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Protection to Children under POCSO Act

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ABSTRACT

The Protection of Children from Sexual Offences (POCSO) Act, 2012, was enacted to address the pressing issue of child sexual abuse in India and to ensure a child-friendly judicial process. This report examines the key provisions, features, and objectives of the Act, highlighting its role in safeguarding children's rights. It also analyses landmark judicial interpretations and significant amendments that have strengthened the legal framework. Furthermore, the report critically evaluates the loopholes and instances of misuse that have surfaced in its implementation, raising concerns about procedural gaps, over-criminalization, and the balancing of natural justice. Drawing from statutory provisions, case laws, and empirical data, the report underscores the importance of sensitization, effective enforcement, and policy reforms to uphold the Act's intent. The study concludes by recommending measures to enhance the efficacy of POCSO, ensuring it serves as a robust instrument of child protection without compromising the rights of the accused.

Keywords: POCSO Act 2012, Child Sexual Abuse, Legal Framework, Implementation Challenges, Judicial Interpretation

I. INTRODUCTION

Sexual exploitation by definition refers to any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes. Sexual abuse is the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions. Children are one of the most vulnerable class of people. The Vulnerability of children which is caused due to them being dependent on those stronger than themselves makes them more susceptible to exploitation, and a prime target for those who prey on such minors.³ Child Sexual Abuse, also called as Child Molestation is a form of Sexual Abuse which takes place against children, where the Child is used for gratification of sexual desires, and is perpetrated by an Older Adolescent or an Adult. Child Sexual Abuse happens in various forms, including but not limited to, fondling, inviting a child to be touched or to be touched in a sexual manner, exhibitionism, intercourse, involving the child in

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³ <https://www.unicef.org/protection/protecting-children-from-sexual-exploitation-and-abuse>

prostitution or pornography^{4 5}. This form of abuse is uniform across all socio-economic backgrounds and permeates through various institutions and different communities⁶. This causes both long term and short-term effects, both psychologically and physically⁷. The trauma of Child Sexual Abuse can also lead to PTSD, shame, worthlessness and low self-esteem. It also impacts their ability to trust others, this leading to loneliness, isolation and a lack of social support⁸.

India has the largest population in the world⁹, with a significant portion of that share being children. This makes it evident that a major portion of the population is dependent on others to survive. This dependency however makes it weaker and more vulnerable as established earlier, thus the need for Laws to protect this demographic. Indian children constitute 19% of the world's population of children at 440 million. United Nations International Children Education Fund study during 2005–2013 reported that CSA in Indian girls was 42%¹⁰. In a government commissioned survey it was revealed that more than 53% of Indian children are subjected to sexual abuse / assault. Majority of these cases were perpetrated by someone known to the child or in a position of trust and responsibility¹¹. All of these statistics worked as an indicator to wake the government about the alarming situation of children in India which ultimately resulted in the introduction of POCSO Act, 2012.

II. PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

The issues of children and the child sexual abuse has primarily been ignored by the public and criminal justice system. Up until 2010s Child Sexual Abuse was not considered as a crime, and the only crime recognized was Rape. Further, the laws that governed the sexual crimes against children were not adequate enough and left several loopholes which were exploited severely. Before the Introduction of POCSO Act, 2012, the only piece of legislation

⁴ Putnam, F. W. (2003). Ten-year research update review: Child sexual abuse. *Journal of the American Academy of Child & Adolescent Psychiatry*, 42(3), 269-278.

⁵ Choudhry, V., Dayal, R., Pillai, D., Kalokhe, A. S., Beier, K., & Patel, V. (2018). Child sexual abuse in India: A systematic review. *PloS one*, 13(10), e0205086.

⁶ Selengia, V., Thuy, H. N. T., & Mushi, D. (2020). Prevalence and patterns of child sexual abuse in selected countries of Asia and Africa: A review of literature. *Open Journal of Social Sciences*, 8(9), 146-160.

⁷ DINWIDDIE S, HEATH AC, DUNNE MP, et al. Early sexual abuse and lifetime psychopathology: a co-twin-control study. *Psychological Medicine*. 2000;30(1):41-52. doi:10.1017/S0033291799001373

⁸ Manukrishnan, Bhagabati K. Surviving Childhood Sexual Abuse: A Qualitative Study of the Long-Term Consequences of Childhood Sexual Abuse on Adult Women's Mental Health. *Journal of Psychosexual Health*. 2023;5(4):253-262. doi:10.1177/26318318231221948

⁹ "World Population Prospects 2022". United Nations Department of Economic and Social Affairs, Population Division.

¹⁰ Ray, A. (2014, September 11). 42% of Indian girls are sexually abused before 19: UNICEF. The Times of India. <https://timesofindia.indiatimes.com/india/42-of-indian-girls-are-sexually-abused-before-19-unicef/articleshow/42306348.cms>

¹¹ Gowda, N. (2023, April 16). Child sexual abuse in India: a dark reality. Rostrum Legal. <https://www.rostrumlegal.com/child-sexual-abuse-in-india-a-dark-reality/>.

protecting children was the Goa Children's Act 2003 and Rules 2004, and the Indian Penal Code, 1860¹². The problem with the Indian Penal Code however was that the Sections which governed the offences against children, i.e. Section 375, 354, and 377, were not effective enough. The Definition of Modesty and Unnatural Sex has not been given in the Code itself and left a lot of room for interpretation which made it arbitrary. Further these provisions did not provide protection to the Male children and further did not protect their Modesty. It was only after the efforts of multiple NGOs and the Ministry of Women and Child Development that the Conspiracy of Silence¹³ was broken and which significantly increased the political and public momentum to address the issue. This led to the formation the Protection of Children Against Sexual Offences Bill in 2011 which was passed on 22nd May 2012 and subsequently made into Protection of Children Against Sexual Offences Act 2012.

POCSO Act, 2012 is an Act to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto. It was Enforced on November 14th, 2012. Even though the Convention on the Rights of the Child was adopted by the United Nations back on 20th November 1989 and enforced on 2nd September 1990 there was no express provision or legislation in the Indian Criminal Justice System to address the specific Crimes against Children until 2012. However, POCSO act makes up for that by providing deterrent punishments for sexual assaults against children, with minimum punishment of 20 years to even Capital Punishment in case of penetrative sexual assault against a Minor. POCSO Act is however not a complete code in itself since it is dependent on other acts to function. The provisions of the Act overlap with the Code of Criminal Procedure, 1973, The Indian Penal Code, 1860, Juvenile Justice Act, and I.T. Act, 2000 to function properly and to encapsulate the offences. Section 2(1)(d) of the POCSO Act gives us the definition of a "Child" as "any person below 18 years of age". This provides us with the scope of the applicability of the act which covers every sexual crime perpetrated against a child. Since the act was published on 20th of June 2012 in the official Gazetteer and enforced on 14th of November 2012, the crimes against children committed in the interim period does raise a few questions as to its applicability on those cases.

In the Case of *M. Loganathan v. State* (2016)¹⁴, the rape happened on 28th September 2012,

¹² V, Dr Thangavel, The Analysis of Research Review for the Protection of Children from Sexual Offences Act (POCSO) (September 21, 2023). Available at SSRN: <https://ssrn.com/abstract=4578739> or <http://dx.doi.org/10.2139/ssrn.4578739>

¹³ Human Rights Watch, Breaking the Silence: Child Sexual Abuse in India, February 2013, <https://www.refworld.org/reference/countryrep/hrw/2013/en/105712> [accessed 18 June 2024]

¹⁴ 2016 LawSuit(Mad) 2340

i.e. before the enforcement of the Act. The Trial court convicted the accused under Section 4 of the POCSO act. However, The Madras High Court declared it as violative of Article 20(1) of the Indian Constitution and modified the charges, so that the accused could be tried under Section 376(1) of I.P.C., 1860.

III. FEATURES OF THE POCSO ACT

- **Confidentiality:** Section 23 of the POCSO Act deals with the confidentiality of the victims. It provides for the Media Procedure to maintain the identity of the Child victim a secret. Section 23 of the Act states, “no reports in any media shall disclose the identity of a child including his name, address, photograph, family details, school, neighborhood and any other particulars which may lead to the disclosure of the identity of the child”. It also imposes the duty to maintain secrecy unless a special court has given express permission to disclose the identity of the Child Victim, and any person who shall disclose the identity of such victim shall be liable to be prosecuted ¹⁵.
- **Gender neutral provisions:** Another striking Feature of the POCSO Act is that it does not differentiate between the Victim’s Gender or the Perpetrator’s Gender, i.e. it is gender neutral in nature. As per Section 2(d) the definition of a child states that any person below the age of 18 shall be a child, here the gender of the child does not matter. At multiple instances the Courts have even convicted women for child sexual abuse incidents. It overcomes the weakness of the older provisions of I.P.C. which were not Gender Neutral.
- **Mandatory Reporting:** Children are generally helpless when it comes to child sexual abuse cases. Since, they are not powerful enough to fight against their abusers, laws that make it mandatory for others to report or to help them are paramount. Most of these Sexual abuse cases happen in secret or behind closed doors and are hidden away by families due to social stigma. For proper implementation of the POCSO Act, reporting such activities is mandatory for third parties who have the knowledge or apprehension of such offences, under Section 19 to 22 of the POCSO Act.
- **Wide Coverage of Offences:** POCSO Act has a comprehensive list of all the different types of offences that can take place against the children. Since, the cast was brought in especially with the intent to protect children in any manner, it becomes paramount that all the possible offences against children get coverage under the act. These

¹⁵ Bijoy @ Guddu Das v. State of West Bengal (2017 SCC OnLine Cal 417)

offences include Penetrative sexual assault, Aggravated Penetrative sexual assault, non- Penetrative sexual assault, aggravated non- Penetrative sexual assault, Sexual harassment, Use of minor for pornographic purposes, attempt of offence, Abatement of offence, and Failure to report an offence.

- **Child friendly Investigation:** Children are emotionally and mentally vulnerable. Hence, it becomes important to make the investigation child friendly so that they can cooperate with the system. Sections 24, 26 and 33 of the POCSO Act enunciates the procedure of investigation and trial which has been formulated keeping in mind the needs of a child. The following points are taken into consideration while investigating any crime under POCSO Act:

- The Child's statement is to be recorded at his/ her place of residence or any place the child is comfortable with and as long as possible by a woman police officer not below the rank of a Sub Inspector.
- The officer recording the statement of the child should not be in uniform.
- The officer should ensure that the child does not come in contact with the accused during the examination.
- A child will not be detained in the police station at night.
- The police officer should ensure that the identity of the child is not revealed.
- The statement of the child is to be recorded in the presence of a person in whom the child has trust, for example, their parents.
- The statement of the child is to be recorded via electronic means.
- The assistance of the translators or interpreters should be taken wherever necessary.
- Frequent breaks are to be allowed during the trial.
- The special court has to ensure that the child is not called to repeatedly testify in the trial court.
- Aggressive questioning of the child is not permitted during the trial.

IV. GENERAL PROVISIONS

The POCSO Act is a very comprehensive piece of legislation. It has 9 chapters which deals with Offences, Punishments and Procedures. A few general provisions are as follows:

- **Penetrative sexual assault:** Section 3 of the POCSO Act gives the definition of penetrative sexual assault and Section 4 enunciates the punishment which by the 2019 amendment, was made more stringent.

- **Aggravated penetrative sexual assault:** Section 5 of the POCSO Act explains the cases in which penetrative sexual assault becomes aggravated penetrative sexual assault. For example, penetrative sexual assaults on a child by a police officer within the vicinity of a police station, by armed forces within the limits of their area, by a public servant, by the staff of jails, hospitals or educational institutions are considered aggravated penetrative sexual assault and are punishable under Section 6 of the POCSO Act.

- **Sexual assault:** Section 7 of the POCSO Act defines sexual assault as, “Whoever, with sexual intent, touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault”. In the case of *Subhankar Sarkar v. State of West Bengal* (2015)¹⁶, on medical examination of the victim, it was found that there was no evidence of penetrative sexual assault but scratch marks on the body of the victim were found which proved the use of force and thus, the accused was convicted under Section 8 and 12 of the POCSO Act.

- **Aggravated sexual assault:** Section 9 and 10 of the POCSO Act contain provisions regarding aggravated sexual assault on a child. In the case of *Sofyan v. State* (2017)¹⁷, the accused who was a plant operator in the swimming pool area was convicted by the Trial Court under Section 10 of the POCSO and Section 354 of the Indian Penal Code, 1860 for having sexually assaulted a girl of 8 years old. The facts of the case are that when the victim was wearing her swimming costume in the changing room area, the accused approached her and inserted his hand in her swimming costume and touched her with sexual intent. The Delhi High Court rejected the argument of the accused that he was implicated falsely and the conviction was upheld.

- **Sexual harassment:** Section 11 of the POCSO Act defines sexual harassment. It includes six cases which constitute sexual harassment of a child.

- First, if anyone utters any word or makes any sound or exhibits any object with sexual intent to a child.

¹⁶ 2015 LawSuit(Cal) 231

¹⁷ 2017 SCC OnLine Del 7748

- Second, if anyone makes a child exhibits his body so that it is seen by the offender or any other person.
- Third, if any person shows any child any form or media for pornographic purposes.
- Fourth, if anyone constantly watches or stalks a child directly or online.
- Fifth, if anyone threatens to use a real or fabricated depiction of any part of the body of the child or the involvement of the child in a sexual act through electronic, film or digital.
- Sixth, if anyone entices a child for pornographic purposes.

• **Pornography:** Section 13 of the POCSO Act states that anyone who uses a child for pornographic purposes by either representing the sexual organs of the child or using a child in real or simulated sexual acts or representing a child indecently or obscenely in programmes or advertisements on television or on internet, commits the offence under this section and is liable in accordance with Sections 14 and 15 of the POCSO Act. In addition, it would be considered child pornography if "an image created, adapted, or modified" to depict a kid was used. This would also apply to animated films, cartoons, etc. In addition, the Cabinet increased the penalties from the initial recommendation of Rs. 1,000 to Rs. 5,000 for possessing child pornographic material without removing it or reporting it. A person could receive a punishment of up to three years if they save such content for future distribution, except for when they use it as evidence in court. Some of these clauses were also included in the POCSO Amendment Act of 2019 but were no longer in effect.

• **Abatement of Child Sexual Abuse:** Section 16 of the POCSO Act defines the abetment of the offence. The following acts constitute abetment of offence under the POCSO Act:

- Instigating any person to commit that offence;
- Engaging in any conspiracy with one or more persons to commit any offence when any illegal act or omission takes place in consequence of that conspiracy;
- Aiding to commit that offence intentionally.
- The punishment for the abetment of offence is specified under Section 17 of the POCSO Act, 2012 according to which a person who abets the commission of an offence and the offence is executed is to be punished with the punishment that has been provided for that offence under the POCSO Act.

- **Attempt to Child Sexual Abuse:** Section 18 enunciates that attempt to commit any offence under the POCSO Act, 2012 is also an offence inviting either of the two following punishments:

- Imprisonment provided for that offence for a term extending up to one-half of the imprisonment for life, with or without fine;
- Imprisonment provided for that offence for a term extending up to one-half of the longest term of imprisonment with or without fine.

V. JURISDICTION OF POCSO ACT

Section 28 of the POCSO Act deals with the provision regarding the jurisdiction of special courts. It states that the special courts also have the jurisdiction to try offences under Section 67B of the Information Technology Act, 2000. Section 33 gives the power of a Court of Session to the special courts. Furthermore, Section 42A specifies that in case of any inconsistency, the provisions of the POCSO Act would override the provisions of any other law. In the case of *M. Kanna v. State* (2018)¹⁸, there were discrepancies in the professional duty of the defense counsel who violated the right to a fair trial of the accused. The Madras High Court after making note of this fact remanded the case back to the trial court to provide the opportunity to the accused to cross-examine the witness. Also, the case was transferred from the trial court in which it was pending as it was presided over by the same judge.

VI. BURDEN OF PROOF

The objective behind the legislation is to ensure that the actual offenders are behind the bars. One approach that has been inoculated in the POCSO Act is to reduce the burden on the prosecution to prove certain things by introducing presumptions. Section 29 and 30 of the POCSO Act lay down the provision with respect to the burden of proof.

According to Section 29, the person who is prosecuted for the commission of the child sexual abuse offences is presumed to have committed or abetted or attempted to commit such offence. The main issue that arises while implementing this provision is that the nature of presumption that has to be applied is at the whim and fancy of the courts. Also, this provision has been challenged to be unconstitutional in a number of cases as it intervenes with the right to be presumed innocent, right against self-incrimination and the right to remain silent.

In *Imran Shamim Khan v. State of Maharashtra* (2019)¹⁹, a child told her grandmother that she

¹⁸ *Kanna v. State*, (2018) 18 SCC 685

¹⁹ *Imran Shamim Khan v. State of Maharashtra*, 2016 SCC OnLine Bom 10183

was sexually abused and her medical examination confirmed this. However, her mother told her to ignore it. The statements of the child victim and her grandmother were recorded before the magistrate. The Bombay High Court made an important observation in this case by stating that, "even if a minor in a sexual assault case turns hostile under the POCSO Act, the onus is on the accused to establish the innocence. It is easy to say that the prosecution failed to prove the guilt of the accused. But in a case like this, the judicial approach has to see justice is imparted to the victim too". Further Section 30 provides the opportunity to the accused to prove his/ her innocence thereby making the presumption under Section 29 rebuttable.

VII. LOOPHOLES IN POCSO

Despite being a strong Act, various flaws have been found by the police and other parties involved in its execution. The following is the list of flaws²⁰:

- If the victim child declines to have a medical examination but the investigating officer and family members are ready to let the child have one, there are no provisions in the POCSO Act on how to proceed.
- As per section 27 (2) of the POCSO Act, a lady doctor must conduct the medical examination of a female victim kid, no remedy is provided under the Act if there is no lady doctor on duty present at the government or private hospital to examine the victim girl child.
- Since only men are designated as accused parties in cases under Section 3 of the POCSO Act, women are not covered by it. In accordance with the terms of section 3 of the Act, a woman who commits a sexual offense is not subject to prosecution.
- The Act deems it unlawful for a teenager to have intercourse with another adolescent or with an adult. The POCSO Act makes no mention of permission from those under the age of 18, and it makes no mention of the likelihood that two minors will engage in any form of sexual conduct. As a result, it restricts the personal freedom of people under the age of 18 by making their consensual sexual activity illegal and making them targets of societal harassment.
- Most nations have set their age of consent at 14 to 16 years old, according to the Bombay High Court's observation in the case of XYZ v. State of Maharashtra & Anr. In nations like Germany, Italy, Portugal, Hungary, etc., 14-year-olds are seen as old enough to consent to sex. In Wales and London, the legal age of consent is 16. The legal drinking age in

²⁰ POCSO Act, 2012: Misuse and Loopholes. <https://www.legalserviceindia.com/legal/article-12660-pocso-act-2012-misuse-and-loopholes.html>

Japan is 13. The legal age of consent is 16 in Bangladesh and 16 in Sri Lanka. As a result, the court determined that the age of consent for sex under the Protection of Children from Sexual Offences Act (POCSO Act) and the Indian Penal Code (IPC) should be reviewed because many of the cases that come before courts involve young girls who have engaged in consensual sex in romantic relationships and because of these cases, the courts are becoming overloaded.

- This Act forbids child marriage and marriage consummation, however distinct personal laws of different communities in India permit these practices. The POCSO Act of 2012 does not provide any explanation in this regard.

- The Act is more influenced by biological than mental age. Clinical psychologists claim that even though a young woman between the ages of 22 and 23 may have the mental ability of a four-year-old child, the POCSO Act does not provide her with any recourse or justice if she is the victim of one of the sexual offenses listed in the Act.

- It is well known that the majority of cases go unreported due to feelings of shame, embarrassment, anger, and frustration; however, if the family members fail to report the case in accordance with section 21 (1) of the Act, which makes filing an FIR by the family members or the head of the office whose jurisdiction the offense occurred mandatory, they will face punishment. The victims' families typically don't want to report the incidents because of concern that they would be re-victimized during medical examinations, court appearances, or by society's lack of understanding.

- Contrary to the common rule of "innocent until proven guilty," the accused are regarded as guilty under this Act until they are proven innocent. The Act is extremely punitive since it places the onus of proving innocence on the accused. The natural justice precepts are disregarded in this situation.

- Section 22 (2) of the POCSO Act, 2012 states that children who make false reports or give misleading information will not be punished. The same clause of the POCSO Act, however, imposes penalties on those who file a fictitious complaint in an effort to humiliate, extort, threaten, or defame another person. Since children are not subject to these penalties, many persons abuse this exemption by using small children to file fictitious complaints and make false claims.

- The POCSO Act is silent regarding the documentation needed to demonstrate the victim's or accused's age, which presents numerous problems for both parties. In this context, Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 is frequently

used by courts. The birth certificate, academic transcript, or matriculation certificate of the kid may be used as identification under this rule.

- The child must undergo an ossification test to demonstrate age in the absence of these documents, even though a passport is a legal document. This test gives the accused person the benefit of the doubt by giving an approximate age estimate for the youngster. There is no specific language in the Act that addresses which documents should be considered for confirming the child's age or if the benefit of the doubt should be given.
- However, a division bench of the Supreme Court made up of Justices S. Ravindra Bhat and Aravind Kumar has noted that School Transfer Certificates cannot be used to determine a victim's age under the POCSO Act, 2012 and that whenever a dispute over a person's age arises in the context of that person being a victim under the POCSO Act, the courts must follow the procedures outlined in Section 94 of the Juvenile Justice Act (Care and Protection) Act.
- Due to the strict terms of the Act, which prevent bail from being granted and require periodical trials, the under-trial offenders imprisoned in jail in POCSO Act cases must remain there for a lengthy amount of time, overcrowding the jails and frequently causing problems for the jail officials. Even if you are falsely accused in such circumstances, it can be exceedingly challenging to obtain bail.
- A clause in the law states that "support persons" must be provided to the children of the victims, although this requirement is rarely followed, which frequently results in the accused being exonerated. According to Rule 4 (8) of the POCSO Rules, 2020, the Child Welfare Committee may provide a support person to assist the child during the course of the investigation and in coping with the trauma of the case, but it is typically seen that support persons are not provided to the victim, leading to acquittal in the majority of cases registered under this Act and psychological and mental pressure on the victim and her family throughout the entire investigation and judicial process. According to the Supreme Court of India, "support persons" were given to the victim in just 4% of the cases reported under the POCSO Act, 2012. As they stand by the victims throughout the judicial process, "support persons" should be made available to the victims to reduce the number of acquittals under this Act.
- The victim is given compensation under Section 33(8). The amount of compensation to be given to the victim kid and who would receive the money on the child's behalf are not specified in the Act.

- The behavior 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.
- The POCSO Act defines bare touch as sexual penetration. As an illustration, a father who pats his child on the back, cheek, or head to convey affection or bestow blessings may be sentenced to prison.
- The legislature intended to have a deterrent effect by maintaining the provisions of severe punishments and penalties against the accused, but in practice, many cases result in acquittals, making it impossible to provide the victims with redress and justice.
- If public employees or officers in positions of authority commit any offense of aggravated assault on a child victim under this Act, it is not stated in the Act how they will be tried.
- Who oversees guaranteeing and requesting reports regarding whether the investigation of POCSO cases was handled strictly in accordance with the POCSO Act's provisions is not specified in the Act.
- It is debatable whether the death penalty would dissuade criminals from committing similar offenses or if it would just motivate them to destroy evidence and kill victims to silence witnesses.
- Section 29 of the POCSO Act of 2012 states that if someone is charged with committing, aiding, or attempting to commit a crime, the Special Court must believe that person has committed or attempted to commit the crime unless the opposite can be proven. While wealthy accused parties can hire competent attorneys to represent them in court, a poor man will be unable to escape the POCSO Act's restrictions if he is implicated because he cannot afford to hire an effective attorney.
- According to section 35 of the POCSO Act, 2012, the Special Court must complete the trial within a year of the date it took cognizance of the offence and must record the victim child's testimony within 30 days of the Special Court doing so. Despite this provision, however, the number of POCSO Act cases still pending continues to rise, and the Special Court has not yet completed any of the cases.
- The Act makes no mention of how much the accused individual should be compensated if he or she is wrongfully accused.

VIII. MISUSE OF THE POSCO ACT

People are frequently found to be implicated in fictitious cases under the POCSO Act because of land disputes, marriage disputes, personal grudges, political motives, or for personal gain to humiliate the accused by holding them in jail for an extended period of time. A girl under the age of 18 may be persuaded by her family to file a false complaint in relation to a personal disagreement against someone with whom her family has animosity.

- Due to the strict restrictions of the POCSO Act, judges seldom give bail, and if the case is false, the mental health and trauma of the accused persons worsen. As a result, those who have been detained on suspicion of a crime must spend a significant amount of time in jail, often until the case has been tried. The accused has already endured a great deal of hardship before being granted bail or being found not guilty.

- Numerous convicts, some of whom were innocent when they were detained under the POCSO Act, are incarcerated for months on end without access to regular trials, release, or bail. Because of their deplorable living conditions, these convicts frequently resort to violence to resolve conflicts. Some of them have also grown mentally ill.

- According to section 33(8) of the POCSO Act, 2012, the special court may, in addition to the sentence, order payment of compensation to the child for injuries to his or her physical or mental health as well as for the kid's rehabilitation. In an effort to obtain the compensation money, some members of the minor child's family file fictitious complaints against wealthy and deserving defendants.

- In one instance, an advocate would accuse wealthy companies in POCSO cases of extortion, purportedly in cooperation with the police and a girl under the age of 18. After teaching the victim girl to speak what was said to her when making a statement under section 164 CrPC before the judicial magistrate, the police allegedly sent the girl in many cases.

- In many circumstances, police detain the accused right away, while in other instances, they don't detain the accused until after the case has been filed, assisting them in obtaining bail from the court. Police are accused of omitting the name of one accused party in a gang rape case by crafting the statements of some 'witnesses' in accordance with section 161 of the Criminal Procedure Code in a manner that cleared the accused party of all charges.

- The police frequently manipulate the use of statements under section 161 CrPC in order to implicate someone in the case or to omit the name of an accused person from the case. For this reason, the statements of some people who were not at all witnesses to the case

were recorded in a way that either favored the accused or implicated innocent people by leaving or adding their names as accused in the statement.

- The mother of the victim girl has also allegedly been accused of scratching her child's shin or injuring her genitalia in order to obtain a medical report that will be used against the accused in a false case under the POCSO Act because the victim girl's family has a bad relationship with the accused and/or his family.

IX. SIGNIFICANT CASES OF POCSO

- **Attorney General for India v. Satish and another (2021):** The Nagpur Bench of the Bombay High Court declared in *Satish Ragde v. the State of Maharashtra* (2021) that grabbing a child's breasts without having "skin-to-skin contact" constituted molestation under the POCSO Act (2021). Extreme hostility was directed towards Justice Pushpa Ganediwala's decision. In the current case of the Attorney General for India versus Satish and another (2021), appeals against this High Court's ruling were filed by the Attorney General of India, the National Commission for Women, and the State of Maharashtra. These appeals were heard by a bench made up of Justices Uday Umesh Lalit, S Ravindra Bhat, and Bela M Trivedi. The SC overturned the decision of the Bombay High Court and stated that the "mischief rule" of statutory interpretation would be suitable in this case. It emphasized the need for courts to interpret the law consistently to prevent harm and advance remedies.
- **Maharashtra State v. Libnus (2021):** "Whether holding hands with a child and taking a penis out in front of her would fall within the definition of sexual assault under Section 7 of the POCSO Act?" was the main question the High Court addressed in this case. The Nagpur bench ruled that actions like holding a child's hand and opening a child's trousers zipper do not qualify as sexual assault under the POCSO Act, 2012, and are instead classified as sexual harassment. The appellant was not found guilty of aggravated sexual assault in accordance with Sections 10, 12, and other IPC provisions. Therefore, just like the skin-to-skin judgment, this choice proved to be contentious.
- **Shivanna v. State of Karnataka (2014):** The POCSO Act of 2012 does not mandate that all statements made in accordance with Section 164 of the CrPC be recorded. According to Section 164(5-A) (a) of the Criminal Law (Amendment) Act, 2013, the statement of a victim under Sections 354, 354-A, 354-B, 354-C, 354-D, 376(1), 376(2), 376-A, 376-B, 376-C, 376-D, 376-E, or 509 of the IPC should be recorded by a Judicial Magistrate. As soon as the police are made aware of the commission, the statement should be taken down. Additionally, it was decided that to record the statement required by Section 164(5A) (a)

CrPC, the victim must appear before the Judicial Magistrate (preferably a Lady Magistrate) within 24 hours of the rape.

- **State of Haryana v. Jarnail Singh (2013):** The daughter of Savitri Devi was allegedly abducted and raped by the appellant while she was fast asleep. In this decision, the Supreme Court of India stated that matters covered under the POCSO Act, 2012, as well, can be handled using the same process used to establish the age of a child who is in conflict with the law under the Juvenile Justice (Care and Protection of Children) Rules, 2007. The Court found Jarnail Singh, the appellant, guilty after applying this rule.

X. CONCLUSION

The POCSO Act, 2012 is exhaustive legislation which aims at covering all the aspects of child sexual abuse. Amendment has been made in the Act via the Protection of Children from Sexual Offences (Amendment) Act, 2019, with which the punishments for the offences have been made more stringent.

It is the duty of every organization to take the necessary precautions to ensure the protection and safety of children. When it comes to child rape, the crime of rape is serious in and of itself. It is one of the most disgusting treatments that any child could ever experience. At a young age, when they should be learning to develop and see the world from entirely new perspectives, children are taught to feel every facet of betrayal, mistrust, and hatred.

Therefore, the need of the hour is to sensitize the public regarding child sexual abuse so that there is no reluctance in reporting these crimes. Moreover, the investigating agencies should be well trained and professionals such as medical practitioners involved in the stages of investigation and trial should be efficient so as to leave any scope of negligence on their part. The POCSO Act already makes the procedure child friendly and this approach should be followed by the judicial officers, magistrates, and police officers so that the child victims could repose trust in them.

XI. REFERENCES

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