last visited May 10, 2023).

¹¹² The convention on the Rights of Child, 1992. Art-54.

4.1.3 UNITED NATIONS RULES FOR THE PROTECTION OF JUVENILE DEPRIVED OF THEIR LIBERTY (1990)

These are the guidelines aimed at protecting children, especially youngsters who have been deprived of their freedom. Hence, it is imperative to guarantee that specific guidelines are followed to while handling juveniles who are under the age of eighteen and in violation of the law. These juveniles may be detained or confined in correctional facilities or institutions. The children imprisonment or confinement may be a consequence of a criminal, protective, correctional, or other action. These minors may be arrested or detained if they have broken any laws that carry penalties, if there is reason to suspect them, or even if the proper authorities believe they pose a risk. These young people who are housed in correctional facilities are the ones who have received orders from judicial, administrative, or other authorities to be detained or restricted.

These regulations also establish guidelines or principles that specify certain situations in which a child's freedom may be restricted. The aforementioned principle stipulates that restricting an individual's freedom ought to be the final option and that a minor's freedom can only be restricted for a brief duration, and only in certain circumstances.

The welfare and dignity of minors while they are in detention or custody are protected by these globally recognized regulations.

The first provision of the aforementioned Act controls the expenses associated with providing every child with the security and care necessary for their personal well-being as well as their prosperity and growth. Article 5¹¹³ states unequivocally that every child has the right to a childhood free from physical or sexual abuse, prohibits whipping, the curse of mental illness, sexual abuse, and other forms of maltreatment, and confirms that every child has the right to insurance against financial or sexual abuse. A further clause in the Act gives children who have experienced cruelty or abuse the choice of receiving appropriate compensation and rehabilitation.

¹¹³ Ibid

4.1.4 THE CONVENTION ON THE RIGHTS OF THE CHILD'S OPTIONAL PROTOCOL CONCERNING THE SALE OF CHILDREN, CHILD PROSTITUTION, AND CHILD PORNOGRAPHY

The United Nations General Assembly approved the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography in 2000. The protocol seeks to stop child pornography, child prostitution, and the sale of children. The protocol was approved by India on December 18, 2002.¹¹⁴

The convention mandates that governments protect, rehabilitate, and reintegrate child victims and outlaw the sale of children, child prostitution, and child pornography. In order to stop these activities and ensure that criminals are prosecuted, governments must also work together.

4.1.5 THE CONVENTION ON THE RIGHTS OF THE CHILD'S OPTIONAL PROTOCOL REGARDING THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

The United Nations General Assembly approved the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict in 2000. The aim of this process is to prevent children from being used as props in conflict. The protocol was approved by India on February 21, 2005.¹¹⁵

Governments are required by the agreement to make sure that no one younger than 18 is enlisted in the military or directly involved in hostilities. Governments must also take action to stop the enlistment and exploitation of minors in armed conflicts and to ensure the victims' physical and mental well-being as well as their social reintegration.

¹¹⁴ United Nations, Treaty Series, vol. 2171, p. 227.

¹¹⁵ VARALAXMI MOGANTY -Optional Protocols 1 and 2 to the Convention on the Rights of the Child and other international standards relating to children.
(<https://ebooks.inflibnet.ac.in/hrdp05/chapter/optional-protocols-1-and-2-to-the-convention-on-the-rights-of-the-child-and-other-international-standards-relating-to-children>)

4.1.6 CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

An international treaty known as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was approved by the UN General Assembly in 1979. The goal of the agreement is to end discrimination against women in all spheres of life, including as the workplace, healthcare, and education. On July 9, 1993, India ratified CEDAW.¹¹⁶

CEDAW recognizes that discrimination against women and children often occur. Governments are required by the convention to take action to safeguard women's and children's rights, including protecting children and adolescents from exploitation and all kinds of violence.

4.1.7 UNITED NATIONS CHILDREN'S FUND (UNICEF)

The United Nations General Assembly established UNICEF in 1946 to promote the welfare of children in Europe. It was developed in the wake of World War II because children had suffered greatly. UNICEF aims to promote the wellbeing of children and protects their rights as its primary goal. Generally speaking, UNICEF collaborates with NGOs, the public and private sectors, and the government. It offers assistance in formulating budgets and forming policies for the benefit of the kids. It also backs up studies done in the area of juvenile justice.¹¹⁷

4.1.8 INTERNATIONAL CONVENTION ON CIVIL AND POLITICAL RIGHTS

This is a document which is legally binding. Article 24 of the stated Covenant deals with children's rights. It states that all children have right by virtue of his birth to acquire nationality and that every child shall gain certain rights without any discrimination. Every child has to be registered the moment he or she is born and that every newborn has a right to receive a name. The Covenant specifies that in case of any proceedings, juvenile should be treated as per the unique laws created for the

¹¹⁶ Convention on the elimination of all forms of discrimination against women,1993.

growth of a child and the age of the juvenile should always be considered. The correctional system of every country should ensure that they isolate the juvenile from adults. The juveniles should be treated according to their age.

4.2 CHILD PROTECTION LAWS AND POLICIES IN INDIA

India has an efficient legal system for safeguarding children that consists of various laws, regulations, and programs. We will explore several of India's most significant child protection laws and programs in this section.¹¹⁸

4.2.1 THE JUVENILE JUSTICE (CARE AND PROTECTION) Act, 2015

In spite of the objective of facilitating the protection, care, and rehabilitation of children who require legal intervention as well as those who are in need of care, the Juvenile Justice (Care and Protection of Children) Act, 2015 replaced the Juvenile Justice (Care and Protection of Children) Act, 2000. The Act also establishes special juvenile police units, child welfare committees, and juvenile justice boards. It specifies that children who are in court proceedings must get extra protection and care, and that their treatment must be in line with advancing their best interests.¹¹⁹

4.2.2 THE CHILD LABOUR (PROHIBITION AND REGULATIONS) Act, 1986

The Child Labour (Prohibition and Regulation) Act of 1986 aims to control the labor conditions for children in various occupations as well as to forbid the employment of minors in specified occupations. Children under the age of 14 are not allowed to work in hazardous jobs, and children between the ages of 14 and 18 are not allowed to work in unsafe positions either. In order to assist in the rehabilitation of child laborers, the Act additionally calls for the creation of the National Child Labor Project.

¹¹⁸ vikaspedia Domains, <https://vikaspedia.in/education/policies-and-schemes/national-child-labour-projectscheme> (last visited May 10, 2023).

¹¹⁹ Ayush Verma, Introduction and Overview of the Juvenile Justice Care and Protection Act, 2015, iPleaders (2022), (<https://blog.iplayers.in/introduction-overview-juvenile-justice-care-protection-act-2015/>) (last visited May 10, 2023).

4.2.3 THE NATIONAL POLICY FOR CHILDREN, 2013

The National Policy for Children, 2013, is a policy document that outlines the government's vision and strategy for the development and protection of children in India. The policy recognizes that children are vulnerable to various forms of abuse, exploitation, and neglect, and outlines strategies for their protection. It also recognizes the need for a multi-sectoral approach to child protection, involving various government departments, civil society organizations, and the private sector.

4.2.4 THE INTEGRATED CHILD PROTECTION SCHEMES (ICPS)

The objective of the state facilitated Integrated Child Protection Scheme (ICPS) is to safeguard and promote the wellbeing of children who require care and protection. The strategy promotes the establishment of juvenile justice boards, child welfare committees, and child protection committees at the local, state, and federal levels. Additionally, it allows for the formation of a number of services, such as foster care, adoption services, and shelter homes, for kids in need of attention and safety.

4.2.5 THE NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS (NCPCR)

The National Commission for Protection of Child Rights (NCPCR) is a statutory body established under the Commission for Protection of Child Rights Act, 2005. The NCPCR is responsible for promoting and protecting the rights of children in India, and for ensuring their welfare and development. The Commission is able to look into cases of children's rights being violated and suggest ways to keep them safe and welfare.¹²⁰

¹²⁰ The National Commission for Protection of Child Rights (NCPCR),2007 (https://www.unicef.org/portfolios/general_comments/CRC.C.GC.13_en.doc.html (last visited May 10, 2023)).

CHAPTER-5

JUDICIAL INTERPRETATIONS

5.1 INTRODUCTION

In 2019, the nation's highest court became involved in a lawsuit involving the inadequacy or insufficiency of the compensatory remedies provided by the POCSO Act. The path was then cleared by the country's highest court, which ruled that there was no plan in place to safeguard victims of sexual assault, in violation of the POCSO Act. The Honourable Supreme Court ruled that the POCSO Act victims should be adequately compensated under the Scheme. Furthermore, victims who exhibit hostility in POCSO Court proceedings, particularly juveniles, represent a serious problem. Most of the time, when the victim's family members are involved, the accused is ultimately found not guilty under the POCSO Act.

Albeit the High Court of India every now and again screens the cases under the Insurance of Kids from Rapes (POCSO) Act 2012, only five percent of youngsters who are overcomers of rapes and who register protests under the Demonstration are getting remuneration as expected by the Demonstration. That main a little part of casualties are getting break pay is truly upsetting. The POCSO Act came full circle on November 14, 2012, but the Service of Ladies and Youngster Improvement is as yet unfit to foster a pay plan that conforms to its prerequisites. The Demonstration was sanctioned an extremely quite some time in the past.

To ensure that misfortunes under the POCSO Act get pay likened to that of the Public Lawful Administrations Authority's (NALSA) Casualties Remuneration Plan, which is given under segment 357 An of the Code of Criminal System (Cr. P.C.), the Service of Ladies and Youngster Advancement (WCD) is considering proposing an update to POCSO. The low level of misfortunes getting pay under the POCSO Act stresses the Service of WCD. WCD is the organization's counsel, according to Mr. Alok Agrawal, part secretary of the NALSA, and they are thinking of amending Section 33¹²¹ of the POCSO Act, which addresses compensation. To put it simply, compensation is set aside

¹²¹ The protection of children from sexual offence, 2012.s-33

for youngsters and decided by the outstanding POCSO court. It is tied to the verdict and given out after the case is resolved. Moreover, POCSO courts have raised the issue of stretch compensation, which has never happened before. These folks still think that there should be no criminal penalties for lost pay.

The mistreated and neglected child lives in peace despite national public uproar about cases of child abuse occurring around the state. The bewildered, hurt, and disillusioned family of the unfortunate casualties are left feeling helpless and unable to cope with the fallout from the horrible wrongdoing. The remarkable law that shields youth from sexual assault, promiscuous behaviour, and sensual entertainment, the Protection of Children from Sexual Offences Act, 2012 (POCSO), was passed by Parliament on May 22, 2012, and became operative on November 14, 2012. However, it remains unenforced, little-known, and inaccessible to those who require it. Unfortunately, this means that POCSOs, who are needed in India, where standard texts mention them but where 40% of the population is under 18, are ignored. In 2007, over 53% of young people in India reported having suffered some form of sexual assault. Strict procedures, swift new legislation, and fast track courts are demanded even though POCSO, as a sound statute, states everything beginning now.

In the past, sexual offenses committed against kids were dealt with under different parts of the Indian Penal Code (IPC)¹²² due to the lack of a distinction between adult and juvenile law. POCSO is in charge of handling physical offenses committed against juveniles, meaning people under the age of eighteen. POCSO defines "lewd behaviour," "rape," and "penetrative rape."¹²³ The offense is deemed more serious if it is reported by a police officer, community worker, employee of a remand home, insurance or perception home, prison, medical facility, or educational institution, or a member of the furnished or security powers. Since the Special Juvenile Police Unit, or just the local police, are obligated to act immediately to give treatment and insurance, POCSO offers relief and rehabilitation when complaints are filed with them. In addition to encouraging child sexual abuse, it is illegal to have the intent to report a crime as defined by the POCSO.

¹²² The Indian penal code, 1860.s-375.

¹²³ The protection of children from sexual offences Act, 2012.s-5

A special focus has been given to making sure that preliminary proceedings in non-standard children's courts are promptly dismissed and to taking drastic steps to remove the accused from the kid at the time of affirmation. Even though POCSO has asked the Central and State governments to take particular safety measures and steps to guarantee public awareness through radio, print, and television media as well as by periodically briefing all partners on matters pertaining to cases involving the use of POCSO's arrangements, the Act is a little vague.

Remarkably, in the latest assault case, the Delhi Police inferred the terms of the Act for the FIR apparently two days after it was documented on April 15, 2013. It appears that the POCSO procedures have not yet been applied to the defendants in the notorious Apna Ghar Rohtak cover home episode that occurred in May 2012 and involved allegations of sexual abuse against over one hundred inmates.

The enactment of the sound law is more than significant for a number of reasons. The work fulfils India's responsibilities as a signatory to the United Nations Convention on the Rights of the Child, which was adopted on December 11, 1992, and only displays incorrect behaviour connected to sexual assaults against minors. According to the Act, POCSO plans will be used appropriately for notification and execution of the organization's action plans by the National Commission and State Commissions for Protection of Child Rights, which were established under the Commissions for Protection of Child Rights Act, 2005. The Supreme Court explicitly ordered all States to ensure that the management and checking bodies are incorporated and made fair in a strong order that was released on February 7, 2013. Either way, these Commissions are currently either somewhat useful or quite non-utilitarian.

In a decision that violated with precedent, the High Court allowed Punjab, Haryana, and Chandigarh to establish State Commissions for Protection of Child Rights, to appoint people as chiefs and people through a direct assurance measure, and to become fully utilitarian in response to a request made by the National Commission for Protection of Child Rights (NCPCR). The High Court also ordered the creation of youth courts, their warning, and the appointment of extraordinary public examiners, in addition to requiring the registration of all children's homes. It also discussed the establishment of a bona fide board to choose members of different committees to be nominated to the kid government.

As a result, the entire system for determining the rights of teenagers has become implicated. Furthermore, it has been decided that the Chandigarh Judicial Academy will commence working on modules and readiness projects to train all partners on youth rights and manage Children's Court cases, and that the National Commissions and State Commissions will start implementing POCSO's plans while rendering their services. The moment has come for state governments to grant this significant request and offer a convincing instrument to stop aggressive behaviour and severe child sexual assault. "One of the recommendations about child sexual assault made by the Justice Verma Committee Report is that there is a serious need to survey the presentation of all affiliations of organization and harmony."

Together, we must focus our efforts on enforcing the rules that are already in place rather than trying to amend new ones that would be inapplicable to our way of life, society, affinities, and the cruel realities of the average person. POCSO is a good law as far as it pertains to child sex abuse. The council should provide the necessary tools for carrying it out and educate its authorities as well as any allies about its contents. When the appropriate responses predominate in a legislation passed by Parliament for such a unique offense, the state shouldn't waste time looking at other options because children are the most vulnerable group in society.

Despite the existence of all these elements of the legal framework, there is a deficiency that is getting worse, and problems still need to be solved both now and in the future. Children have been denied equity in a variety of circumstances. Child labour and child marriage are two examples of social inequalities that are still pervasive in society. Poverty is evidently the only reason why young people work; there are numerous cases where the IPC areas have shown to be worthless.

There are situations in which a child is abducted, executed, or is purposefully or truly mistreated intellectually. Since all of these instances are still ongoing, it is also important to remember that the above laws are intended to eradicate these wrongdoings from the society at large. The public continues to witness a significant rate of wrongdoings among the general populace.

The legal system should emphasize how severe it is, and all of the disciplines should make people fearful. In India, we adhere to the reformative hypothesis, which suggests

that the thugs should be reorganized. Since none of these reformative initiatives worked, they actually became dangerous.

The discipline hypothesis known as the "deterrent hypothesis" is what keeps lawbreakers from breaking the law by instilling fear in them and making them act within the bounds of the law. In India, this disciplinary hypothesis should be pursued. There have been instances where the court's decision has completely denied the parties in issue equity.

Three men were freed in a recent ruling by the Additional Session Court (Special POCSO court) in Palatka. The men had been charged with assault, rape, and aiding and abetting self-destruction against their relatives at Waylayer, Palakkad. It was impossible for the designated authority to believe that the three women were unreliable witnesses. The designated authority came to the conclusion that the observers' testimony had been falsified to support the indictment. The adjudicator also stated that the police merely possessed a list of people who were against the accused, but they lacked any proof linking them to the misconduct.

The sisters' report following their deaths showed that they had been beaten, but at the end of the day, the court's decision covered the whole group and stated that the arraignment required rational evidence. They have had a tremendous impact on those who are being blamed, and as a result, the police have excluded certain facts from the case, and an indictment has been issued that led to this decision.

Children are legally incapable of making decisions for themselves since they are minors. Taking everything into account, the individuals who make these choices are those who hold a great deal of authority, including parents, guardians, social workers, teachers, youth workers, and others. The majority of individuals concur that the state renders them powerless and gives them little control over their own lives. The fundamental liberties that underpin the exceptional protection and consideration extended to youngsters are known as children's rights. Numerous administrative tactics have been ineffective in exposing the ways in which adults abuse and take advantage of children, lowering their integrity and leading to poverty, need, or even a rejection of schooling. According to this perspective, children are seen as a minority group that the wider public has to reconsider how it treats them.

Children were the beneficiaries of government assistance programs. Children's rights became an idea in the twentieth century. In actuality, rights are taking the place of government assistance, which was a truly crucial methodology. Rights are privileges having objectives and duties attached to them. In essence, they consist of value, strengthening, friendly equity, and no segregation. The United Nations Conventions on the Rights of the Child (1989), a significant step toward the worldwide enactment of common liberties, are the embodiment of the rights perspective.

In many countries, there is a mixed belief that children are weaker cognitively and physically the younger they are.¹²⁴ The majority of children's activities are focused on the age range at which they are most likely to start school, marry, or otherwise be regarded as adults in accordance with the criminal justice system; that is, the age range at which they can work, work, or enlist in the military, and so forth. That being said, it differs, to the greatest extent feasible, depending on the activity and the nation.

A person under the age of 14 is classified as a "youngster" by the Child Labor (Prohibition and Regulation) Act 1986 and the Indian Constitution. Juveniles (16–18 years old) who commit major crimes such as assault, corrosive assault, murder, and other comparable felonies may face adult prosecution, as per the recently amended Juvenile Justice Act of 2015.

The greatest asset of India and the key to its future were recognized by the writers of the Constitution. They were worried about making arrangements for the kids' security. They understood insurance to include safeguarding their rights, physical safety, psychological certainty, and other things. The children's life was governed by certain regulations provided by the Constitution. A plethora of enactments, tactics, programs, and other initiatives have been proposed in an attempt to reinforce the constitutional requirements.

“Case 1- Attorney General for India v. Satish and another (2021)”

In *Satish Ragde v. State of Maharashtra (2021)*¹²⁵, the Bombay High Court's Nagpur Bench decided that, in accordance with the POCSO Act, 2021, gripping a child's breasts without creating "skin-to-skin contact" constituted molestation. The statement was

¹²⁴ NCRB Data

¹²⁵ Attorney general of India v. Satish and other(2021) SCC online SC 42

delivered by a lone bench chaired by Justice Pushpa Ganediwala. The Attorney General of India, the National Commission for Women, and the State of Maharashtra filed appeals against the controversial High Court decision in the ongoing case of Attorney General for India versus Satish and another (2021) before a bench composed of Justices Uday Umesh Lalit, S. Ravindra Bhat, and Bela M. Trivedi.

In order to provide a just and equitable resolution to the cases that fell under the purview of the POCSO Act, 2012, the question at hand is how to interpret Section 7. The recent verdict highlighted how the High Court's reasoning quite insensitively trivializes and even legitimizes a wide variety of unpleasant behaviour that infringes upon a child's autonomy and dignity through unwelcome intrusions. It also underlined that Section 7 concerns both direct and indirect touch.¹²⁶

“Case 2- Hari Dev Acharya @ Pranavanand and Ors v. State (2021)”

The Delhi High Court ruled in the recent case of Hari Dev Acharya @ Pranavanand and Ors v. State (2021) that the Code of Criminal Procedure, 1973 (CrPC) would apply, allowing for a joint trial if the offenses were committed during the same transaction, because the Protection of Children from Sexual Offenses (POCSO) Act, 2012 is silent on the matter of whether two separate incidents can be combined in a single First Information Report (FIR). The Hon'ble High Court's single judge bench, led by Justice Manoj Kumar Ohri, made the statement when they were turning down multiple applications from those challenging the summons that the special POCSO court had issued in addition to the additional charge sheets.

August 2019 saw the publication of the charges and summons about an alleged occurrence involving the alleged sexual assault of a student by a teacher at a Delhi Gurukul. The accused led the youngster to the teacher's room, where the teacher sexually molested him. The child subsequently repeated this information to his friend. After returning to the police station and filing a second complaint, they were able to get a solution because his mother and sister had already appeared. According to Judge Ohri, under CrPC clause 219, an individual may be prosecuted simultaneously for three similar acts committed within a year. The violations are regarded as belonging to the

¹²⁶ Hari Dev Acharya @ Pranavanand and Ors v. State (2021)

same transaction since they are punished by the same IPC and POCSO clause. Consequently, the summoning orders were upheld and the pleas were rejected.

“Case 3 - Nipun Saxena v. Union of India (2019)”

- 1) In the recent case of Nipun Saxena v. Union of India (2019)¹²⁷, the Supreme Court of India observed that, in the event that an employee violates According to Section 23 of the POCSO conduct, the media, studio, or photography facility's owner or publisher will be held accountable for the actions or inactions of that employee on a joint and several basis. The Apex Court gave the following directives regarding the aforementioned clause, which are listed below:
- 2) No one is allowed to openly reveal the victim's identity in print, electronic, or social media, or even to subtly divulge any information that should be made public and could be used to identify the victim.
- 3) In situations where the victim is deceased or mentally ill, the victim's name or identity should not be disclosed, not even with the next of kin's consent, unless there are exceptional circumstances that warrant it. In this case, the Sessions Judge is the competent authority.
- 4) It is not permitted to make public FIRs for violations under POCSO or for offenses under Sections 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB, or 376-E of the IPC.
- 5) A victim filing an appeal under Section 372 CrPC need not disclose their identify; the case would be managed in compliance with the law.
- 6) Any documents that reveal the victims identify should be sealed as much as possible, and they should be replaced with identical documents that remove the victim's name from any records that could be examined in the public domain.
- 7) The victim's name and identity must be kept confidential and shared in no other way than in the report, which must be sent in a sealed envelope to the investigating agency or the court. This obligation also extends to all authorities to whom the victim's name is provided by the investigating agency or the court.

¹²⁷ Nipun Saxena v. Union of India, (2019) 2 SCC 70.

- 8) A request made under Section 228-A(2)¹²⁸ by the victim's next of kin to permit the revelation of the identify of a deceased or mentally incapacitated victim(c) IPC should only be made to the relevant Sessions Judge until the Government takes action in accordance with Section 228-A(1)(c) establishes standards in accordance with our directives for recognizing such social welfare establishments or groups.
- 9) Under the POCSO Act, 2012, the Special Court may only permit the identities of juvenile victims to be disclosed if doing so would be in their best interests.
- 10) Within a year after the current case's verdict, every State and Union Territory is required to establish at least one "One-Stop Center" in each district.

“Case 4 - Ujjain Rape Case 2023”

A 12-year-old young lady was tracked down draining after assault in Barnagar area of Ujjain in MP. The public authority has framed a SIT to test this terrible assault case. Clinical assessment of the young lady has affirmed assault. Prior, a video showed the young lady in semi-bare state going from one way to another looking for help. Young lady at long last arrived at an ashram and was taken to emergency clinic by the minister. The young lady has been alluded to Indore for treatment. Monitor general Santosh Kumar Singh let TOI know that police depended widely on specialized proof, particularly film from CCTV cameras in different regions, to lay out the chain of occasions, since the survivor couldn't say something. “The blamed tracked down the minor young lady alone on Monday morning and offered her a lift. He took her to a separated spot in Jeevankhedi town and assaulted her. The accused driver was arrested. There were reports of the authorities demolishing the accused's house, though it was claimed to be an illegal structure.

“Case 5 – State of Himachal Pradesh v. Jitender Kumar (2020) 3 SCC 311”¹²⁹

In this instance, the accused was charged for penetrating sexual assault on a six-year-old kid in accordance with Section 6 of the POCSO Act. The accused was found guilty by the trial court and given a ten-year sentence of strict imprisonment. The accused's

¹²⁸ Indian penal code,1860.s-228.

¹²⁹ State of Himachal Pradesh v. Jitender Kumar (2020) 3 SCC 311

appeal was denied by the Supreme Court, and the High Court maintained the conviction. The prosecution's strong case, which proved the accused's guilt beyond a reasonable doubt, was noted by the Supreme Court. This case included the victim's and her mother's testimony, as well as medical and other circumstantial evidence.

“Case 6 - State of Rajasthan v. Sandeep (2021) 1 SCC 66”¹³⁰

In this case, the accused was found guilty of raping and killing a young girl in accordance with Sections 376(2)(i), 302 of the Indian Penal Code, and Section 5(m) in conjunction with Section 6 of the POCSO Act. Declaring the case to be among the rarest of rare cases, the Supreme Court maintained the conviction and gave the accused the death punishment.

“Case 7- Kishore Chand v. State of Himachal Pradesh (2021) 1 SCC 431”¹³¹

Under the POCSO Act, the accused in this case was charged with both aggravated penetrative sexual assault and rape. The Supreme Court maintained the accused's conviction and sentence, ruling that the victim's account was trustworthy and that there was medical evidence to back up her claims.

Case 8:- Chiddu Vs. State of Uttaranchal, 2005 Cri LJ 4251 (Utt)”

Prosecutrix was a minor girl of the age of 7 years and she was allured by the accused on the pretext of giving orange and alleged to have committed rape on her. It was clearly revealed by evidence of the victim that accused committed rape on her. The underwear of the victim as well as of the accused were sent for chemical examination and the semen was found in both the underwear.

Witnesses was subjected to cross examination for a longer duration, but no concrete result could be decided to show that they had any grudge against accused. Factum of rape was fully corroborated by medical evidence. Fact was perpetrator was kid when offence commenced. While maintaining conviction against accused the sentence of 7 years rigorous punishment was liable to be quashed.

¹³⁰ State of Rajasthan v. Sandeep (2021) 1 SCC 66

¹³¹ Kishore Chand v. State of Himachal Pradesh (2021) 1 SCC 431

“Case 9- Sita Ram Vs. State of Rajasthan, 2004 Cri LJ 4320 (Raj)”¹³²

The trial court's findings about the prosecutrix's age below eighteen years old are based on the marksheet, which the prosecution never submitted with the challan and never provided as evidence for their points. The aforementioned marksheet is not included in the file. The trial court did not certify the copy, nor did it confirm its authenticity before relying on it.

Furthermore, the appellant had not been asked a question concerning the uncertified marks sheet or given a copy of it, nor had his statement been recorded under section 313 of the Cr. P. C., which would have allowed him to rely on it for his defence. The trial court's decision, which is based on the mark sheets, is unsustainable and subject to being overturned in light of the relevant facts and problems.

“Case-10 Aftab Ahmad v. State of Uttar Pradesh (2021) 2 SCC 290”¹³³

In this case, the accused was found guilty of violating Sections 7 of the POCSO Act, as well as Sections 354-A and 354-B of the IPC, by sexually abusing a young girl. The victim's testimony was deemed undeniable and the evidence against the accused was deemed believable by the Supreme Court, which upheld the accused's conviction and punishment.

“Case-11 State of Haryana v. Pala Ram (2017) 15 SCC 461”¹³⁴

The accused was found guilty of raping a young girl in accordance with sections 354, 376, and 506 of the Indian Penal Code and the POCSO Act. The victim's testimony was deemed believable and dependable by the Supreme Court, which upheld the conviction. The Court further noted that the POCSO Act must be interpreted in a way that promotes its goal and purpose because it is a particular statute designed to protect minors from sexual offenses.

“Case-12 Baldev Singh v. State of Haryana (2017) 1 SCC 483”¹³⁵

As per the Indian Penal Code and POCSO Act, the accused was found guilty of kidnapping and raping a young girl in violation of sections 363, 366A, 376, and 506.

¹³² “Sita Ram Vs. State of Rajasthan, 2004 Cri LJ 4320 (Raj)”

¹³³ Aftab Ahmad v. State of Uttar Pradesh (2021) 2 SCC 290

¹³⁴ State of Haryana v. Pala Ram (2017) 15 SCC 461

¹³⁵ Baldev Singh v. State of Haryana (2017) 1 SCC 483

The conviction was maintained by the Supreme Court because it found the evidence utilized against the accused to be reliable and credible. The POCSO Act is a stringent law that was intended to shield minors from sexual assaults; nonetheless, the court pointed out that its application must be correct.

“Case-13 State of Haryana v. Bhupinder Singh (2020) 2 SCC 160”¹³⁶

According to Section 4 of the POCSO Act, the accused in this case was charged with penetrating sexual assault on a five-year-old child. The trial court found the accused guilty and sentenced him to a harsh ten years in prison. The High Court cleared the accused because the prosecution was unable to prove its charges beyond a reasonable doubt. The Supreme Court overturned the decision of the High Court and maintained the conviction, finding that the prosecution's evidence supported the charges.

“Case-14 State of Himachal Pradesh v. Jitender Kumar (2020) 3 SCC 311”¹³⁷

In this case, the accused was charged for penetrating sexual assault on a six-year-old kid in accordance with Section 6 of the POCSO Act. The trial court found the accused guilty and sentenced him to ten years in harsh jail. The High Court upheld the conviction, and the Supreme Court rejected the accused's appeal. The prosecution's strong case, which proved the accused's guilt beyond a reasonable doubt, was noted by the Supreme Court. This case included the victim's and her mother's testimony, as well as medical and other circumstantial evidence.

“Case- 15 Yogesh v. State of Maharashtra (2021) 2 SCC 18”¹³⁸

In this case, the accused was found guilty of violating both Section 376 of the IPC and Section 4 of the POCSO Act by raping a juvenile girl. The Supreme Court upheld the accused's conviction and punishment, finding that the evidence against him was reliable and the victim's testimony was credible despite the formal complaint being filed later than expected.

¹³⁶ State of Haryana v. Bhupinder Singh (2020) 2 SCC 160

¹³⁷ State of Himachal Pradesh v. Jitender Kumar (2020) 3 SCC 311.

¹³⁸ Yogesh v. State of Maharashtra (2021) 2 SCC 18

Chapter-6

CONCLUSION AND SUGGESTIONS

6.1 CONCLUSION

Rape is one of the most heinous crimes against any person, adult or child. A thorough examination of the kid who was sexually assaulted is required. India has strong laws protecting victims of sexual offenses, albeit occasionally these are not fully implemented. Regarding the medical surveillance of a victim of molestation or rape, there is a protocol that needs to be adhered to.

The guidelines are not well-executed, even in the event that the Act is. It is expected that the State's Directive Principles will educate the public on a variety of topics pertaining to protecting children from abuse, physical crimes, and other types of offenses against children as those terms are defined under the aforementioned Act. The issue with this is that the necessary authorities under the aforementioned Act, in addition to the inhabitants and children, are unaware of its provisions.

Even though the POCSO Act is seen as a tough regulation, the number of crimes against children in Mumbai City solely has increased by about 10%. In a recent investigation, the Mumbai police revealed alarming data regarding the rise in sexual harassment complaints in Mumbai City directed solely at minors. It was discovered that there had been a 105-case increase in cases of offenses against children under this stringent Act, also known as the POCSO Act, in comparison to the prior year. According to reports, youngsters are becoming more concerned as a result of the proper authorities' creation of awareness, which has accelerated the reporting of cases. Crimes against children have been reported as a result of this awareness. It is impossible to dispute the importance of parents, since they have been instrumental in raising their children's consciousness and teaching them the difference between "good touch" and "bad touch."

Sanctioning a far-reaching system to forestall viciousness against kids is vital. The impartial system can work, however it necessities to include a great deal of different segments. Frameworks work best when carried out as a component of an extensive,

multisectoral procedure. Partners in numerous nations are attempting to end viciousness against kids, yet their endeavours are not very much organized and upheld 100% of the time. With an end goal to end all types of oppression youngsters, the World Wellbeing Association has fostered a far-reaching evasion structure as a team with UNICEF, UNODC, and different associations.

India has carried out various regulations and drives to battle this issue throughout recent years. Kids who are as of now isolated from their family dwell in a reasonable family with a stable monetary circumstance and approach sufficient schooling. Obliviousness and an absence of business are the primary drivers of youngster work in India.

Exertion has been there to address it from the beginning. The way to deal with kid work has moved to keep away from the authorizations that we have carried out. It is frequently apparent from the very much positioned stores and plants that kids are utilized in the places of entrepreneurs. Kid work oftentimes has express sexual substance, much as how young fellows are utilized in places that are all the more actually requesting while young ladies are utilized in blood related positions.

Young adult value is ostensibly the main issue confronting the globe at the present time. Under the much-talked about Show on the Privileges of the Kid, youngsters who are regularly captured for the infractions they commit are not given the affirmation to which they are entitled. A few states likewise handle kids who perpetrate genuine wrongdoings as grown-ups in their underlying court procedures. The overall prohibition on bringing up kids as grown-ups is likewise frequently utilized. Throughout recent years, the level of wrongdoings carried out by kids younger than sixteen has expanded. This should be possible for social, monetary, instructive, or absence of parental direction purposes. Their viewpoint is direct and earnest, and there is a frightening sureness that they can be constrained into carrying out genuine violations, similar to the case in the high-profile Nirbhaya Group assault case in Delhi that shook the country. The individual considered answerable for this situation was scarcely year and a half old. This improvement provoked the reception of the Adolescent Equity (Care and Security of Youngsters) Act, 2015, which supplanted the past regulation and gave that minors between the ages of 16 and 18 could be attempted as grown-ups in a conventional court on the off chance that they perpetrated a genuine wrongdoing.

It is guessed that the POCSO Act will give protection to youngsters without a voice so they can keep on living in harmony. The Demonstration was presented by the assembly in 2014 to shield kids from occurrences of sexual amusement, attack, and assault. A 7-year prison sentence, with the chance of a lifelong incarceration, is accommodated assault under Segment 4 of the POCSO Act. Moreover, the regulation laid out 597 courts the nation over to deal with POCSO cases to guarantee that starter procedures were finished soon.

It can be challenging at times to trust only the victim's, or the child's, statements. In the Sohan Lal case, a complaint was filed in accordance with articles 376 (2) (i)/506 of

In addition to taking into account Section 6 of the POCSO legislation, the Honourable Session Judge concluded that there is a possibility that the kid may be coerced into making false claims through tutoring. The judge in the aforementioned instance declared that there is no question that the victim's testimony that is, the juvenile witness in situations of sexual assault may serve as the foundation for a conviction in any case. The only thing to keep in mind in this situation is that the child witness, who is a victim, should never have received tutoring as the result of their testimony, as this might be considered one of the most crucial prerequisites for their testimony or the proof they present. Because it was discovered that there was a prior financial dispute between the parties and that the victim, a minor witness, had provided tainted testimony, the honourable judge was forced to acquit the accused in this case.

Based on the testimony provided by the child victim, the honourable court felt that the perpetrator should not be treated as a guilty party. Because the judge believed the child's claims could have been influenced by tutoring, the Honourable Judge of the Court did not deem the offender as guilty.

Although it is discovered that the number of incidents reported under the aforementioned POCSO Act is increasing daily, the statistics do not fully reflect the state of affairs. Over 80% of cases filed under the POCSO Act do not go to the point where the victim convicts the accused, as the conviction rate under the Act is not higher than 20%. In addition to all of this, it has been observed that the child victim becomes hostile if there is a conflict between family members in which the accused is a family member. People frequently take advantage of the POCSO Act in situations involving financial issues, conflicts between employers and employees, or disputes between

tenants and landlords. The worst aspect is that, in violation of the POCSO Act, the parties only seeking retribution employ their kids. As a result, investigating authorities alone have the duty to carry out impartial investigations and provide solid cases free from fear, favouritism, or coercion.

Since it becomes difficult for a child to escape the never-ending cycle of kid labour, bringing the children who are the victims of it back into the mainstream may be the most important and poignant activity. That problem can be somewhat resolved by this plan. Before enrolling a child in formal education, providing them with professional preparation and a connect course that is paid for can help address a major cause of children's work, specifically a lack of instruction. A child who receives instruction is less likely to become a victim of child labour. The NCLP scheme pays off in this situation. The World Health Organization defines sexual offenses and child abuse in the best possible way. It is the involvement of children in sexual activity that defies social norms and that he is unable to understand or comprehend and give informed consent for. It also involves having inappropriate contact with the child, having sex with them, engaging them in prostitution or other forms of sexual amusement, or having digital hunters attract them online.

Despite the Act's possibly noble intentions, the intended outcomes are not realized. Since there aren't many recorded rape instances, this Act's primary goal is being disregarded.

Without a question, POCSO 2012 made a crucial commitment to addressing the CSA problem in India. It has acknowledged and denounced a variety of sexual behaviors that are not acceptable and endanger children. The number of detailed instances is growing rapidly, indicating that the legislation has made significant progress in educating people, honing the criminal justice system, and making the disclosure of CSA both commendable and required. The law is very broad and has some remarkable highlights. Nevertheless, there are three key differences between the law's actual objective and letter that could raise problems with its application in an Indian context. The problems are the erroneous belief that 18 is old enough assurance, mandatory promises with specific details, and strictness about the age of consent for sexual activity with minors. Furthermore, underage partnerships should be hindered by the Indian government's desire to forbid child marriages and guarantee weak children, as expressed in the

Prohibition of Child Marriages Act 2006 and POCSO 2012. In any event, it is impossible to ignore the possibility of waste and asset loss in light of the previously mentioned problems as well as the fact that social and cultural norms sustain, if not actively foster, child connections in this setting.

Children will be the guardians of power, justice, equity, freedom, fairness, and, finally, world peace and security. They may be the culmination of our ambitions, wishes, aspirations, and expectations for the future. They are the shoulders that the country will rest in the future as great thinkers, leaders, legislators, researchers, educators, judges, technicians, industrialists, engineers, labourers, and organizers. Fundamental rights instruments that specifically address children's rights: The Declaration of the Rights of the Child, adopted by the League of Nations' fifth assembly in 1924, is widely regarded as the first international document governing children's rights.

Youngsters are significant HR that are additionally powerless. Various regulations in India center around a circumstance where kids were treated as non-components and where fastidious endeavours have been made to liberate them from misuse and abuse as well as empower them to arrive at their maximum capacity with fair admittance to food, medical services, training, and regard. The Show on the Privileges of the Kid, the essential peaceful accord that maintains youngsters' crucial freedoms, was introduced to the UN General Gathering. An essential right is a protected youth. They join the military.

They face capital punishment, vanish, face dismissal from insensitive and savage strategies, and experience many types of mercilessness. The reason for this study is to decide how really youngster privileges infringement can be forestalled in any case, as well as to give the important direction to the public authority and gatekeepers in regards to their obligations to safeguard kids' freedoms and diminish the weakness of kids in unsafe circumstances. Expressions: India's Constitution, Common freedoms, Youngsters.

Through its few arrangements, the constitution guarantees youngsters' privileges and security. Kids who are known to be delicate and youthful require exceptional consideration and security. They are generally and universally perceived as having clear freedoms and satisfactory standards. The constitution perceived kids' privileges by and large and incorporated a few arrangements tending to free and required schooling, youth

opportunity and improvement, non-isolation in instructive settings, and restricting youngsters from working in risky conditions like as mines, plants, and different spots.

Numerous cases remain unresolved in the courts. In order to address this issue, the Honourable Supreme Court requested status reports from Assam, Madhya Pradesh, and Haryana State. Both states submitted their reports, but Madhya Pradesh failed to do so and was fined Rs. 10 lakhs for failing to follow the Apex Court's orders. Despite an astonishing number of pending cases, states such as West Bengal and Uttar Pradesh continue to disobey the Supreme Court's directive to establish Special POCSO Fast Track Courts (FTC). However, in one particular location in these districts, it is discovered that over a thousand cases involving young children have been waiting before the relevant courts for longer than a year.

Without a doubt, the previously mentioned POCSO Act has holes relating to the security of youngsters, and its change is desperately required. The POCSO Act is important to protect youngsters' freedoms, and the Public Commission felt the same way.

In light of a basic solicitation, the Kerala High Court gave a plenty of orders, which incorporate assigning a female IPS official in every space, managing the assessment of cases enlisted under the Security of Kids from Sexual Offenses Act (POCSO), and laying out OneStop Help Places as per the High Court's mandates to protect the people being referred to and plug any departure courses in the Demonstration's execution. Value P.B. Suresh Kumar gave the orders in the wake of noticing a few critical defects for the situation examination.

The youngster casualties were denied of their basic privileges to get legal direction and different advantages, the court found while managing a POCSO-related case. The court additionally saw that affirmations are not gotten to validate the sexual maltreatment through conduct signs or to clarify the damage that provoked the "odd lead" of the person in issue, delivering the youngster a problematic onlooker. The State Police Boss was guided by the court to assign a female IPS official in every space to guarantee that POCSO case examinations were led rigorously as per the POCSO Act's arrangements. In the improbable occasion that a female IPS official is inaccessible in a specific region, the State Police Boss might assign one of the accessible IPS officials.

The assigned IPS official will guarantee that the examination of the cases is exclusively regulated by authorities prepared in the Adolescent Equity Standard and that main these authorities are approved to offer expressions for the benefit of minors. Additionally, these announcements are made just when the casualties are genuinely and mentally well. The authority will guarantee that extra proof of the sexual maltreatment, both regarding actual proof and conduct rules, is acquired for each case. Prior to recording the last report for each case, the authority ought to guarantee that adequate proof is gotten to arrive at a resolution in regards to the charge's responsibility or genuineness. The court asked that One-Stop Backing Focuses be laid out in each area, supervised by the High Court, with staff individuals who are knowledgeable in taking care of worries relating to ladies and youngsters. It is normally utilized as the fundamental police base camp where all offenses against ladies and kids locally are accounted for. The court guided the State government to take quick, critical activity to empower the Kerala Legitimate Administrations Authority (KELSA) to pay out pay to casualties and guarantee that no casualties are compelled to sit tight for their remuneration. The State organization was guided by the court to assign a nodal individual inside a fortnight to empower the different accomplice works out, including their planning. The court requested that the State government think of fast answers for staff the state's measurable science labs to guarantee that the exploration offices' work deficiency wouldn't disrupt assessments and starter casework. The public authority was made to decide how really to allocate qualified, interesting public inspectors to courts taking care of POCSO matters and to furnish them with the essential preparation.

The most important phase of the legal executive is a lower court. By laying the groundwork for the case to build itself, it initiates the legal process. At this basic stage, the need for knowledgeable and skilled lawyers and judges is greatest. However, it appears that the entire framework was designed in an erroneous manner. These days, practicing in lower courts is seen as less respectable. But we can never plan to build a robust system to achieve equity until the establishment is adequate.

The enormous growth of legal mediation in the present era has expanded the scope of legal interpretation and the function of the Indian judiciary. When handling matters pertaining to children, the Court's officers make sure that all reasonable precautions are taken. The twin shields of equity under the vigilant eye of the law and the equal assurance of laws are recognized as two of the most significant pillars of fundamental

liberties of the universe of opportunity, which is the location where every opportunity to state common freedoms is perceived, whether under an unwritten or written constitution. India, with its expansive constitution that guarantees a wide range of rights, is the world's largest majority rule system. It is a sovereign, communist, popular republic. The foundation for India's international strategy and consideration of its global obligations is laid forth in the Constitution. Part IV of the Indian Constitution contains Article 51, which provides a primary explanation of these underpinnings.

To sum up, the POCSO Act is a critical first step toward the eradication of child abuse in India. However, for it to be executed successfully, collaboration between the government, judiciary, law enforcement, and civil society organizations is required. A sustained public awareness effort is needed to inform people about the Act's requirements and the need of reporting occurrences of child abuse. Establishing a strong support network for victims of sexual assault is also necessary. Victim rehabilitation should be part of this network, along with other initiatives. The POCSO Act needs to be regularly examined and changed in order to make sure that it is still applicable and effective in shielding children from sexual assaults.

A multitude of challenges, including low conviction rates, sluggish court systems, disjointed agency operations, and inadequate victim assistance programs, impede the execution of the POCSO Act. To solve these problems and make sure the Act is applied correctly, a comprehensive plan is required. Strengthening the ability of law enforcement agencies, offering sufficient victim support, improving agency coordination, and addressing the underlying causes of child abuse poverty, illiteracy, and social norms that support violence against children are all crucial components of this kind of strategy.

6.2. SUGGESTIONS

Drawing from the analysis and discourse, the ensuing recommendations may be proposed to enhance the efficacy of the POCSO Act in safeguarding children in India against sexual abuse:

1. Education and awareness: Disseminating facts and understanding on child sexual abuse is crucial. More comprehensive and approachable community-based initiatives are needed to increase public, child, and parent awareness of the issue. This can be achieved through awareness campaigns, lectures, and workshops.

2. Enhancing the POCSO Act's implementation: It's critical to make sure the POCSO Act is implemented promptly, effectively, and efficiently. This can be accomplished with sufficient support for the judicial system and law enforcement organizations. Building capacity and offering suitable training are crucial in order to guarantee that police, prosecutors, and judges are equipped to handle cases involving the sexual abuse of kids.

3. Protection of witnesses and victims: In situations involving child sexual abuse, it is imperative to offer sufficient protection to all parties involved. Making sure the witness protection program is carried out efficiently can help achieve this. Establishing a thorough witness protection program that include steps like relocation, rehabilitation, and anonymity is essential.

4. Victim rehabilitation: Assisting children who have experienced sexual abuse in their healing is essential. A comprehensive rehabilitation program that offers medical, psychological, and social support is essential. This would be facilitated by establishing rehabilitation centers that offer victims the assistance they need.

5. Regular review and modification of the POCSO Act: In order to keep up with the evolving circumstances surrounding child sexual abuse, the POCSO Act must be regularly reviewed and amended. Ensuring that the legislation offers sufficient protection for children and takes their needs into account is crucial.

In conclusion, child sexual abuse is a complex and diverse issue in India. Although the POCSO Act is a positive beginning, cooperation amongst all parties is required to guarantee that children are shielded from abuse in all of its manifestations. The aforementioned recommendations can act as a basis for creating an all-encompassing plan to deal with the problem of child sexual abuse in India.

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4. Save the Children India: <https://www.savethechildren.in/>
5. National Crime Records Bureau (NCRB): <https://ncrb.gov.in/>