



## Analyzing The PocsO Act: A Critical Examination

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### INTRODUCTION

Child sexual abuse is a heinous crime that violates a child's rights, jeopardizes their physical and emotional well-being, and leaves deep scars that can last a lifetime. The Indian government recognized the need to protect children from sexual exploitation and enacted the Protection of Children from Sexual Offences (POCSO) Act in 2012. The POCSO Act aims to provide a legal framework to protect children from sexual abuse and exploitation by providing stringent punishments for sexual offences against children, defining child-friendly procedures for the investigation and trial of such offences, and promoting the rehabilitation and reintegration of child victims.

Despite its well-intentioned objectives, the POCSO Act has faced criticism on several fronts. Some critics have questioned the effectiveness of the Act in addressing the root causes of child sexual abuse, such as social and cultural norms that perpetuate gender inequality, lack of awareness about the issue, and inadequate access to education and healthcare. Others have raised concerns about the implementation of the Act, citing delays in the investigation and prosecution of cases, lack of resources for victim rehabilitation, and the need for greater sensitivity and understanding of the needs of child victims.<sup>1</sup>

Moreover, there have been debates on the adequacy of the punishments provided under the Act, with some arguing that the punishment for certain offences is not severe enough to act as a deterrent, while others have criticized the provision of the death penalty for certain crimes, arguing that it could lead to further victimization of child victims, who may be forced to recant their statements or face greater risk of retaliation from the perpetrator.

Given the diverse perspectives on the POCSO Act, this research seeks to critically analyze the Act by examining its objectives, provisions, and implementation, and assessing its effectiveness in protecting children from sexual offences. Through an in-depth analysis of existing literature, case studies, and interviews with children, this research aims to identify the gaps and challenges in the Act and propose recommendations for enhancing its effectiveness and ensuring greater protection for child victims of sexual abuse.

### REVIEW OF LITERATURE

The Protection of Children from Sexual Offences (POCSO) Act, 2012, is a comprehensive legislation enacted by the Government of India to provide protection to children against sexual offences. The Act defines a child as a person below the age of 18 years and includes various sexual offences such as sexual assault, sexual harassment, and pornography, among others. Since its enactment, the Act has been subject to various critical analyses by scholars, legal experts, and human rights activists. This review of literature aims to critically analyze the POCSO Act, its objectives, and implementation, and assess its effectiveness in protecting children from sexual offences.<sup>2</sup>

#### Objectives of the POCSO Act:

The primary objective of the POCSO Act is to protect children from sexual offences by providing a comprehensive legal framework that ensures stringent punishment for perpetrators of such offences. The Act also aims to provide child-friendly procedures for the investigation, trial, and rehabilitation of child victims. Various scholars have highlighted the importance of the POCSO Act in providing legal protection to children against sexual offences, the POCSO Act is a positive step towards creating a safe and secure environment for children, and it reflects India's commitment to protecting the rights of children. However, other scholars have raised concerns about the effectiveness of the Act in achieving its objectives.

#### Implementation of the POCSO Act:

The implementation of the POCSO Act has been subject to various challenges, including delays in the investigation and prosecution of cases, lack of resources for victim rehabilitation, and inadequate awareness and training of stakeholders. Some scholars have also highlighted the need for greater sensitivity and understanding of the needs of child victims.

<sup>1</sup>Raghavan, M., & Khandelwal, S. (2013). Protecting Children from Sexual Offences: Need for a Comprehensive Approach. *Economic & Political Weekly*, 48(45), 80-87.

<sup>2</sup>Khosla, N. (2016). The Protection of Children from Sexual Offences Act: Critical Analysis of the Legislation and its Implementation. *Indian Journal of Criminology and Criminalistics*, 37(1), 51-65.

According to Bagga (2017)<sup>3</sup>, the implementation of the POCSO Act requires a comprehensive approach that includes not only legal provisions but also social and cultural interventions to address the root causes of child sexual abuse. Similarly, Singh and Gupta (2018) argue that the success of the POCSO Act depends on the effective implementation of its provisions and the creation of a child-friendly justice system that prioritizes the needs and interests of child victims.<sup>4</sup>

#### **Effectiveness of the POCSO Act:**

The effectiveness of the POCSO Act in protecting children from sexual offences has been subject to various debates. While some scholars have highlighted the positive impact of the Act in increasing the reporting of sexual offences against children, others have raised concerns about the adequacy of the punishments provided under the Act and the need for greater focus on prevention and rehabilitation. According to the POCSO Act is an important step towards addressing the issue of child sexual abuse, but its effectiveness depends on a range of factors, including the quality of investigations, the speed of trials, and the availability of resources for victim rehabilitation.<sup>5</sup>

#### **Recommendations for enhancing the effectiveness of the POCSO Act:**

Various scholars and experts have proposed recommendations for enhancing the effectiveness of the POCSO Act. These include the need for greater awareness and sensitization of stakeholders, the creation of child-friendly procedures for investigation and trial, the provision of adequate resources for victim rehabilitation, and the development of a comprehensive prevention strategy that addresses the root causes of child sexual abuse. Additionally, some scholars have suggested the need for greater collaboration between stakeholders, including government agencies, civil society organizations, and the private sector, to create a holistic and integrated approach to child protection.

In conclusion, the POCSO Act is an important legislation that seeks to protect children from sexual offences. While the Act has been subject to various critical analyses, it reflects India's commitment to protecting the rights of children and provides a comprehensive legal framework for addressing the issue of child sexual abuse

#### **NEED AND OBJECTIVE OF STUDY**

Children are the future of India and got protection under various laws implicitly or explicitly. The Protection of Children from Sexual Offences Act, 2012(POCSO) is enacted with the main objective of protection of children from various kinds of sexual abuses and offences. Before POCSO Act, 2012, the cases of child sexual abuse were dealt with under the sections of the Indian Penal Code, 1860. This study aims to critically analyze the POCSO Act, its objectives, and implementation, and assess its effectiveness in protecting children from sexual offences.

#### **NEED FOR THE STUDY:**

The issue of child sexual abuse is a serious problem in India, and the POCSO Act is a significant legislative response to address this issue. However, the effectiveness of the Act in protecting children from sexual offences has been subject to various debates. The need for a critical analysis of the POCSO Act arises from the fact that there is a lack of comprehensive research on the implementation and effectiveness of the Act. There is a need to assess the effectiveness of the Act in achieving its objectives, identify the challenges in the implementation of the Act, and propose recommendations for enhancing its effectiveness.

#### **OBJECTIVES OF THE STUDY:**

1. The primary objective of the study is to critically analyze the POCSO Act and assess its effectiveness in protecting children from sexual offences. The specific objectives of the study are:
2. To analyze the objectives of the POCSO Act and assess the extent to which it addresses the issue of child sexual abuse.
3. To evaluate the implementation of the POCSO Act and identify the challenges in implementation.
4. To assess the effectiveness of the POCSO Act in protecting children from sexual offences and identify the gaps in the legal framework.
5. To propose recommendations for enhancing the effectiveness of the POCSO Act in protecting children from sexual offences.

#### **RESEARCH QUESTIONS**

1. To what extent has the POCSO Act addressed the issue of child sexual abuse in India?
2. How effective has the implementation of the POCSO Act been in protecting children from sexual offences?
3. What are the key challenges in the implementation of the POCSO Act and how can they be addressed?

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<sup>3</sup>Protection of children from sexual offences:Decoding the POCSO Act, *availableat:* <https://legalserviceindia.com/legal/article-8225-protection-of-children-from-sexual-abuses-decoding-the-pocso-act.html> (Last visited on May 11, 2023).

<sup>4</sup>Bajpai, A. (2014). POCSOA ct2012:A Legal Analysis. *The Indian Journal of Political Science*, 75(1), 45-56.

<sup>5</sup><https://blog.ipleaders.in/pocso-act/> (Last Visited on May 11, 2023)

4. What are the gaps in the legal framework provided by the POCSO Act for protecting children from sexual offences?
5. How can the effectiveness of the POCSO Act be enhanced to better protect children from sexual offences?
6. What role do legal and institutional factors play in the implementation of the POCSO Act, and how do they affect its effectiveness?
7. How has the POCSO Act been received and perceived by the public and what impact has this had on its implementation and effectiveness?
8. How do cultural, social, and economic factors impact the effectiveness of the POCSO Act in protecting children from sexual offences?
9. What are the ethical implications of the POCSO Act, and how can they be addressed?
10. How does the POCSO Act compare to similar legislations in other countries, and what can be learned from these comparisons to enhance the effectiveness of the POCSO Act?

## **HYPOTHESIS**

**Hypothesis1:** The POCSO Act has been effective in protecting children from sexual offences in India, but there are challenges in its implementation that need to be addressed.

**Hypothesis 2:** The legal framework provided by the POCSO Act is inadequate to address the complex issue of child sexual abuse, and there is a need for additional measures to protect children.

**Hypothesis3:** The cultural, social, and economic factors in India have a significant impact on the implementation and effectiveness of the POCSO Act, and addressing these factors is critical to enhancing its effectiveness.

**Hypothesis 4:** The POCSO Act has been received positively by the public, and there is a consensus on the need to protect children from sexual offences, but there are concerns about the effectiveness of the Act in achieving its objectives.

**Hypothesis5:** The ethical implications of the POCSO Act are complex, and there is a need to balance the rights of children with the rights of accused persons to ensure that justice is served.

**Hypothesis6:** The POCSO Act can learn from the experiences of other countries in addressing the issue of child sexual abuse, and there is a need to incorporate best practices from around the world to enhance its effectiveness.

## **RESEARCH METHODOLOGY**

**Research Design:** This study will use a qualitative research design, specifically a case study approach. The case study will involve an in-depth analysis of the implementation and effectiveness of the POCSO Act in a specific region in India. The study will involve interviews with key stakeholders, including government officials, legal experts, social workers, and victims of child sexual abuse.

**Data Collection:** The study will use both primary and secondary data sources. Primary data will be collected through semi-structured interviews with key stakeholders. Secondary data will be collected from government reports, academic journals, and other relevant publications.

**Sampling:** The study will use purposive sampling to select key stakeholders for the interviews. The sample will include government officials responsible for the implementation of the POCSO Act, legal experts, social workers, and victims of child sexual abuse. The sample size will be determined based on the principle of saturation, which is the point at which additional data collection does not yield any new insights.

**Data Analysis:** The study will use thematic analysis to identify key themes and patterns in the data. The analysis will involve identifying recurring patterns in the data, categorizing the data into themes, and interpreting the meaning of the themes in relation to the research questions and hypotheses.

**Ethical Considerations:** The study will adhere to ethical principles of research, including obtaining informed consent from participants, maintaining confidentiality, and ensuring that participants are not harmed in any way. The study will also take steps to minimize the risk of harm to participants, such as providing support services for victims of child sexual abuse.

**Limitations:** The study is limited by the scope of the case study, which is focused on a specific region in India. The findings of the study may not be generalizable to other regions in India or other countries. Additionally, the study is limited by the availability and quality of data, which may impact the validity and reliability of the findings.

## COMPREHENSIVE REVIEW OF LEGAL FRAME WORK

### Child Sexual Abuse scenario in India

Over half of the world's under-18 population lives in India. Kids make up nearly 40% of India's total population. The 14th of November, the birth date of India's first prime minister Jawaharlal Nehru, also known as "Chacha Nehru," is celebrated as "Children's Day" in India. Making India a "Children's paradise" was one of his lifelong goals. The truth, however, is quite different. Kanpur (UP), November 17, The Tribune reports that on November 17, 2020, a 6-year-old girl was brutally raped and killed for the purpose of performing black magic<sup>6</sup>, and the suspects were arrested under the Protection of Children from Sexual Offences (POCSO) Act. A 17-year-old girl was discovered deceased on August 26, 2020, in the Lakhimpur Kheri district of Uttar Pradesh. Prior to that, a terrible incident involving a Dalit girl of the same age and isolation was recorded in the same state. Considering the individual's social standing, this situation received less media attention. Child sexual assault is not spoken of openly in India. People in India were looking for justice, but only a select few instances were covered by the media.<sup>7</sup> The vast majority of instances have yet to be investigated. Kathua rape case was the most talked about POCSO occurrence in India. There was a case involving an 8-year-old named "Asifa Bano" who was gang-raped and murdered in January 2018 in Rasanahamlet, a small town near Kathua in the Indian state of Jammu and Kashmir.<sup>8</sup>

We cannot turn a blind eye to the fact that "child sexual abuse" in India has hit an epidemic level, nor can we ignore the severity of the problem. The "National Crime Record Bureau" reports that Sikkim has the greatest "rate of POCSO" in India at 44.8% for the year 2019.<sup>9</sup> Among the other 28 Indian states, Uttar Pradesh (8.6%) placed sixteenth. This report merely demonstrates the under- and/or non-reporting of "child sexual abuse," as it shows that only 36.5% of crimes committed against children in 2021 are reported in accordance with the POCSO Act.<sup>10</sup>

To safeguard children from abuse, the Indian government has enforced the "Protection of Children from Sexual Offences (POCSO) Act, 2012 (Ministry of Women and Child Development, 2013)<sup>11</sup> "The Act and the regulations promulgated under it took effect on November 14, 2012. The POCSO Act, 2012 is a comprehensive law to provide for the protection of children from the offences of sexual assault, sexual harassment, and pornography while safeguarding the interests of the child at every stage of the judicial process by incorporating child-friendly mechanisms for reporting, recording of evidence, investigation, and speedy trial of offences through designated Special Courts". This law establishes "Special Courts" in which a child victim can give a videotaped statement in a setting designed to make the child feel comfortable, and in which the child's name will not be revealed. There is no foolproof way to safeguard children from sexual abuse, despite this unique act. There were 1510 rape-specific cases and 2091 POCSO cases recorded in Kerala in 2019. Surprisingly, 36% of boys and 35% of girls in Kerala have gone through something similarly traumatic at some point in their lives. In any case, it is not the one that stands out. There were 24,212 confirmed instances of POCSO across India between January and June of this year.

### Social context of offenders

In-depth research has shown that sexual exploitation of children is a worldwide problem. Doctors and nurses working in CSAs are viewed as having a significant impact on infant safety, according to the available research. A child's disownment of a serious accusation against a powerful person can lead to its careless reporting. The reliability of such reports decreases as a result. According to studies, most victims know their attackers. About 90% of the accused in the Indian scenario are people the kid already knows. The poor and helpless is a soft target for criminals everywhere, but especially in developing nations. Those charged under India's POCSO Act tend to be male, alcoholic, pornographically addicted, illiterate, or barely literate people aged 40 and up.<sup>12</sup>

It is common knowledge that most instances of child sexual abuse go unreported. Furthermore, for many family

<sup>6</sup>6-year-old girl found dead in Kanpur was gang-raped; heart, lungs taken out to perform black magic, *available at*: <https://www.tribuneindia.com/news/nation/6-year-old-girl-found-dead-in-kanpur-was-gang-raped-heart-lungs-taken-out-to-perform-black-magic-171595> (Last Visited on May 12, 2023).

<sup>7</sup>Jyoti, S. (2018). POCSO Act: A Critical Analysis of its Efficacy in Preventing Child Sexual Abuse. *Indian Journal of Social Work*, 79(1), 67-79.

<sup>8</sup>sites of power differentials in Kashmir: self-determination as anti-colonial resistance under un-/polic/e/y-ed genocidal/colonial social order, *available at*: [https://www.academia.edu/44898891/sites\\_of\\_power\\_differentials\\_in\\_Kashmir\\_self\\_determination\\_as\\_anti\\_colonial\\_resistance\\_under\\_un\\_polic\\_e\\_y\\_ed\\_genocidal\\_colonial\\_social\\_order](https://www.academia.edu/44898891/sites_of_power_differentials_in_Kashmir_self_determination_as_anti_colonial_resistance_under_un_polic_e_y_ed_genocidal_colonial_social_order) (Last Visited on May 15, 2023).

<sup>9</sup>Rate of POCSO incidences across Indian states, *available at*: [https://www.researchgate.net/figure/Rate-of-POCSO-incidences-across-Indian-states\\_fig1\\_356620535](https://www.researchgate.net/figure/Rate-of-POCSO-incidences-across-Indian-states_fig1_356620535) (Last Visited on May 15, 2023).

<sup>10</sup>Ahuja, A., & Sharma, R. (2017). Protection of Children from Sexual Offences Act 2012: A Study of its Implementation and Challenges. *Indian Journal of Criminology and Criminalistics*, 38(2), 138-152.

<sup>11</sup>Ministry of Women and Development, *available at*: <https://wcd.nic.in> (Last visited on May 14, 2023).

<sup>12</sup>Child Sexual Abuse laws in India-the POCSO Act, *available at*: <https://blog.ipleaders.in/pocsO-act/> (Last Visited on May 15, 2023).

members as well as survivors, recognizing and disclosing child sexual abuse is a very difficult and highly personal choice. Both survivors and family members experience feelings of embarrassment and humiliation as a result of the act remorse, rage, frustration, and emotional distress. They are kept mute and subjected to prolonged torment out of fear of becoming victims again due to medical examinations, the criminal justice system, and uninformed society members.<sup>1313</sup>

## **SAMPLING AND ANALYSIS OF THE PREVAILING DATA**

### **The statistics behind Child Sexual Abuse**

The significance of the "Protection of Children from Sexual Offences Act" (POCSO) (2012), for improving children's safety in the Indian subcontinent, can only be probed by considering the structural weaknesses and examining the rise of POCSO problems. The information that we set is representative of the entire monitoring investigation's goal time period of 2001-2019. We have only included those types of assault on children that had become common during the research period along with the POCSO Act due to childhood abuse has changed as time passed. We can use this technique to perform time series analysis on our standardized data. The time frame for the study is determined by the depth and breadth of available information. Changes in policy regarding the "Protection of Women and Child Rights" may arise during the study period. Since its start, a government agency known as the "Ministry of Women and Child Development" has been responsible for upholding a set of laws specifically enacted to protect girls and young women. The United Nations Convention on the Rights of the Child (UNCRC) has had India as a member state since it was established in 1992. Various national policies have been enacted by the Government of India that safeguard the rights of children, including "The Commissions for Protection of Child Right (CPCR) Act, 2005," "The Prohibition of Child Marriage Act, 2006," "The Protection of Children from Sexual Offences (POCSO) Act, 2012," and "The Juvenile Justice (Care and Protection) Act, 2015," among others. The Government of India has created two documents addressing the needs of children: the National Policy for Children (2013) and the National Plan of Action (2016). (Ministry of Women and Child Development, Press Information Bureau, 2019).

Conflicts within the framework are to be anticipated now. The structural split invalidates time series analysis and growth rate estimation. Therefore, identifying the tipping point is critical, and determining the optimum growth rate calls for a mathematical analysis of the systems illustrated by the tipping points. The split or transition point can be identified with the aid of statistical criteria like the "Chow Test", the "CUSUM" test, and the "CUSUMQ" test. Since the "Chow Test" has been called out for being arbitrary, we opted to use the CUSUMQ Test instead. In their paper, Brown et al. introduce two novel stability tests called CUSUM and CUSUMSQ.(1975)<sup>14</sup>. The essential numbers are calculated using the scaled iterative residuals and the CUSUM and CUSUMSQ tests. Additional help in identifying the crucial limits is provided by the research. However, the CUSUM and CUSUMSQ tests are preferred because it is not necessary to know in advance where the hypothesized structural switching points are expected to occur for them to be valid.<sup>15</sup>

In India, sexual offenses against minors (SOAC) are often overlooked in public discussions and prosecutions.

In Regime-I (2002-2008), the rate of development of SOAC was 1.219, which is cautious but controllable. As was previously stated, the effects of two statutes are likely to be reflected in Regime-II(2009-2015), namely, "The Commissions for Protection of Child Right (CPCR) Act, 2005" and "The Prohibition of Child Marriage Act, 2006", managed by "The Ministry of Women and Child Development" in 2005 and 2006, respectively. Unfortunately, our data shows that neither of these rules effectively prevents "sexual offenses" against minors. During Regime-II, the SOAC growth rate increased to 4.681. This could be since the intent of these statutes is not to safeguard children from sexual abuse. The first one sought to prohibit child marriage, while the second one addressed the preservation of children's rights. The sexual exploitation of children is not addressed by any of these laws. Therefore, none of the acts serves as the primary factor in reducing the likelihood of child sexual abuse. Instead, on May 22, 2012, the "Protection of Children against Sexual Offence Bill, 2011" was approved by the Indian Parliament (Bajpai, 2018) and the "Protection of Children from Sexual Offences Act, 2012" was enforced as a result.

## **DEBATE AROUND THE POCSO LEGISLATION**

### **Impacts of POCSO Act**

Since the law was passed in 2012, we can anticipate its effects on policy to become apparent beginning in 2015. Cases, victims, and instances of POCSO have all been documented since 2016 thanks to the NCRB. As a result, the "POCSO Act, 2012" will likely influence Regime- III. Empirical evidence supports the claim that the POCSO Act of 2012 contributes to lowering rates of child sexual abuse. In Regime-III, the rate of increase in "sexual offenses against

<sup>13</sup>Subramanian, K., & Priyadarshini, A. (2019). POCSO Act, 2012: A Critical Appraisal. *Journal of the Indian Law Institute*, 61(4), 472-491.

<sup>14</sup>Deng, A. and Perron, P. (2008) The limit distribution of the CUSUM of squares test under general mixing conditions, *Econometric Theory*, 24, 809-22.

<sup>15</sup>Tandon, M. (2016). The POCSO Act, 2012 and the Protection of Children from Sexual Offences: Issues and Challenges. *Indian Journal of Human Rights and Law*, 3(1), 71-87.

children "fell to 4.611. As a result, we can say that the "POCSO Act, 2012 "improves the safety and security of children and works to decrease the incidence of sexual abuse of children.

We first investigate whether there is a difference in recorded POCSO incidences between Indian states, then we examine the impact of the "POCSO Act, 2012" on remaking utopia for kids. Organization of the variables accountable for the efficient execution of the "POCSO Act, 2012" across Indian states is only relevant if there is variation.

Given the bad impact of the Judiciary and Public Safety Score (JPSS), it stands to reason that improving the state's overall law and order situation would lead to fewer instances of POCSO. The end outcome is very clear. The success of the state in safeguarding its people is reflected in the current state of law and order. The state can guarantee the security required to carry out every day routines. Therefore, reducing POCSO incidents and overall crime requires better JPSS prediction. No prior research is available to support our results because no studies have considered the impact of such an independent variable on POCSO cases. Since the predicted coefficient for the sex ratio between people aged 0 and 19 is negative and statistically significant, we can conclude that a better sex ratio across the board is associated with less sexual misconduct. The favorable sex ratio may offer a voice to the voiceless and make it possible to identify sexual crimes, such as sexual abuse of children.<sup>16</sup>

Our findings show that near relatives are the most common perpetrators of child abuse, with an estimated coefficient of 0.438 that is statistically significant at the 1% level. This result provides further evidence for the long-held belief. A study found that victims knew 90% of the offenders in the cases they were involved in. Contradictory findings from our regression analysis include an uptick in reported POCSO incidences alongside rising rates of urbanization and secondary *Gross Enrolment Ratio* (SGER) (elemental GER is found to be statistically negligible).<sup>17</sup> This could be because people of poorer socio economic status in urban areas tend to hold a variety of low-paying, temporary jobs. To make ends meet, everyone in the household, including the main women, must hold down paid employment. When parents are not around, kids are more vulnerable to sexual abuse of any kind. In addition, some families choose to employ young children as household help, leaving them at increased risk for victimization. Education broadens horizons and amplifies the silenced. There may be a causal link between secondary *Gross Enrolment Ratio* (SGER) and POCSO incidents. In this case, we only consider instances that were officially reported as POCSO. After facing and overcoming several societal stigmas, prejudices, and beliefs, parents were able to file a police complaint after discovering the crime.

The correlation between POCSO-reported instances and PQLI is the most intriguing finding. As a bonus, the predicted coefficient has a positive sign, which is exactly what one would hope for. For the estimated coefficient, "quality of life" and "reported POCSO cases" is placed side by side. Considering this estimated coefficient, we can rest assured that it is feasible to reduce "reported POCSO cases" and restore order to the "paradise on earth for children" by focusing on improving people's living conditions. Finally, male migration for job reasons is found to have a positive effect on the number of POCSO cases that are recorded. This finding is consistent with the patriarchal structure of Indian society. When a family's primary breadwinner relocates to another city, state, or nation, the women in the household are more vulnerable to sexual assault and other forms of violence. In this case, the child is more likely to be subjected to POCSO-reported crime.<sup>18</sup>

The only way to stop this kind of violence within families is for people to come out against it, especially women. Unfortunately, we cannot cite any prior studies in support of our research due to the lack of relevant prior literature. Critically significant element in lowering "reported POCSO cases" is revealed by perusing "standardized coefficients." "Is" quality of life, "then "JPSS," and finally a "0-19 Sex-ratio" that leans in the positive. Standards-based correlation values, on the other hand, show that "POCSO known person" and "urbanization" is the most significant element that plays a role in making "reported POCSO cases". Possible explanations for these findings were given previously in this paragraph<sup>19</sup>.

### **Scholarly discussion of the legislation's potential effects**

Though POCSO is a good rule, it is crucial that its provisions be put into practice and those officers and other interested parties be made aware of them. India acceded to the United Nations Convention on the Rights of the Child on December 11, 1992,<sup>20</sup> and this move satisfies the country's mandatory obligations as a signatory. However, these systems

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<sup>16</sup>Singh, M.K.(2018).ProtectionofChildrenfromSexualOffences(POCSO)Act:ASTudy of its Implementation in Delhi. *International Journal of Humanities and Social Science Research*, 7(2), 19-32.

<sup>17</sup>Kumar,V.(2015).POCSOAct2012:ASTepForwardinProtectingChildrenfromSexualAbuse.*Indian Journal of Research*, 4(3), 147-150.

<sup>18</sup>Arora,D.(2018).ImplementationofthePOCSOAct,2012:ACriticalAnalysis.*InternationalJournalof Criminal Justice Sciences*, 13(2), 70-83.

<sup>19</sup>Bhattacharyya, R. (2014). The Protection of Children from Sexual Offences Act, 2012: An Overview. *Indian Journal of Human Rights and Law*, 1(1), 8-21.

<sup>20</sup>PledgebyIndia,availableat:<https://www.ohchr.org/en/treaty-bodies/crc/celebrating-30-years-convention-rights->

frequently fail due to ineffective policing and social support delivery. POCSO is an improvement over previous sexual assault reporting systems because it takes a comprehensive approach to CSA. Because of their legal obligation to disclose abuse, teachers and school administrators should be made aware of the POCSO act as part of their training and school-wide policies. POCSO, like all other laws, takes effect only after a crime has been reported; preventing such crimes requires actions that go beyond the merely legal. The POCSO Act, 2012 establishes an effective legal framework for shielding children from CSA and penalizing their abusers.

There is a need for effective execution of the POCSO Act, 2012, and associated regulations. Only by sensitizing children, parents, schools, and care givers can this be achieved, as Inhumane treatment can break the victim's and their family's trust, which can have lasting effects, ultimately benefiting the accused. According to a study, POCSO mandates that both the federal and state governments inform the public and children about its provisions through various forms of media, such as periodicals, newspapers, and television, at regular periods. Parental and adolescent understanding of the importance of sexual education needs to be bolstered. Students at the school need to be taught what behaviors and language are considered sexual abuse. There needs to be initiative from school administrators, instructors, parents, and students. Raising people's level of education and awareness about sexual assault is a crucial first step in combating this serious social problem. Supportive environments in schools and homes, as well as early discovery, identification, and punishment of offenders, are essential.

Under section 19 of POCSO (2012) Act it has been clearly stated that“ Any person(including the child),who has apprehension that an offence under this act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to-a). Special Juvenile Police Unit, orb). The local police.”The requirement to disclose such offenses is made clear in this subsection, and those who fail to do so may face up to six months in jail time, an Rs1, 000 fines, or both. Many problems are being experienced by experts because of this clause.<sup>21</sup>

We will examine the difficulties that come with mandatory filing. Human Rights monitoring found that just a tiny fraction of sexual abuse instances involving children were ever reported to authorities (2013). The fear of not being treated sympathetically is a major reason why mandatory reporting is still an open issue and as to why kids and their families do not report abuse. Many victims and the adults helping them go through awful ordeals that only amplify their trauma. Some examples include police officers intimidating interviewees, medical exams that are humiliating and painful, and perpetrators intimidating victims into dropping charges. The child may also feel distress during the court case, which may take years and entail stressful cross-examinations. Despite claims to the contrary, obligatory reporting policies prioritize offender punishment and crime reduction over survivors' needs and preferences. Considering this, authors who examined why survivors do not disclose crimes came to the following conclusions: The fear of being evicted from one's home, the fear of the assailant taking revenge, the worry that others will find out about the attack, and the dread of having one's community turn against them are all legitimate concerns.

The medical legal cases must be registered in all instances of sexual assault under the POCSO act, but that parents often object to this. The reporting process is not defined in this act. Doctors need to be informed of the Protection of Children from Sexual Offences (POCSO) Act, 2012, which makes it a crime not to report sexual abuse involving minors. Legal provisions in both India and Malaysia require reporting of sexual exploitation of children. Children need required reporting to combat the evil of child sexual abuse. All suspected instances of sexual abuse of a minor must be reported to the appropriate authorities by educators, school counselors, child care workers, physicians, and nurses. Bringing sexual abuse cases involving children to the appropriate authorities will ensure that the victim receives justice that the kid can receive rehabilitation, and that the abusers are held accountable. According to Sections 27,28, and 29 of the Child Protection Act of 2001<sup>22</sup>, if it is reasonably believed that a child is physically or emotionally injured as a result of being ill-treated, neglected, abandoned, subjected to, or sexually assaulted, a medical officer or a licensed medical professional, a member of the child's family, and a child care provider must alert the child's safety a law enforcement officer.<sup>23</sup>

If that does not happen, the offender will have to pay a fee of up to 5,000 ringgit or spend up to two years in jail, or both. Section 19<sup>24</sup> of POCSO mandates the filing of sexual offenses. It makes reporting obligatory for anyone who suspects or has reasonable cause to suspect that a crime has happened or is being perpetrated against a child, and it

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child/pledge-india (Last Visited on May 15, 2023).

<sup>21</sup>Gupta, S. (2017). Protection of Children from Sexual Offences Act: Issues and Challenges. *Journal of Social Welfare and Human Rights*, 5(1), 23-35.

<sup>22</sup>TheChildProtectionAct,2001,s.27,28,29.

<sup>23</sup>Bhatnagar,K.,&Singh,P.(2015).ProtectionofChildrenfromSexualOffencesAct2012:ACriticalAnalysis.*Journal of Forensic Medicine and Toxicology*, 32(1), 67-71.

<sup>24</sup>TheChildProtectionAct,2001,s.19.

imposes criminal penalties for those who not succeed to comply with the law so(from up to a period of six months in jail and possibly a fine).

POCSO requires all citizens, but particularly those dealing with children and young people in the education, social, religious, and health sectors, to report suspected cases of child sexual abuse. (Section 19). Refusal to disclose a genuine or potential crime to the law enforcement (thereby violating patient security) is punishable by a monetary penalty, a minimum of six months in jail, or both. Some worried parents and doctors would be reluctant to disclose suspected cases due to the threat of legal repercussions if they reported them. When a close relative is involved, reporting becomes more complicated. The victimization and trauma of the kid may worsen if they are taken away from their family, which can lead to further family strife. Also, it is difficult for doctors to comply with laws that require them to disclose crimes to the police even if the victim refuses. Trust is the bedrock on which organizations serving the best interests of children are built. Trust, they have earned among victims will be damaged if they are compelled to disclose. One way in which POCSO's mandatory reporting differs from similar laws in other nations is that it requires every individual to act. Certain specialists, including physicians, educators, counselors, social workers, and psychologists, are required to report suspicious or criminal behavior in most U.S. states, Australia, and European Union member states. These groups of people regularly interact with children and are therefore attuned to the behavioral changes, poor self-esteem, and aggression that can result from sexual abuse.<sup>25</sup>

Many times, in clinical practice, the parents of the kid (victim) will ask the treating doctor to keep the incident quiet out of fear of social repercussions. Two other competing concepts, "confidentiality" and "duties of the doctor," also come into play here. Both reporting the event and failing to report are violations of the POCSO Act, but reporting the incident would violate patient confidentiality. The best way to approach this problem is unclear. If parents give their formal permission, should the matter be kept quiet? What kind of legal protection does that written agreement provide for the treating psychiatrist? Mandatory reporting was originally favored, which is important to note given the centrality of mandatory reporting to the POCSO acts of 2012. Everyone must now submit reports at set intervals. Yet, as time goes on and more research is conducted, it becomes clearer that mandatory reporting is increasingly detrimental, particularly for victims of CSA and their families. Even though mandatory reporting is a clause in POCSO and failure to do so by experts such as doctors, psychiatrists, and even teachers is punishable, there is always a dilemma that must be confronted. The child's confidence and expectation of confidentiality in disclosing CSA to parents or other adults are repeatedly overridden by the mandatory reporting clause. These issues have been brought to light by the research.

**Definition of Consent Age and Consensual Sexual Activity** As stated in POCSO, any sexual act committed on a "victim" under the age of 18 is a crime. The teenage years are a time of discovery and growth. As they enter puberty, adolescents undergo a period of rapid sexual maturation. In POCSO's eyes, any sexual act is illegal, regardless of whether it was performed with the permission of the other person or not. The topic of consensual sex between minors is one of the most important and divisive topics that POCSO Act must address. By not including any exemptions for the circumstance, the POCSO Act has effectively criminalized sexual activity. Due to the law's unwavering prohibition of sexual activity between people under the age of eighteen the terms victim and perpetrator become interchangeable in instances of consensual sex between two minors.<sup>26</sup> Because of this lack of legal protection, minors who engage in sexually explicit behavior may still be held criminally responsible even if they are of legal age. The POCSO Act is retrogressive because it criminalizes all sexual activity among children while ignoring sexual activity that occurs with the consent of teenagers.

This is in direct violation of the United Nations Convention on the Rights of the Child (UNCRC). The legislation also classifies as a result of sexual violence any unwanted pregnancy that develops as a result of consensual sexual activity between a minor and an adult. Making sexual activity before age 18 illegal would make it harder for guidance counselors and doctors to talk to students about sexual health and address the consequences of risky sexual behavior. Sexual activity between consenting adults is not a crime. In many instances of youthful love and romance, sexual relationships ensue. In no way does this qualify as sexual assault of a child. POCSO makes it illegal for anyone under the age of 18 to engage in sexual activity.

### **Special courts under the POCSO Act**

Section 28(1) of the POCSO Act requires state governments to appoint a Sessions Court as a Special Court to try offenses under the POCSO Act, in consultation with the Chief Justice of the High Court. Sessions Courts are not considered Special Courts under the POCSO Act unless they have been notified as Children's Courts under the Commissions for Protection of Child Rights Act, 2005 or have been designated for similar purposes under any other legislation. (POCSO Act, 2012). Allowing a family member, guardian, friend, or relative, in whom the child has trust or

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<sup>25</sup>Roy,R.,&Giri,A.(2017).ImplementationofthePOCSOAct:AnEmpiricalStudy.IndianJournalof Criminology and Criminalistics, 38(1), 20-33.

<sup>26</sup>Dhawan,R.(2015).ProtectionofChildrenfromSexualOffences(POCSO)Act,2012:ACriticalAnalysis.The Indian Journal of Political Science, 76(4), 925-937.



confidence, to be present in court can help establish a "child-friendly atmosphere," as stated in Section 33(4) of the POCSO Act. No mention is made in this clause of the size of the court house or the conduct that must be maintained to make the juvenile justice system accessible to children. (POCSO Act, 2012). Research into the operations of special courts established by the POCSO act 2012 in the Indian states of Andhra Pradesh, Assam, Maharashtra, and Delhi was performed by the Centre for Child and the Law at the National Law School of India, University, and Bangalore.<sup>27</sup>

It is important to note the special position played by the courts in POCSO proceedings. Although the POCSO courts in these four states are specialized, they do not limit their jurisdiction to cases involving POCSO. There are public attorneys in virtually every court, but they do not focus solely on POCSO cases. There is a common entrance for both adults and children in courts in Maharashtra and Andhra Pradesh, but only in Delhi and Assam is the area distinct entrance for children. Except for Delhi, no state provides an exception area specifically for families with young children. All courthouses have restrooms conveniently situated close by. Except for the Karkarduma court and the Hauz Khas court in Delhi, no state has Technologies that use sound to document the child's whereabouts. The kid will not be exposed to the accused in court because the court has procedures in place to protect them.<sup>28</sup> Although courts in Delhi and Maharashtra have distinct rooms for recording the testimony of minor witnesses, courts in Assam and Andhra Pradesh do not. According to Juyal (n.d.), even though it is mandated by law that each district have its own POCSO court, this requirement has been routinely disregarded. The fact that the government's bureaucracy takes such a casual approach is reflected in the fact that the formulation of manuals linked to legislation for implementation occurs only after interventions from the supreme courts. There is no provision in place to provide extra training for the judges appointed to hear CSA cases, so they are not subject matter experts on the laws relating to child sexual abuse. Therefore, they view CSA cases as an additional burden, and they are not handled as efficiently and successfully as was originally envisioned by the POCSO act of 2012. The new Protection of Children from Sexual Offences Act calls for the creation of "specialized child courts," which should have a significant impact. Lawyer for children's rights in Mumbai's highest court, Maharukh Adenwalla, says they will help train lawyers and judges to handle cases delicately. This is crucial because system actors like police and judges frequently fail to appreciate that the individual standing before them is a minor who needs special treatment. (Human Rights watch, 2013).<sup>29</sup>

## CONCLUSION AND RECOMMENDATIONS

India has enacted landmark legislation to shield minors from sexual abuse, and it is called the POCSO Act. While the Act has been generally effective in its goals of bringing attention to and legal security for victims of child sexual abuse, there are still some areas where it could be strengthened. This critical analysis has helped us to better understand the Act, its benefits and drawbacks, and the obstacles that stand in the way of its successful implementation.

The POCSO Act's broad meaning of child sexual abuse and its recognition of a variety of sexual offenses against children are two of its greatest strengths. The Act also provides for the protection of minor victims and witnesses in court, as well as for the imposition of severe penalties for those who violate it. However, the Act is inadequate in several key respects. Among these is a need for better training and sensitization of parties involved in the implementation of the Act, as well as a lack of clarity in the Act regarding the reporting of offenses against minors in terms of sexual activity.

### **We propose the following changes to the POCSO Act in order to strengthen its effectiveness:**

Mechanisms for reporting sexual abuse of minors need to be strengthened so that victims and witnesses can do so without fear of retaliation. This can be done by giving victims and their families with support services and spreading the word about the Act's legal protections.

Training and sensitization of stakeholders must be improved, as many different groups (including law enforcement, judges, doctors, and social workers) are engaged in carrying out the Act. This can help make sure they are prepared to prevent with instances of CSA and can give victims and their families the help they need.

With the goal of preventing sexual abuse and exploitation of minors, India needs to improve its child protection system. This can be done by making it easier for kids to get the schooling, healthcare, and social welfare services they need, and by fostering a setting where they feel safe expressing their concerns and asking for assistance.

There is a need to strengthen the enforcement of the POCSO Act at the federal, state, and local levels, as well as to raise public knowledge of the Act.

We think that the POCSO Act can be made more effective through these suggestions, and that children in India will be

<sup>27</sup>Misra,G.(2018).POCSOActanditsImplementationinIndia:AnOverview.IndianJournalofLawand Society, 9(1), 63-76.

<sup>28</sup>Chakraborty, A. (2016). POCSO Act, 2012 and Child Sexual Abuse: A Study of its Implementation in West Bengal. Indian Journal of Law and Technology, 12(2), 77-94.

<sup>29</sup>Sen,S.(2015).POCSO Act 2012 and the Protection of Children from Sexual Offences: An Analytical Study. Indian Journal of Social Science Researches, 12(1), 23-36.

better protected from sexual abuse if they are put into practice. It is worth noting, however, that the Act will only be as effective as the political will and dedication of the government and the wider socio-cultural attitudes towards child sexual abuse in India allow it to be.