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**INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH**

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**INEFFECTIVENESS IN THE IMPLEMENTATION OF POCSO ACT; AN  
ANALYSIS**- Anika Sharma<sup>1</sup> & Dr. Ekta Gupta<sup>2</sup>**Abstract**

To shield children from sexual assault, harassment, and pornography, India passed the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO) to protect children from sexual harassment, bullying and pornography<sup>3</sup>. This act made special provisions possible, such as the creation of Special Courts for the swift trial of these cases. It is specific legislation that addresses cases of sexual offences against minors, or those who are younger than 18 years old. The gender neutrality of this law makes it special. Unlike the rape sections of the Indian Penal Code 1860, anyone can be a victim or a perpetrator under this law, regardless of gender. This bill allows special provisions such as the creation of special courts for expeditious hearing of these cases. Since the Criminal Court is the highest court at the municipal level in India and conducts criminal cases, the POCSO reform targets them. According to these courts are also considered a major factor in excessive delays and expenses affecting the administration of justice in India<sup>4</sup>. I chose this topic for research for two reasons. One, although there is a wealth of literature on sexual violence in India, most of it has focused on adult victims. There is also some empirical research on how the criminal justice system handles sexual violence in India, as well as gender, caste, and state violence<sup>5</sup>. Except for a very small number of studies, little attention has been paid to how the criminal justice system interacts with victims of different ages and genders, especially when children are

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<sup>3</sup> Social and behavioral scientists often use the term “sexual violence,” as this term is far more broad than sexual assault and sexual abuse. See, What’s the difference between sexual abuse, sexual assault, sexual harassment and rape? The Conversation (2018). 7 February. At: <https://theconversation.com/whats-the-difference-betweensexual-abuse-sexual-assault-sexual-harassment-and-rape-88218> (accessed 12 November 2020).

<sup>4</sup> 2019, Sekhri

<sup>5</sup> See, Abdulali, 2018; Batool et al., 2016; Bhattacheryya, 2021; Chakravarti et al., 2007; Diwakar, 2020; Mandal, 2013, 2014; Patil, 2016.

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abused. Second, there is a lack of research on the use, effectiveness, and impact of POCSO reforms on different types of court personnel, especially bystanders.<sup>6</sup>

To eliminate the social stigma associated with the term "rape," "penetrative sexual assault" has been used in its place. The rights to privacy of the minor victims have been protected, the legal process has been made kid-friendly, and the accused's mental state is presumed to be culpable by the courts.

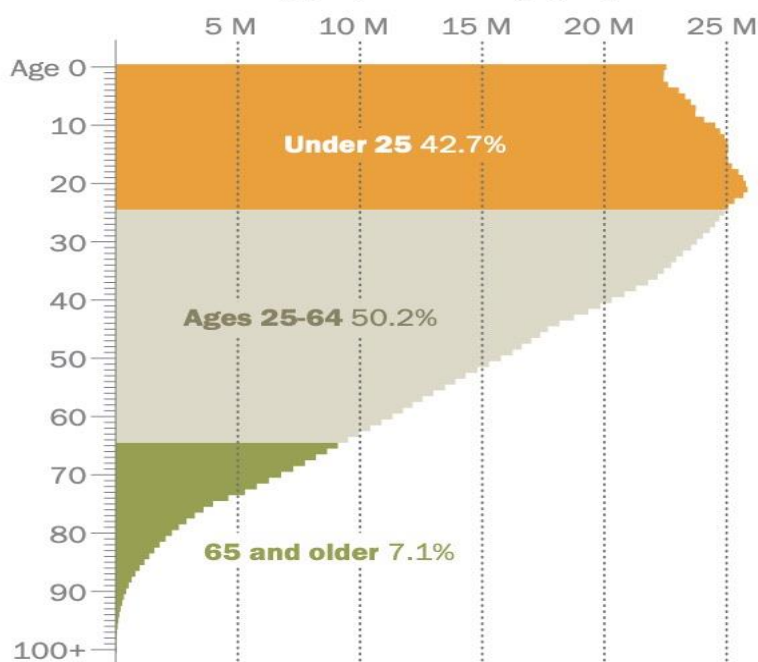
The research has three main goals:

- i. The first is to examine how the criminal justice system handles cases involving child sexual abuse.
- ii. POCSO Act, 2012's implementation and effects; and
- iii. Determine tactics for bolstering justice through the application of the law.

## Chapter 1 – Introduction

### More than four-in-ten people in India are under 25 years old

Number and share of people in India, by age



Note: The projection depicted is the UN's "medium variant" scenario for the year 2023.

Source: UN Population Division's World Population Prospects: The 2022 Revision.

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<sup>6</sup>See, Ali et al., 2017; Bhawnani, 2021; Centre for Child and the Law, 2016, 2018; Kothari & Ravi, 2015; Partners for Law in Development, 2017; Patkar &Kandula, 2016; Wilson, 2020.

*Image 1 – Depicting Increase in Population through the years*

Prior to commencing the act's implementation, it is imperative that we comprehend the primary beneficiaries of this legislation, as well as the reasons behind its necessity in India, along with its predecessors. Even though the kinds of crimes committed in various nations are largely the same worldwide, the severity of the crimes determines which nation has harsher laws than another. Considering this, we also need to recognise that, as the only nation with such a large population and a diverse range of lifestyles and religious beliefs, India's population always plays a significant role in the creation of any laws that are intended to be implemented.

In *Sheela Barse & Others v. Union of India*<sup>7</sup> Justice Misra Rangnath delivered the ruling, stating that children are considered national assets and that it is the responsibility of the state to ensure that their personalities develop appropriately. Children are essential to a nation's development. All aspects of their development, including the strengthening of bonds with security, love, and affection, as well as cognitive and emotional growth, should be considered<sup>8</sup>. One good measure of a civilised society's level of civility is how it treats its children<sup>9</sup>.

In India, 26.16 percent of the population is between the ages of 0 and 14<sup>10</sup>. Women and children have always been viewed as the most vulnerable members of society, dating back to the dawn of civilization. Although there isn't a single cause for this, child sexual abuse is frequently the result of poverty, which is also the most common source of other social injustices.

Child sexual abuse has detrimental effects on kids<sup>11</sup>. It serves as a major barrier to advancement and development. Numerous unhealthy behaviours that result from child sexual abuse have a lasting negative impact on one's mental, physical, and social well-being<sup>12</sup>. There is proof that the neurobiological systems may be affected by child sexual abuse. Aside from this, a variety of interpersonal problems arise, including a heightened likelihood of domestic abuse

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<sup>7</sup>Sheela Barse & Others v. Union of India

<sup>8</sup>CHANDRA GUPT, S. SANON, WORKING CHILDREN: A SOCIOLOGICAL ANALYSIS (APH Publishing Corp., 1998)

<sup>9</sup>Hunny Matiyani, Sexual Abuse of Children: A Sociological Study in Delhi Metropolis (Feb. 24, 2021, 11:04 AM), <https://bprd.nic.in/WriteReadData/userfiles/file/201609221212533362863Report.pdf>

<sup>10</sup>MINISTRY OF STATISTICS AND PROGRAMME IMPLEMENTATION, UN WORLD POPULATION PROSPECTS 2019 (March 3, 2021, 10:00 PM), <https://statisticstimes.com/demographics/country/indiapopulation.php>

<sup>11</sup> Goodman GS, Quas JA, Ogle CM., Child maltreatment and memory, 61 ANNUAL REVIEW OF PSYCHOLOGY 325–51 (2010)

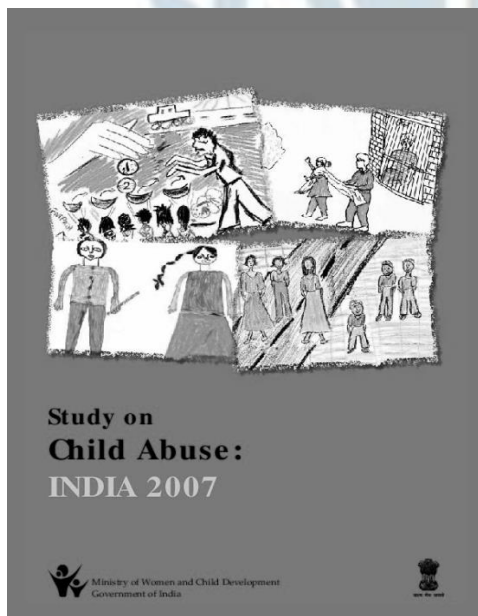
<sup>12</sup> 8 Putnam FW, Ten-year research update review: child sexual abuse, 42 JOURNAL OF THE AMERICAN ACADEMY OF CHILD AND ADOLESCENT PSYCHIATRY 269–78 (2003)

and aggressive behaviour directed towards victims of child sexual abuse. Childline 1908 reports that during the lockdown in April 2020, 50 percent of calls were for crisis situations. Most of the calls (92,105) were related to violence and child abuse. A call for help was made to the Ministry of Women and Child Development for 3.07 million poor children in just 11 days<sup>13</sup>.

## 1.1 Previous Records of Child Sexual Abuse Laws and initiation of POCSO

United Nations Convention on the Rights of the Child 1989<sup>14</sup> (also known as the UNCRC) was ratified twenty years ago, India still had many antiquated laws regarding child sexual abuse. The general criminal law of the Indian government stipulated the penalties for child sexual abuse. Indian Penal Code 1860 (also known as the IPC). There is a glaring lack of reported cases and legislation in India related to child sexual abuse because the issue is sensitive and victims are reluctant to report incidents. It was ensured that there was no legal requirement to notify law enforcement agencies of incidents due to the lack of nationwide mandatory reporting procedures.

The Indian computer revolution began in the late 1990s<sup>15</sup>. Additionally, the American media extensively publicised deplorable instances in which several Indian professionals participated in the electronic sexual exploitation of minors. There were glaringly no statistics available in India on the issue of child sexual abuse.



<sup>13</sup> 9 Pallavi Arora, Rise In Online Child Sexual Abuse Cases Amidst COVID-19 Pandemic, HUMAN RIGHTS PULSE (March 26, 2021, 2:00 PM), <https://www.humanrightspulse.com/mastercontentblog/rise-in-online-child-sexualabuse-cases-amidst-covid-19-pandemic>

<sup>14</sup> The United Nations Convention on the Rights of the Child (UNCRC) is the basis for all of UNICEF's work and upholds children's rights all over the world.

<sup>15</sup> <http://news.bbc.co.uk/1/hi/uk/2445065.stm>



In 2007, India's Ministry of Women and Child Development conducted government-funded study on child abuse in 13 states of India.<sup>16</sup> The prevalence of child sexual abuse was found to be high in this study, "A Study on Child Abuse: India 2007"<sup>17</sup> with 53.22% of children reporting having experienced one or more forms of abuse and 21.90% reporting severe forms. Three sets of evidence show the highest gender prevalence: children in hospitals, working children, and street children's. Fifty percent of those who abused children were either people the child knew or people in positions of authority and trust.

## **1.2 Aim of the Dissertation**

The purpose of the research is to examine the shortcomings and difficulties in putting laws intended to prevent child abuse into practice.

## **1.3 Objective of the Dissertation**

- To research the different types of child sexual abuse that occur in India and the laws that are in place to stop it.
- To evaluate the National Commission on Protection of Child Rights' (NCPCR) efficacy.
- To make reform recommendations to close the gaps and address the difficulties in the application of child sexual abuse.

## **1.4 Hypothesis**

India's laws against child sexual abuse, the most recent revisions to them, and the way they are being applied are insufficient to stop child sexual abuse therein.

## **1.5 Research Questions**

- What is responsible for the number of child abuse cases in India?
- Are existing laws in India sufficient to prevent child abuse?
- Should laws impose harsher penalties to reduce child abuse cases?
- Should research methods be changed to reduce differences between situations and decisions?

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<sup>16</sup>The Department of Women and Child Development, Government of India, came into existence as a separate Ministry with effect from 30th January 2006, earlier since 1985 it was a Department under the Ministry of Human Resources Development.

<sup>17</sup>Study on Child abuse: India 2007

- Can the country's judiciary's response to child abuse be called "progress"?
- What are the shortcomings and difficulties in the implementation of the law against child abuse?

## 1.6 Research Methodology

The research methodology of this study will use non-consensual methods to determine facts and relevant evidence. Primary and secondary data collection sources will form the basis of the research. Laws and cases can be important sources of information such as books, journals, online resources, research articles, reports and statistics of the Ministry of Health and Family Welfare, NCRB and other relevant organizations. second place.

## 1.7 Grounds for Child Sexual Abuse (with a focus on India)

A child is vulnerable to emotional, psychological, social, physical, and mental abuse from both family members and outside sources. Not all bad things come from strangers; occasionally, a child's own parents are to blame for misbehaviour. It is no longer the case that someone would do evil but rather persuade a child to do a crime.

A child is constantly under a parent's protection and care in Indian tradition because it has always been patriarchal and dominant. In addition, they believe that using force to discipline kids is beneficial for their growth.<sup>18</sup>

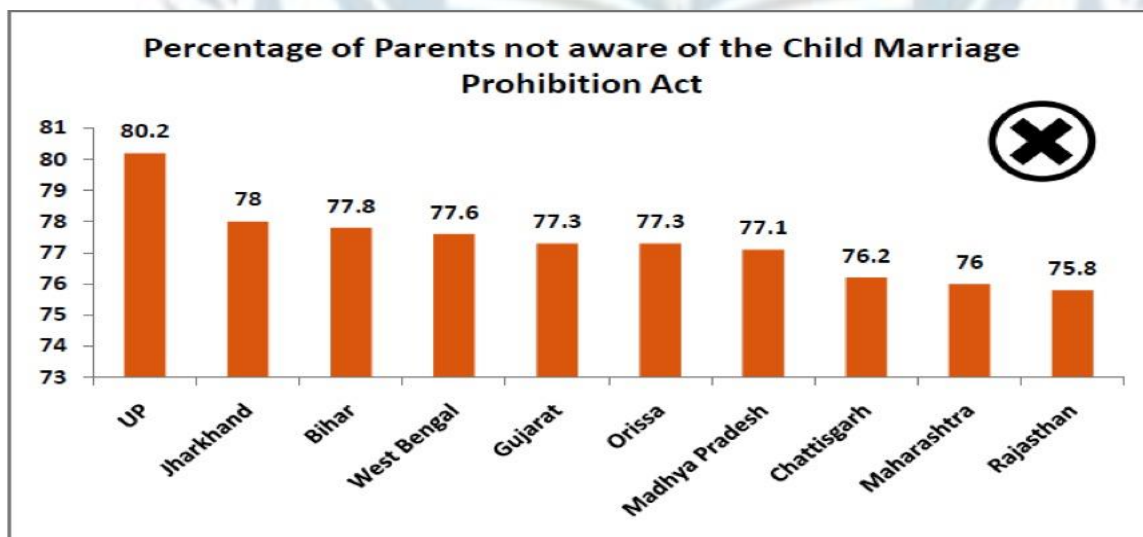


Image 3 – Awareness regarding Prohibition of Child Marriage

<sup>18</sup><https://nhrc.nic.in/sites/default/files/ChildrenRights.pdf>

### **1.7.1 Disability**

According to the Indian Law a person a person who is under the age of 18/with disability and not of sound mind is always supposed to be guided by a guardian. A person's ability to seek protection is compromised if someone in a position of authority is sexually assaulting them. People with impairments are frequently kept apart from the public, which restricts their ability to participate in typical social situations. A person becomes more dependent on service providers as a result of this isolation. Because of this, the offenders utilise it as an opportunity to continue having power and influence over their victims and to sexually abuse them. Individuals with disabilities are more likely to experience sexual abuse because they typically lack sufficient education and are ignorant of good relationships, legal rights, and individual rights.

Speaking of disability, we would also like to include people with mental health problems who are unfit to take rational decisions due to some underlying disease or stress. A person who is going depression or psychiatric illness is at much higher risk of abusing and neglecting others as they will not be able to think straight.

### **1.7.2 Poverty**

Given the population of the country is highly unlikely for everyone to be at the same level of comfort and lifestyle, it is a simple case of limited resources and unlimited needs. Researchers from all throughout the world have looked into the connection between child sexual abuse and poverty. Child sexual abuse has a negative impact on those living in poverty. The majority of sexual abuse occurs in homes with low incomes. Not all child sexual abuse cases come from low-income households; some also occur in working-class and affluent households. Adult perpetrators prey on impoverished and vulnerable youngsters, claiming to support them but ultimately taking advantage of them.

Not only the children from below poverty line more prone to being subjected to Sexual Abuse their financial condition also keeps them from reporting the cases as firstly they often lack the education of what they are being subjected to and secondly, they do not have sufficient funds to file a case. Many parents also end up selling their child to brothels due to lack of funds thus also rolling in the concept of human trafficking which is primarily done to use Kids/adolescent girls for Sex.

### **1.7.3 Domestic Violence**

Even though the argument for this is majorly based on prejudice but is more often than not the actual case. It has been found that the Households where a woman is subjected to Domestic Abuse, it is

very common for her kids to be subjected to sexual abuse as well<sup>19</sup>. Since these kids grow up to a different ideology of what is wrong and right and suppression from their father's end. Conflicts and constant arguments within the family are the main cause of domestic violence, which leads to family separation and divorce. These dysfunctional family systems are often a contributing factor to child abuse. Child abuse can affect children of all ages and genders, but it especially affects girls.

#### **1.7.4 Lack of Education**

As stated by Many, education can be the solution to many problems and child sexual abuse is no different. The Literacy rate in India although increasing as we speak but is still low compared to other developed nations. For the purpose of this topic, we will have to look at education with two aspects in mind. First, basic education wherein a person is given and taught the basic idea of what is wrong and what is right and how they are supposed to respect the boundaries of each and everyone around them. Basically, they learn how to function as a human being in a society. The second aspect would to look at Sex Education in focus. Discussing Sex, or problems related to it is still a taboo in India this also keeps children from having knowledge about this topic. They are not aware of the wrongs and right and more often than not have no idea about even being subjected to sexual abuse.

#### **1.7.5 Practice of Child Marriage in India**

Child marriage increases the vulnerabilities of girls and is intimately linked to poverty. Young brides frequently experience social isolation and lose contact with friends, family, and other support networks. They might be more vulnerable to having few options for a good education and well-paying employment. The practice of child marriage persists despite the Prohibition of Child Marriage Act (2006) because of a variety of socio-ecological variables, such as structural inequities and regressive social norms. Due to this a lot of these girls are not able to report the sexual abuse since it is common for a wife and husband to have sexual relations, it also falls under the cover for marital rape cases which in itself is another issue that India deeply struggles with. Girls subjected to practice of child marriage end up getting pregnant before the age of 18 which is detrimental to their health and of the child being born. Thus, repeating the cycle that we have previously talked about.

It is more likely that a female who is wed as a child will not attend school, earn no money, and make no contribution to the community. There is a high risk of contracting domestic violence and HIV/AIDS. It is possible to get pregnant while you are still a baby. Decreased survival is associated with complications during pregnancy and birth.

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<sup>19</sup>MagwaSimuforosa, *Factors Contributing To Child Sexual Abuse: An Ecological Analysis*, 7 International Journal of Current Research 17591-17597(2015).



The number of married women under the age of 18 in India is approximately 1.5 million every year. Currently, approximately 16% of young women aged 15-19 are married.

Although the proportion of the majority of women married before the age of 18 has decreased from 47% in 2005-2006 to 27% in 2015-2016, this number is still very high.

India's significant progress in eliminating child marriage has had a major impact on the global decline in the practice. Multiple factors may have contributed to the decline, including increased maternal literacy, improved educational opportunities for girls, stringent legislation, and rural-to-urban migration. This change can be attributed to many factors, including increased girls' education, significant government investments in adolescent girls, and public media's condemnation of children, marriage, and its effects.

### One in two women (age 20-24 years) in six states continue to get married before legal age of marriage

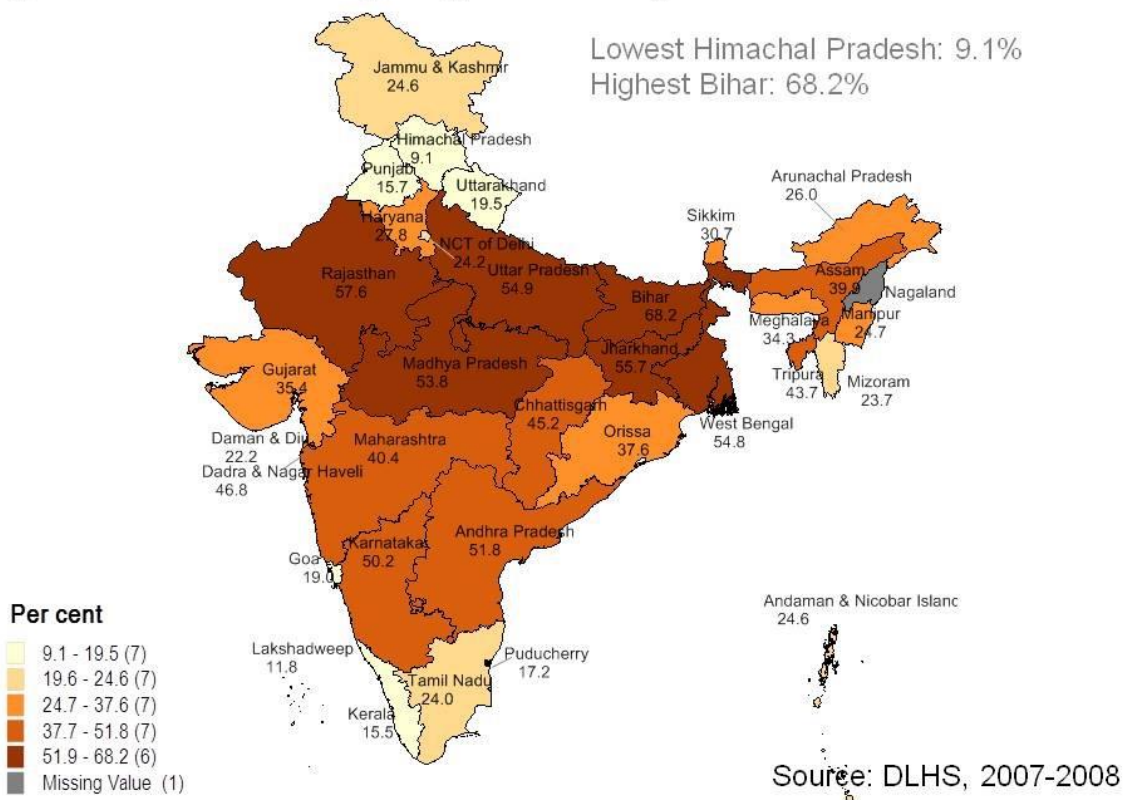


Image 4 – Representation of Child Marriage in India

## Chapter 2 - Forms of Child Sexual Abuse

The degree of punishment that is to be advised in a particular is based on the extent of the crime and the violation against norms. In light of this it is important to understand the nature of different types of acts that can be categorised as child sexual abuse.

### 2.1As described by Societal Norms

#### 2.1.1 Abuse of Children by Institutions

In political science, an institution is a set of formal guidelines—such as constitutions—or unwritten conventions—such as mutual understandings—that limit and govern how political actors engage with one another. Both state and nonstate actors, such professional associations and certification authorities, create and uphold institutions<sup>20</sup>. For example – Police authorities or the government in general. We have seen various cases where the people in such positions have utilised their authority for manipulating laws according to them. Not every sexual assault is carried out by an unknown individual. The perpetrators of many forms of child abuse in schools are adults in positions of authority known to the children. These activities are available in trusted institutions such as orphanages, convents and schools. These abuses are even more serious because they are difficult to track. Fear of stigma prevents many people from reporting, even those who are rarely punished.

One such cases recently reported was that of a girl in 12<sup>th</sup> Standard at a school in north Delhi who was sexually abused by a senior official of the government's<sup>21</sup>. In the *Apna Ghar case*<sup>22</sup> Approximately three girls were sexually abused while running away from home. Since then, around 120 girls have also reported the crime. The main accused arrested are Jaswant Devi and her son-in-law. This incident is a perfect example of how our children are not safe even at home.

#### 2.1.2. Cyber space sexual abuse in India

Cybercrimes against minors in India increased by about 400% between 2020 and 2019. The publication or dissemination of child sexual abuse materials was a factor in almost 90%<sup>23</sup> of these offences (CSAM)<sup>24</sup>. Children's online safety is being threatened by the growing usage of social media platforms, the widespread adoption of online learning, and the use of educational apps. With the increasing availability of internet connections and lack of education it is easier for predators

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<sup>20</sup><https://www.britannica.com/topic/institution>

<sup>21</sup><https://www.thequint.com/news/crime/delhi-government-official-booked-for-raping-friend>

<sup>22</sup> Utsav Singh Bains v. CBI ,2012 SCC OnLine P&H 12237

<sup>23</sup><https://www.orfonline.org/expert-speak/how-india-is-protecting-its-children-online>

<sup>24</sup> [https://www.justice.gov/d9/2023-06/child\\_sexual\\_abuse\\_material\\_2.pdf](https://www.justice.gov/d9/2023-06/child_sexual_abuse_material_2.pdf)

(people indulging in child sexual abuse) to get hold of children who are easy to manipulate and take advantage off. More often than not children end up taking advantage of their peers in an act of revenge and post obscene pictures and videos of the other. We have seen a rapid increase in such cases since the time apps like Instagram and Facebook have become the mark of one's social status. The following has also given rise to Child Pornography<sup>25</sup> and Online grooming.

Online Grooming refers to luring a child towards sex. "A technique whereby an adult 'turns into a friend' of an underage individual with the intention of sexually harassing her or him" is how it is described. Research indicates that there are more men than women who commit crimes. That being said, it would be incorrect to claim that the perpetrators are only men.<sup>26</sup> Children use a variety of social media sites and communication channels, which can be exploited by criminals to obtain access to a child's account. They access the accounts based on their preferences and inclinations, "ease of access" (as long as websites, apps, and other platforms respect their privacy settings), and the content they share on social media. Following this victim selection, they make an effort to get in touch with the victim or to start a friendship with them. In this case, the offender obtains information from online sources and uses it to win the victim's trust by bringing up comparable experiences and hobbies. He is able to win the victims' trust by doing this.<sup>27</sup>

### **2.1.3 Child Marriage and Sexual Abuse**

As discussed earlier as well, the practice of child marriage is one of the leading causes of child sexual abuse in India. The most serious concern with child marriage is that the cases of child sexual abuse are not reported due to the pressure that the child faces from their family. The reporting of cases is quite low under PCMA 2006<sup>28</sup> and therefore studying the loopholes becomes very important. This does not only include the cases where the male is above the legal age of marriage and the female is underage but also the cases where both the male and female are underage and do not have proper sex education.

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<sup>25</sup>Many professionals in the field of child protection have been using the phrase "child sexual abuse material" instead of "child pornography" for the past few years. In fact, it is thought to be more accurate and provides a better description of the crime. The term "child pornography" refers to offences involving the creation, preparation, sharing, and dissemination of such material in addition to child sexual abuse.

<sup>26</sup>Winters et al., *Stages of Sexual Grooming: Recognizing Potentially Predatory Behaviors of Child Molesters*, 38(6) DEVIANT BEHAVIOR 724-733 (2017)

<sup>27</sup>O'Connell, Rachel, *A Typology of Cyber Sexploitation and Online Grooming Practices*, UNIVERSITY OF CENTRAL LANCASHIRE

<sup>28</sup>The Prohibition of Child Marriage Act, 2006



There are numerous examples and pieces of evidence supporting the sexual exploitation of brides<sup>29</sup>. In the case of *Independent Thought v. Union of India*, the Hon. Supreme Court ruled that having sex with a girl under the age of 18 constitutes rape<sup>30</sup>.

Prior to the issuance of this ruling, sexual relations between a male and a female who was older than fifteen was not regarded as rape.<sup>31</sup> A rise in economic distress coincided with a rise in child marriage instances during the COVID-19 pandemic<sup>32</sup>. Women's and girls' rights must be taken into consideration as progressive actions are taken to reach the 2030 sustainable development goal aim.

## **2.2 According to Law**

### **2.2.1 Penetrative sexual assault**

In the POCSO Act, sexual assault is defined in Chapter 3 and the penalties are explained in Chapter 4, which was amended in 2019 to make it more stringent. *2017 Bandu v. A man in the State of Maharashtra* has been found guilty of sexually harassing a 10-year-old physically and mentally challenged girl under Section 4 and Section 6 of the POCSO Act and various provisions of the Act. *Indian Penal Code, 1860. Pratil Gupta v. State of Sikkim (2015)*, genital injuries were detected while the victim was in the presence of the accused. The victim was fifteen years old at the time. The Supreme Court believed the defendant's narrative that she was raped five times in one night after her clothes were removed.

### **2.2.2 Aggravated Penetrative sexual assault**

Section 5 of the POCSO Act spells out the circumstances under which sexual harassment is considered sexual harassment. For example, a sexual assault of a child by a police officer near a police station, law enforcement officers working there, or prison, hospital, or school personnel. It is classified as aggravated penetrative sexual assault. Prosecution and punishment under Section 6 of the POCSO Act.

### **2.2.3 Sexual Assault**

"A person who touches a child's genitals, genitals, anus or breasts for the purpose of sexual intercourse, or who causes the child to touch his or her own or others' genitals, genitals, anus or breasts, or who engages in other sexual acts. Sexual assault, including without physical penetration

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<sup>29</sup>Population Council and IIPS, 2008

<sup>30</sup>[2017] 10 SCC 800.

<sup>31</sup>STATUS AND DECADAL TRENDS OF CHILD MARRIAGE IN INDIA.

<sup>32</sup>The Global Girlhood Report 2020: How COVID-19 is putting progress in peril, Published by Save the Children.



and is considered a sexual offense under Section 7 of the POCSO Act. Following medical examination of the victim, Subhankar Sarkar v. State of West Bengal (2015) found no evidence of sexual violence; However, marks were found on the victim's body indicating use of force. As a result, The accused was found guilty under Sections 8 and 12 of the POCSO Act.

#### **2.2.4 Aggravated Sexual Assault**

Sections 9 and 10 of the POCSO Act define it as a serious offense against child sexual intercourse. In the 2017 case Sofyan v. The state court of first instance found the defendant, an office worker at the swimming pool, guilty of abusing eight children. The 18-year-old girl has violated Section 10 of POCSO and Section 354 of the Indian Penal Code, 1860. According to the facts of the case, the defendant approached the victim while she was in the locker room, put his hand inside her swimsuit and had sex with her. The accused said they had committed a crime, but the Delhi High Court rejected this contention and upheld the conviction. The Act was passed pursuant to Article 39, Article 15 of the Constitution of India and the signing of the United Nations Convention on the Rights of the Child, 1992, which requires states parties to take all reasonable measures to prevent minors from doing so. Being persuaded or forced to participate in illegal sex or child abuse.

Ten years after the bill was passed, the provisions of the POCSO Act appear not to be implemented by the country's courts.

#### **2.2.5 Sexual harassment**

Article 11 of the POCSO Act provides for sexual harassment

1. If someone says or does something sexually suggestive to a teenager, such as showing them something.
2. If the young person is forced to expose his or her body in a way that the perpetrator or others can see.
3. If someone exposes their child to any form of pornography.
4. If your child is regularly online or being watched or followed by others.
5. If someone threatens to use real or fake images of children's bodies or engage in sexual activity in electronic, video or digital media.
6. If someone seduces a child for sexual purposes

#### **2.2.6 Child Pornography**

According to Section 13 of the POCSO Act, anyone who uses a child for pornographic purposes—either by depicting the child's sexual organs, using the child in actual or simulated sexual acts, or

using the child indecently or obscenely in television or online advertisements—commits this offence and faces penalties under Sections 14 and 15 of the POCSO Act. The mother in *Fatima A.S. v. State of Kerala* (2020) claimed that her two small children had painted her nude body above her navel in a social media video, with the intention of teaching them about sex education.

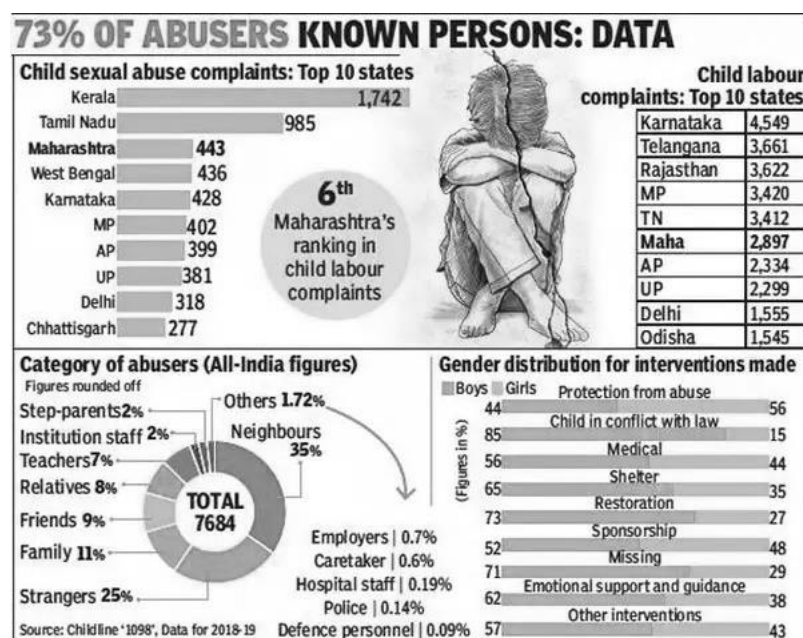


Image 5 – Representation of Abusers and Victims

### Chapter 3 - AN OVERVIEW OF THE LAWS IN INDIA ABOUT CHILD SEXUAL ABUSE

We have seen what causes child sexual abuse in India in the previous chapter. The legislative provisions pertaining to child sexual abuse in India are highlighted in this chapter. The previous chapter's discussion of child sexual abuse does not always result from a lack of legislative actions, but rather because there is a dearth of knowledge regarding children's rights. Since they are considered vulnerable, children have been given special laws at both the national and international levels. Although the Indian Constitution does not specifically mention children, it does contain several provisions aimed at ensuring their safety and well-being. Two examples of it are Articles 24<sup>33</sup> and 15 (3)<sup>34</sup>. A nation's constitution is designed to address the issues and aspirations of its citizens. The conscience of the Constitution is formed by the Fundamental Rights and the Directive Principles of State Policy, which together represent the essential human rights in our

<sup>33</sup>Article 24 of the Constitution: “Prohibition of employment of children in factories, etc No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.”

<sup>34</sup>Article 15(3) of the Constitution states: “(3) Nothing in this article shall prevent the State from making any special provision for women and children.”

culture. They play an equally important role in advancing the Preamble's stated goals and purposes for the Constitution. Since it is the largest law of our country, it also contains some special provisions regarding the protection and welfare of children. The basic benefits of citizens in this country are called fundamental rights

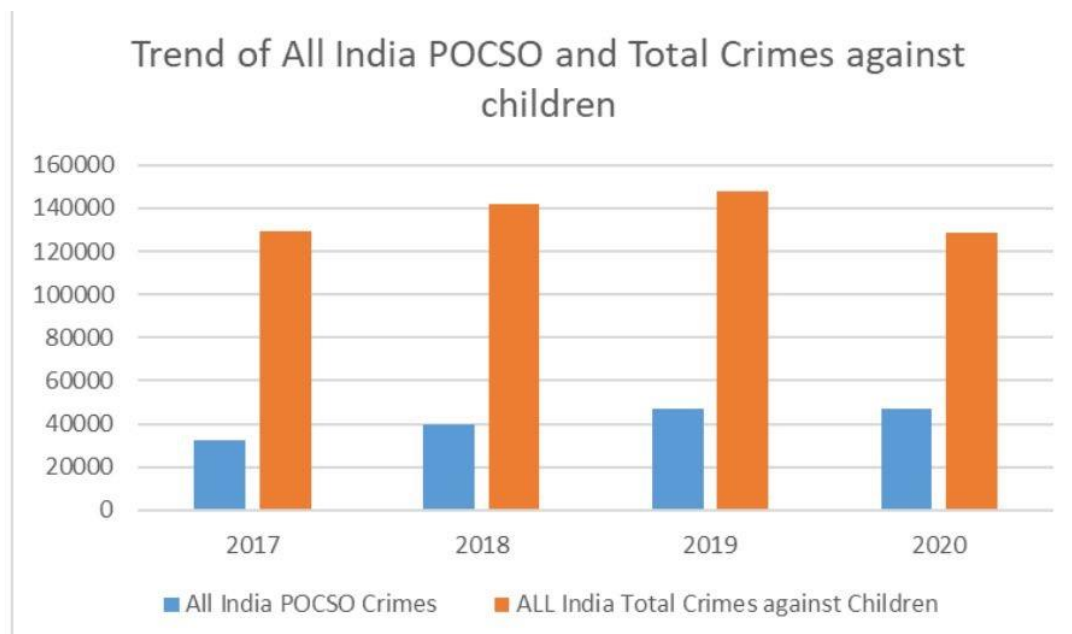


Image 6 – Graphic representation of POCSO v/s other crimes

Until 2012, three general sections of the Indian Penal Code (hereinafter referred to as IPC) were the only sections of the law that recognized the offense of child sexual intercourse.<sup>35</sup>, Sexual intercourse without consent is known as rape and violation of female depravity (undefined)The only recorded crime is sexual intercourse (anal, homosexual or bestiality)<sup>36</sup>, and sexual intercourse classified as "against the woman's will" is not reported because the illegal use of force is considered a crime (POCSO) entered into force in<sup>37</sup>.

India has been trying to create laws to deal with the problem of child abuse for some time now; this chapter covers the laws regarding child abuse in India.

## POCSO ACT

<sup>35</sup>INDIAN PENAL CODE 1860 S.376.

<sup>36</sup>INDIAN PENAL CODE 1860 S. 354

<sup>37</sup>INDIAN PENAL CODE 1860 S.377

Congress passed the Protection of Children from Sexual Offenses Act (POCSO) in 2012 to address the scourge of child prostitution and child abuse.

Twelve fundamental principles are listed in the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), and they must be adhered to by all parties involved in the child's legal proceedings, including state governments, the Child Welfare Committee, the police, special courts, non-governmental organizations, and any other professionals. Among them are:

- A child's right to life and survival requires protection from all forms of abuse and neglect, including physical, psychological, mental, and emotional harm.
- The child's best interests should come first.
- The child's harmonious development must be the main priority.
- The right to receive compassionate and dignified treatment Throughout the legal process, child victims should receive compassionate and considerate treatment.
- Right to be free from discrimination: Regardless of the child's social, linguistic, religious, or cultural background, the legal system must be open and equitable. entitlement to specific preventive actions It implies that children who have experienced abuse are more likely to experience it again.
- The child victimized or witness has the right to be fully informed about the legal proceedings.
- Right to voice opinions and concerns and to be heard Each kid has the right to effective assistance, including financial, legal, counselling, wellness, interpersonal, and academic services, psychological and physical rehabilitation services, and other support required for the child's healing.
- Every child also has the right to be heard about matters that affect them.
- Right to Privacy: Throughout the entire pre-trial and trial phases, the child's identity and privacy must be safeguarded.
- Right to be shielded from hardship while facing legal proceedings Reduce the number of times a child experiences hardships or secondary victimization throughout the legal process.
- Right to safety: A victim who is a child must be shielded before, during, and after the process.
- Right to compensation – The child can ask for support in case they need it not only from the Accused but also from the government as a way to get back on their feet.



# #POCSO

## Salient Features:



- ◆ The POCSO Act, 2012 was enacted to Protect the Children from Offences of Sexual Assault, Sexual harassment and pornography with due regard for safeguarding the interest and well-being of children. The Act defines a child as any person below eighteen years of age, and regards the best interests and welfare of the child as matter of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child. The act is gender neutral.
- ◆ The amendment in Section-4, Section-5, Section-6, Section-9, Section-14, Section-15 and Section-42 of Protection of Children from Sexual Offences (POCSO) Act, 2012, is made to address the aspects of child sexual abuse in appropriate manner. The modification is made to address the need for stringent measures required to deter the rising trend of child sex abuse in the country.
- ◆ To discourage the trend of child sexual abuse by acting as a deterrent Section-4, Section-5 and Section-6 are proposed to be amended to provide option of stringent punishment, including death penalty, for committing aggravated penetrative sexual assault crime on a child to protect the children from sexual abuse.
- ◆ The amendments are also proposed in section-9 to protect children from sexual offences in times of natural calamities and disasters and in cases where children are administered, in any way, any hormone or any chemical substance, to attains early sexual maturity for the purpose of penetrative sexual assault.
- ◆ Section-14 and Section-15 of the POCSO Act, 2012 are also proposed to be amended to address the menace of the child pornography. It is proposed to levy fine for not destroying/or deleting/ or reporting the pornographic material involving a child. The person can be further penalized with jail term or fine or both for transmitting/propagating/administering such material in any manner except for the purpose of reporting as may be prescribed and for use as evidence in court. Penal provisions have been made more stringent for storing/possessing any pornographic material in any form involving a child for commercial purpose.

wcd.nic.in f /PMOIndia f /MinistryWCD @Manekagandhibjp f /ManekaGandhiOfficial

Image 7 – POCSO as explained by Ministry of women and Development

Along with this the act also has a few distinctive features which make it different from all the laws that have been previously enacted for the protection of Children from sexual abuse.

### 1. Child Welfare Committee (CWC)

The police are required to present the case to the Child Welfare Committee in less than twenty-four hours. It is now required to report cases, and filing a false complaint is punishable.

### 2. Gender Neutral Provisions

Since the Act is gender-neutral, both male and female children are covered by it. Before the passage of this Act, sexual abuse of children was punished under the Indian Penal Code. It was not, however, gender neutral. However, since the passage of this Act, equal protection has been extended to sexual abuse of children irrespective of gender. Peno-

urethral, fingering, peno-oral, and peno-anal acts are now included in the term of sexual assault, expanding the legislation's application beyond peno-vaginal acts alone.

### 3. Child Friendly Provisions

When recording the statement, female police officers who are not in uniform must be present. This recording must be done in front of a person the child trusts. It is necessary to make every effort to ensure that Section 157 CrPC<sup>38</sup>'s requirements are being complied with. Whether it's the child's name, school, photo, or family details—all of them should remain private. But only with a Special Court order that makes sense and only when it serves the child's best interests can it be permitted.

Additionally, the law has made sure that the victim is shielded from any kind of influence or fear by not requiring them to interact with the accused during the trial<sup>39</sup>. Video conferencing is used to record the entire testimony, ensuring that the victim is spared from having to reiterate her remarks<sup>40</sup>.

### 4. Speedy Trials

Section 173(1A) of the CrPC<sup>41</sup> stipulates that the investigation must be finished in two months. To prevent cases from being kept pending for too long, the trial must also be finished in a year. Long-pending cases may influence the child's mental health and for that reason, this time restriction is regarded as another crucial component of this Act.

### 5. Medical Examination of the accused and the victim

The victim child's medical examination should only be performed by a female doctor, according to section 27 of the POCSO Act of 2012 and section 164 A of the Code of Criminal Procedure. As this investigation is ongoing, the existence of Any person who is trusted, such as a parent, needs to be guaranteed. The consent to perform such a medical examination and to collect samples for forensic analysis<sup>42</sup> must be given in writing. Similarly, section 53 A of the Code of Criminal Procedure would be adhered to,

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<sup>38</sup>CrPC 1973 S. 157 provides for Procedure for investigation preliminary inquiry.

<sup>39</sup> POCSO ACT 2012, S. 36

<sup>40</sup> POCSO ACT 2012, S. 37

<sup>41</sup> 5CRIMINAL (AMENDMENT) ACT 2018, S.14(i).

<sup>42</sup> CODE OF CRIMINAL PROCEDURE 1973, S. 164-A

which stipulates that a police officer holding a rank higher than a sub-inspector would obtain the accused's DNA. In this case, the accused's consent is not required.

#### 6. Presumption

The assumption is in favour of the victim, which means that if someone is charged according to Sections 3 and 5, it will be assumed that they committed the crime or tried to do so unless the opposite is demonstrated<sup>43</sup>. Another assumption is the guilty mindset of the accused, though the defence<sup>44</sup> may be able to show otherwise. Nonetheless, the accused must be granted some rights by the equity principle. Thus, a clause exists that mandates the prosecution to establish the case not only on the preponderance of the evidence but also beyond a reasonable doubt. The Court must investigate "improbabilities," "infirmities," and "patent absurdities" that could expose the prosecution's falsity to prevent injustice from occurring. This implies the presumption is not unqualified, and it loses strength when the prosecution's arguments raise questions and makes the case seem implausible. In this instance, it was decided that the Act was a historic step toward protecting children from sexual abuse and exploitation. It is also kid-friendly and places a strong focus on upholding children's dignity. However, the courts must preserve the enactment's spirit and meaning while also making sure that its provisions are not misunderstood.

#### 7. Mandatory reporting

Anyone who works with young people or children is required by POCSO to report child sexual abuse, but this requirement is especially high for those who work in the schooling, social, religious, and medical sectors (section 19). If you don't, you could face legal repercussions like. The goal of fines and/or a maximum of six months in jail is to incentivize law-abiding behaviour.

### **Issues concerning the POCSO Act 2012**

#### **1. Determination of the Age of the Child**

A crucial substantive and jurisdictional factor that establishes the validity of the Juvenile Justice Act and the POCSO Act is the age of the accused or victim. The POCSO Act's Section 34(2) mandates that the Special Court determine the child's age

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<sup>43</sup> 7 POCSO ACT 2012, S. 29

<sup>44</sup> POCSO ACT 2012, S 30(1)



and document in writing the rationale behind its findings. However, there has been a debate about whether the scope of the act should be expanded beyond the physical age.

In the case of *Eera v. State (Govt. of NCT of Delhi)*<sup>45</sup>, the Supreme Court ruled that rape cases involving victims who are mentally challenged cannot be transferred to POCSO Courts. The victim in this instance had been a woman who suffered from cerebral palsy from birth. Based on a comprehensive medical assessment, her IQ and eight social development areas indicated that she was six years old overall. The main argument in the present instance was that failing to assess the victims' mental ages would directly undermine the main goal of the 2012 Act.

In front of the Supreme Court, Ms. Bhati, an advocate, contended that the protective scope of the POSCO Act would naturally expand to include a purposive construction that considers both biological and mental age, as opposed to just biological age. This POCSO Act gap leads to misunderstandings. Beyond this, determining the age of the victim and the offender presents another challenge because it can be challenging to determine their ages. There are a lot of issues for both parties because the POCSO Act is quiet on the documentation required to prove the age of the accused or victim. Courts frequently apply the 12th rule of the Juvenile Justice (Caring for and Protecting of Children) Rules, 2007 in this situation.

This rule allows the child's birth certificate, educational transcript, or matriculation certificate to be used as identification. Due to the lack of a defined legal procedure for determining the age of victims, inconsistent judicial decisions have been made, undermining the essential requirements of a high standard of proof in criminal trials.

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<sup>45</sup><http://docs.manupatra.in/newsline/articles/Upload/A9B8E154-4665-4BF5-A554-D3C6F28F3A6A.pdf>



## Who's a child? | While most laws fix 18 as the age when one ceases to be a child, there are exceptions:

- The Majority Act, 1875 sets the age of majority at 18

- 61st Constitutional Amendment Act fixes the minimum voting age at 18

- POCSO Act, 2012 and Juvenile Justice Act, 2015 define a child as someone under the age of 18



- Right to Education Act, 2009 says a child is someone between the ages of six and 14

- Child Labour Amendment Act, 2016 says a child is someone under the age of 14 and an adolescent is aged between 14 and 18

*Image 8 – Determination of Age of Child*

## 2. Mandatory Reporting

While reporting a crime is seen to be the first step towards justice, this is usually not the case for crimes that involve sexual abuse. In the medico-legal processes, mandatory reporting is a crucial initial step since it paves the way for further legal interventions. But among the many obstacles to required reporting in India are social stigma, perceived harassment, widespread gender stereotypes, family disbelief, victim's unwillingness, and threats from the offender. Even when the victim wants to take the first step and register a complaint, they are not supported by their family due to the common fear of exclusion from society.

This situation is even worse for males who aren't often believed and are often laughed at while making such claims. The common perception that men no matter the age should enjoy sexual attention bars children from reporting anything that feels unnatural to them. Thus, stopping them from reporting the issues any further. Along with this, we can also identify three more reasons why mandatory reporting is working against the provisions of the act.

- In a country that already lacks sexual awareness making having sex with someone under the age of 18 illegal makes the issue even more severe. Now, health experts and school counsellors who are supposed to spread awareness might be reluctant to offer advice on safe sexual behaviour.
- For institutions, non-profits, and organizations committed to building trustworthy relationships with children and underprivileged and minority communities, the law presents a plethora of new obstacles. If they are required by law to disclose every instance of mutually beneficial, though underage sex, a breach of trust would compromise their attempts to engage and collaborate with youth. These organisations depend on their popularity in the public eye for donations which further let them work better<sup>46</sup>. However, in case they report these cases they will attract BAD PUBLICITY which is detrimental not only to the organization but also to the other children/beneficiaries of that organization.
- Reporting requirements bring up the issue of who should or shouldn't oversee carrying out the law. The police have a lot on their plates and not enough equipment to complete their work. imposing financial and criminal penalties for violating a legal obligation without considering how to there are instances of outright failure to report due to its implementation and the ensuing lack of accountability. The law does not guarantee that responsible authorities report suspected child sexual abuse in the appropriate circumstances; rather, it can only be applied retroactively to punish offenders.

### **3. Issues concerning CWC.**

Concerns exist regarding CWC surveillance. There were multiple inconsistencies in the way the system operated because of the absence of a clearly defined monitoring authority for CWCs. It is widely acknowledged as one of the primary causes of the prevailing ambiguity and absence of responsibility within the child protection system, thereby hindering its efficacy<sup>47</sup>. Individual CWCs' internal reviews were a good decision, but they are not always followed.

### **4. Age of Consent**

Teens are not allowed to have sexual relations with adults or other adolescents, according to the Act. The probability that a couple of children will take part in any kind of sexual activity is not mentioned in the POCSO Act, nor is permission from people under the age of 18

<sup>46</sup>A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World

<sup>47</sup>CHILD WELFARE COMMITTEES IN INDIA A comprehensive Analysis Aimed at Strengthening the Juvenile Justice System for Children in Need of Care and Protection

mentioned. Consequently, it curtails the liberty of individuals below the age of eighteen by outlawing their consensual sexual behaviour and making them the object of social harassment.

Most countries have set the legal age of permission at 14 to 16 years old. Countries such as Germany, Italy, Portugal, Hungary, and so on consider 14-year-olds to be of legal age to consent to sexual activity. The official age of consent in Wales and London is sixteen. In Japan, the legal drinking age is thirteen. In Bangladesh and Sri Lanka, 16 is the legal age of consent. Thus, the court decided that the minimum age of consent for sexual activity under The Indian Penal Code (IPC) and the Protection of Children from Sexual Offences Act (POCSO Act) should be reviewed because many court cases involve young girls who have consented to sex in romantic relationships, and as a result of these cases, the courts are overburdened.

## **POCSO (AMENDMENT) ACT 2019**

The goal of the 2019 Protection of Children from Sexual Offences (Amendment) Bill, which was approved by both Houses of Parliament, is to put an end to the widespread sexual abuse of minors. It aims to impose harsher penalties—such as the death penalty—for sexual offences against minors. In some quarters, the bill is now welcomed because it explicitly mentions "child pornography" and makes it illegal to both "sexual exploitation of children" and "possession or storage of pornography affecting minors." The definition of 'sexual violence' has also been expanded. Because the Act has strong penal provisions, the modification is expected to act as a deterrent and prevent the increasing incidence of child sexual abuse. It aims to safeguard the welfare of children who are at risk during difficult times and guarantees their dignity and safety. The purpose of the amendment is to provide clarification on the elements of abuse of children and the associated penalties. It investigates sexual assaults of both young boys and girls because it is gender neutral.



**PUNISHMENTS UNDER THIS ACT**

Offence	punishment	section in the act
Penetrative sexual assault	seven years to imprisonment for life and fine	section 4
Aggravated penetrative sexual assault	10 years to imprisonment for life and fine	section 6
Sexual assault	three years to 5 years and fine	section 8
Aggravated sexual assault	five years to 7 years and fine	section 10
Sexual harassment of the child	up to 3 years of imprisonment and fine	section 12
Use of child for pornographic purposes	5 years and in case of subsequent conviction seven years	section 14(1)
if along with pornographic act offences also committed under	section 3: 10 years to life imprisonment section 5: life imprisonment section 7: 6 years to 8 years section9: 8 years to 10 years	section14(2)  section 14(3) section 14(4) Section14(5)

Image 9 – *Changes According to the Amendment*

## **Loopholes in the Enactment of the Act**

There are no guidelines for how people in positions of authority—such as government employees or police officers—will be tried for aggravated assault. Clarifying these points is essential in a nation where impunity and power are synonymous. To improve courts', it should be mandated that child-friendly areas and specialised sensitization training be provided to judges, prosecutors, and fast-track courts, such as POSCO courts. Children's psychological counselling is essential for addressing the trauma of abuse. More rehabilitative services, such as free mental health professionals, are needed to treat the abuse's long-term effects.

It is necessary to redefine the term "age of consent" due to the difficulty in distinguishing among consensual and non-consensual sex. Families use these outdated circumstances to hide inter-caste marriages and elopements because they impede sexual agency and freedom as the society's sexual mores change.

The POCSO Act's Sections 11 and 12 outline the rules pertaining to sexual harassment and its penalties. "A person is said to commit sexual harassment of a child when such person with sexual



intent,<sup>48</sup> according to Section 11. Furthermore, it has been stated that any inquiry pertaining to "sexual intent" will be considered a factual inquiry. It has been established and is commonly known that proving the intention element of a legal question in court is exceedingly challenging. It also begs the question of whether sexual harassment would still occur if an offender committed any of the acts specified in Section 11 without intending to cause sexual harm. The phrase "sexual intent" is not used in Section 354A of the Indian Penal Code, which defines sexual harassment. As a result, Section 11 of the Act has a loophole that benefits the offenders due to the term "sexual intent."

When a minor is charged with a sexual offense, the judge will consider whether to treat him under the POCSO Act or the Juvenile Justice Act. This is done to cast doubt on the accused's age, but the assault that was carried out isn't ever considered. Consequently, juveniles who perpetrate horrific crimes are not held accountable for the seriousness of their offense. In the well-known Kathua Rape case<sup>49</sup>, eight people were accused of kidnapping and raping an eight-year-old girl. Six of the accused were found guilty, one was cleared on the grounds of benefit of doubt, and the other accused—a minor—was tried in juvenile court.

In the Nirbhaya Case, too, the minor who struck the deceased with an iron rod and caused her death was considered a minor and sentenced to three years in jail; he is currently employed as a cook in a southern region of the country. The fact that the juvenile was acting in a way that resulted in the deceased person's rape and death is an undeniable fact, but that fact serves as a shield for them. For justice to prevail, this shield must be broken, and anyone accused of committing a sexual offense—regardless of age—must be dealt with like an adult.

The inclusion of the death punishment as a punishment in the POCSO Act 2019 has lessened the deterrent effect of the original amendment to the Act. The harshest punishment possible for aggravated penetrative sexual assault is the death penalty, according to Section 6(1), which was added to replace Section 6 of the original Act.

When a victim or survivor's family member is the offender, the introduction of the death penalty may be even more problematic. According to the National Crime Records Bureau's (NCRB) 2016 report

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<sup>48</sup> POCSO ACT 2019 Amendment

<sup>49</sup><https://www.thehindu.com/news/national/kathua-rape-murder-case-arguments-on-framing-of-charges-against-main-accused-on-june-26/article67008154.ece>

on crime in India, individuals who knew the victim personally were responsible for 94.6% <sup>50</sup>of the rape cases that were reported as penetrating sexual assault against minors. If the accused is known to the victim, even though they are the ones wronged the guilt of pushing someone to their death can be even more damaging to the mental health of an individual. This prevents the victim from even reporting the crime, instead of taking the blame of someone's death and taking away the loved one from their own family they decide to harbour the pain of the experience that they have been through. Death Penalty according to the Indian constitution has always been the harshest punishment and is only given in the rarest of the rarest cases.

Death penalty has always been a controversial issue in India. After India gained independence in 1947, the death penalty became inevitable. Before this, life imprisonment was the standard. This is the harshest punishment. It is spread by hanging from the neck in India. Section 53 of the Indian Penal Code (IPC), 1860 provides for death penalty and the Supreme Court has the power to confirm death penalty under Section 368 of the Penal Code. India is one of 78 countries where the death penalty is still in effect. A report prepared by the National Law University of Delhi stated that 755 people have been hanged in India so far.

The Indian Penal Code (IPC) provides for death penalty for various crimes like crime (Section 120B), murder (Section 302), conspiracy against the government of India (Section 302, 121), sedition (section 132), murder (sections 396 and 364A), terrorism-related offences, aggravated rape, treason (sections 121 and 136) and kidnapping. Death penalty is permitted under various laws, including the NDPS Act and the Prevention of Atrocities Act. Major changes were made to the Crimes Act in 1955 and section 367(5) was repealed by Parliament. When it was re-enacted in 1973, many changes were made, most notably Section 354.3, which required judges to state specific reasons for the death penalty. Last week, a Supreme Court bench led by Chief Justice of India (CJI) <sup>51</sup>D Y Chandrachud urged the Centre to defend the legislation permitting hanging as a method of execution. This renewed discussion on whether there is a more humane and respectable means to carry out the death penalty dates back decades.

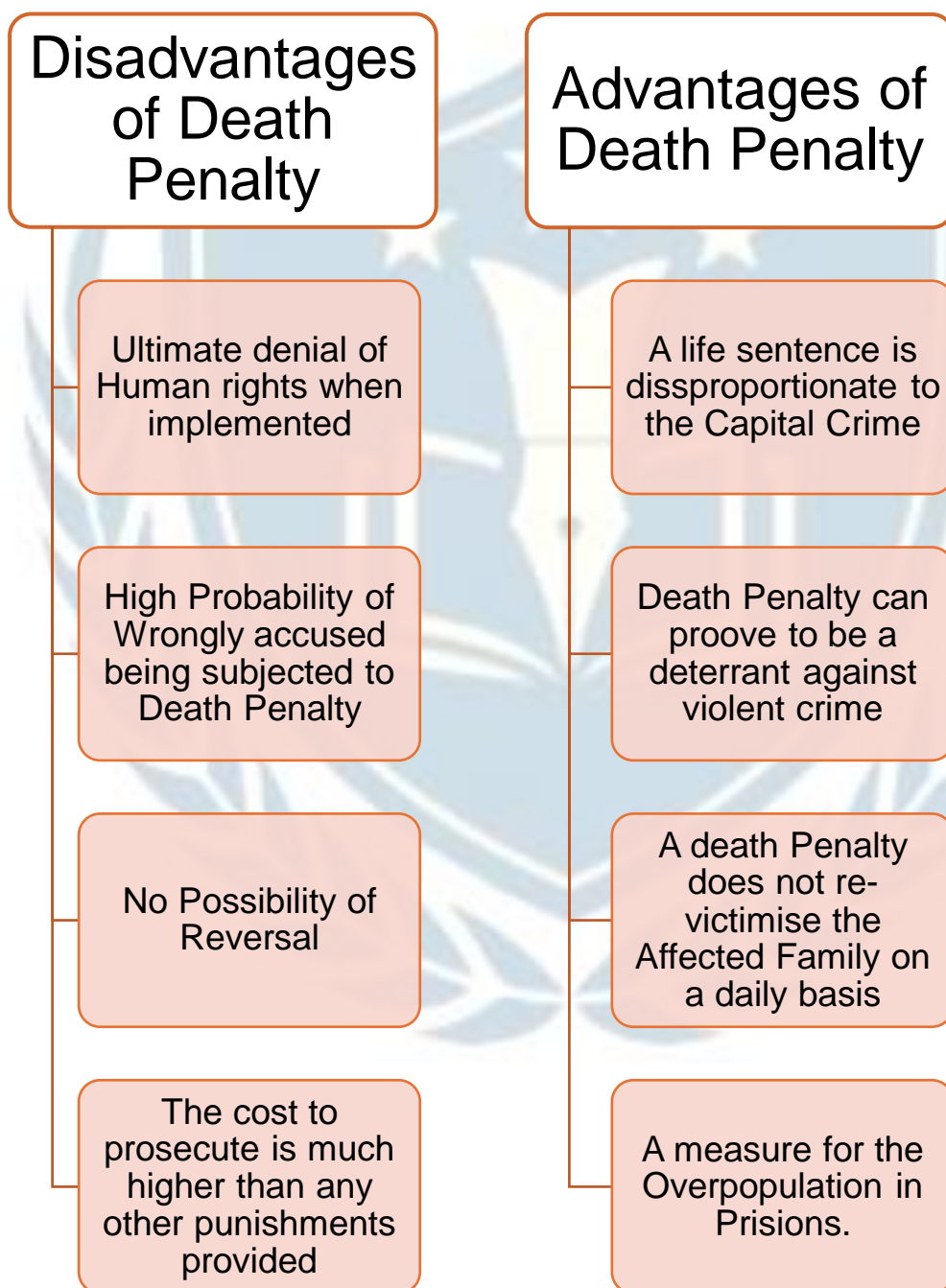
India is still divided over this debate where many people believe that a death penalty is the right punishment for anyone who has taken the life of another as they have forfeited their right to live, it acts as a form retribution which is reinforcing the moral indignation for the law-abiding citizens as

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<sup>50</sup> National Crime Records Bureau (NCRB) compiles and publishes information on crimes in its publication 'crime in India'

<sup>51</sup><https://indianexpress.com/article/explained/explained-law/debate-over-mode-of-capital-punishment-explained-8510590/>

well as the victims' relatives. They also believe that this will instil fear in the would-be murderers from killing people. However, there is always a flip side to every coin, another section believes that reformatory justice is a better solution as an eye for the eye turns the whole world blind. Some people also believe that Death penalty can be the perfect way to hide crimes of the people who have truly committed it. As death penalty in itself is such a debatable topic in India, its inclusion in the POCSO act only makes one wonder of the seriousness of the Judicial system towards its enactment.



## **Chapter 4 – Key Holders in the POCSO Act**

### **1. Parents**

As a child's first mentor and teacher, parents have a difficult job because some teachings are more difficult to teach than others. The ability to understand one's own body is among the most crucial and priceless things that a child may learn. This contains common sense information about setting limits and managing relationships in addition to basic biology facts like knowing all of one's body parts and sexual orientation. Children are a prime candidate for sexual assault because they are touch creatures; it is one of the most vital senses in the early years, and they use it most naturally to express and receive affection.

Early experiences with touching and being physically touched are crucial for a child's physical and mental health as well as for developing later sensory sensitivity, motor abilities, and comprehension of the physical world. Your child's whole development will be impacted if they link touch to a traumatic event. Therefore, it's critical to protect them from any negative touch. Little ones are easy pickings because they crave touch and thrive on it. If the parents take action to protect their ward from the accused, including taking legal action, if necessary, in a hypothetical situation where a child is being abused and their parents are unwilling to report the crime<sup>52</sup>, the likelihood that the child will experience problems is lower than if the parents choose to ignore the complaint. The child is abused continuously as a result of the parent's ignorance and negligence. If the offender knows that the parents are doing nothing about the complaint, he becomes haughty and the assault may go on for longer. The offender's conviction that "nothing will happen" will give him the confidence to continue to mistreat other kids in this manner.

### **2. Role of Special Juvenile Police/Local Police**

The police are crucial in ensuring children's safety. When handling allegations of child sexual abuse, law enforcement must implement child-friendly protocols, according to the POCSO Act of 2012. The body of information or facts utilised by a court to assess the veracity or truth of a fact is known as evidence. According to the Indian Evidence Act, "evidence" means: (1) any statement made by a witness in court relating to the incident under investigation; these statements are called oral evidence; (2) documents that can be examined by the court. and All documents designated as documents (including electronic documents)

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<sup>52</sup>In the case of Upendra Kumar Vs State[7] the person who witnessed the offence and failed to report was found guilty in the eyes of the law and bail and a fine was issued however in the case of M H Gangamaregowda vs The State Of Karnataka[8] bail was dismissed by the cognizance of the court.



Any type of "Evidence" is subject to procedure laws, which are thought to be essential to the administration of various substantive laws. Whether a matter is civil or criminal, the Indian Evidence Act regulates the admissibility of proof used for general purposes. Timely reporting is essential to obtaining reliable and authentic written and visual proof. Delay rejects specific proof. A cloud of doubt surrounds credibility when a crime goes unreported, raising the possibility of evidence manipulation. Therefore, too much time spent in delaying the reporting might be detrimental and raise doubts about the accuracy of the material. It is the prosecution's duty to offer a plausible justification for the delay. The primary reason why sexual offences against women are either not reported at all or are reported slowly in the Indian community is the social shame attached to these victims and their family.

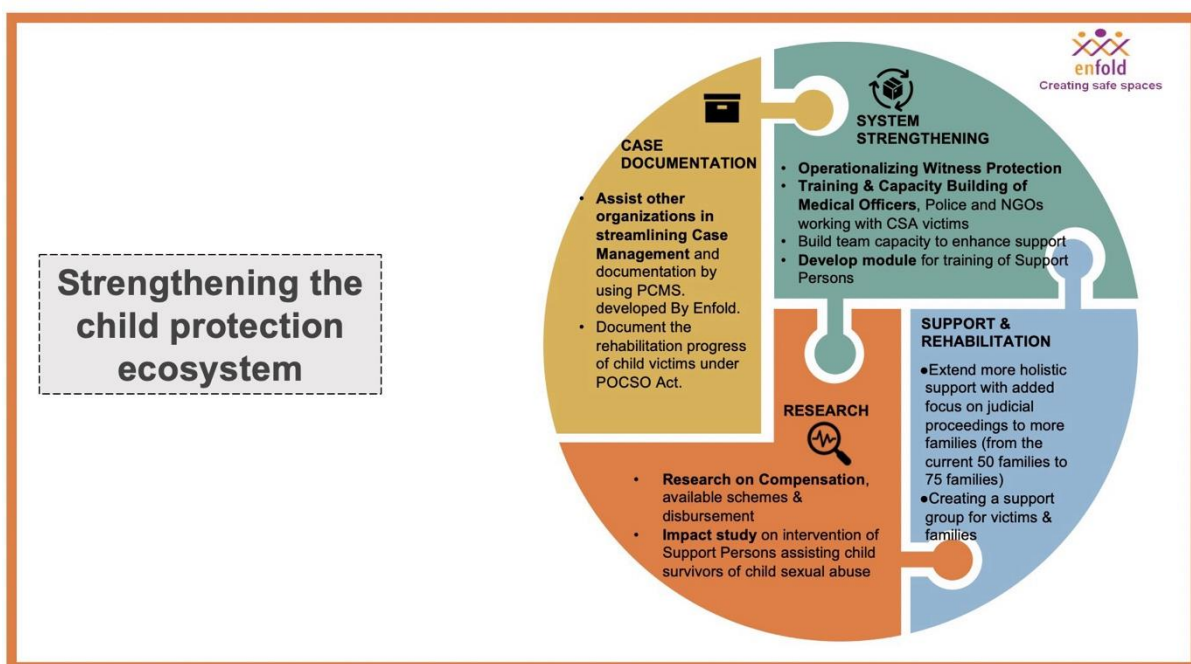


Image 10 – Role of Keyholders

### 3. Health Care Providers

When a child commits a sexual offence, parents and other adults often choose to take them to the closest hospital or clinic rather than calling the authorities. A quick response from medical personnel and hospitals is essential to the child's long-term rehabilitation and well-being. In most POCSO case investigations, the evidence gathered during the medical evaluation of victims of sex assault is crucial. All hospitals, private or public, are required to provide emergency treatment under Rule 5 of the Protection of Children from Sexual Offences Act 2012. Yes, that's why sexual assault is a medical emergency.

Under Indian law, there is no clear definition of what constitutes forensic or scientific evidence. While voice and DNA matching are two examples of forensic inputs that have long been used frequently in courtrooms, these experts are not allowed to work in the Indian legal system."Courts can express their opinions on a variety of topics by using the "Opinions of experts" provision of Chapter 45<sup>53</sup> of the Indian Evidence Act, 1872. The law continues by stating that an expert's evidence is really advisory in character and that he isn't a fact witness. A fact witness's testimony and an expert witness's opinion are not the same. It is the expert's duty to present their opinion together with a rationale and supporting data. The validity of expert testimony is one of the cornerstones of the judicial system. The notion that forensic evidence is flawless is untrue, as there is still ample opportunity for forensic fraud and manipulation. Forensic solutions are specifically created for this intricate sector in order to accomplish the stated purpose of conducting an investigation. The circumstances surrounding an expert witness who is providing false testimony or who is aware that they are not authentic are the same as those surrounding a different witness who is misleading the court.

Such conduct is unethical and against the law.

#### **4. Role of Child Welfare Committee**

According to Section 30<sup>54</sup> of the Juvenile Justice Act of 2015, the Child Welfare Committee is essential in making sure that minors who have been sexually abused receive the care and protection they need. When it comes to the treatment, care, and protection of the children, the Committee is fully empowered to make decisions. The Committee can also decide matters involving the development, rehabilitation, and protection of underprivileged children as well as cases involving meeting the children's fundamental needs and safeguarding them.

Whenever a committee is established for a specific area, it has the authority to handle all procedures under this Act's provisions pertaining to children's needs for protection and care. Police are required by the POCSO Act to notify CWC

Any child "who has been or is having or has a chance to be mistreated, tortured or used for purposes other than sexual assault or illegal acts" is considered a CNCP<sup>55</sup> in the event of sexual abuse, according to the Juvenile Justice Act.

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<sup>53</sup>When the Court has to form an opinion upon a point of foreign law or of science or art, or as identity of handwriting or finger impressions, the opinions upon that point of persons especially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts.

<sup>54</sup>For children in urgent need of care and protection, such as street children and run-away children, the State Government shall support creation of requisite number of shelter homes or drop-in-centres through the voluntary organisations.

<sup>55</sup>Children in Need of Care and Protection

According to POCSO Act regulations, the victim must be presented before CWC if the police have cause to think that the kid is not receiving parental support or has never had a home, is in an institution, or has an offender living in the same house as them.

## **5. NGO's**

With the help of POCSO, non-governmental organisations (NGOs), social workers, special educators, counsellors, and other professionals can legitimately assist victims and their families throughout the whole process, from filing a complaint to going to trial and receiving long-term rehabilitation.

NGOs can act as interpreters and translators, as well as support persons, experts, and special educators (as specified by POCSO Rules, 2012, c, d, f). According to Rule 2 (e)<sup>56</sup>, a person whose presence facilitates communication with the kid or whose communication style is familiar with the child's has also been defined. POCSO grants accredited roles to Non-Governmental Organisations (NGOs), Social Workers, Special Educators, Counsellors, and other professionals to assist victims and their families during the whole process, beginning with

In cases of sexual offences against minors, support persons have two roles: (1) supporting the child throughout the legal process, from the investigation to the trial; and (2) ensuring the child's long-term rehabilitation and well-being.

## **6. School Authorities and Teachers**

The youngster starts spending equal amounts of time at home and at class as they get older and more mature. A concerning trend has been the recent upsurge in complaints of child sexual assault on school property or by adults employed by educational institutions. The majority of the time, a child's suffering is made worse by the school's lack of readiness to handle situations of sexual assault. Not only is it tragic that the abuse occurred as a result of a breakdown in the system for protecting children, but it is made even worse by the reality that schools frequently attempt to downplay the occurrence in order to distance themselves from it; in certain cases, they even shift the blame on the parents and the child.

As educators or carers, parents and kids have complete faith in school personnel. Frequently, prior to talk to their parents, kids confide in them about their problems. The administration of the school is in charge of preserving this confidence. When an allegation of child sexual assault is received, it is imperative that the authorities respond forcefully, swiftly, and methodically.

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<sup>56</sup>"domestic relationship" shall have the same meaning as assigned to it in clause (f) of section 2 of the Protection of Women from Domestic Violence Act, 2005;



## 7. Special Courts

POCSO Section 28 (1) empowers the State Government to establish special Labour Courts<sup>57</sup> for the trial of offences in order to expedite trials. In cases where an individual is charged with violating Sections 3, 5, 7,9, 12, 13, 14, and 15 of the POCSO Act, 2012, the Special Court will assume, absent evidence to the contrary, that the accused has committed, assisted, or attempted to commit the offence. Thus, it is the accused's responsibility to establish their innocence (Section 29)<sup>58</sup>. Unless it can be demonstrated otherwise, the Special Court will likewise assume that the accused is in a guilty mental condition (Section 30)<sup>59</sup>.

The Government of India passed the Protection of Children from Sexual Exploitation Act (POCSO) in 2012 to protect children from sexual exploitation. The POCSO Act, 2012 encourages the establishment of special courts for speedy trials. Additionally, the Act stated that the Special Court must record the statement of the child within one month from the date of the crime being reported to the Special Court and try to complete the trial within one year from the date the crime was reported to the Special Court. The law was amended in 2019 to include harsher penalties, such as the death penalty, for sexual crimes against minors in order to protect offenders and maintain positive situations. This shouldn't happen again.

The Department of Justice (DoJ) is implementing a Centre-backed initiative to set up 1,023 Fast Track Special Courts (FTSCs), including 389 special courts POCSOs, to try and resolve the issue of rape and POCSO. problems. According to the Ministry of Justice, 640 FTSCs, including 338 special POCSO courts, will operate in 26 states/Union Territories and will have resolved 50,484 cases by May 2021. Goa, Jammu and Kashmir are yet to implement FTSC<sup>60</sup>. West Bengal, Andaman and Nicobar Island, and Arunachal Pradesh are yet to join the scheme. Annexure-I is a list of the states and union territories where those courts are located. The information on the selection of judges in particular courts established under the POCSO Act of 2012 is not centralised.

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<sup>57</sup> For the purposes of providing a speedy trial, the State Government shall in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, designate for each district, a Court of Session to be a Special Court to try the offences under the Act:

<sup>58</sup>here aperson is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.

<sup>59</sup>In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

<sup>60</sup>Fast-Track Courts



## 8. Special Public Prosecutor

Every Special Court shall designate a Special Public Prosecutor (SPP) to handle matters only in accordance with POCSO regulations [Section 32 (1)]<sup>61</sup>.

It is generally accepted that a public prosecutor works in the public interest rather than trying to convince the accused to confess. Simultaneously, he is supposed to guarantee that the actual offender remains convicted. It is the Public Prosecutor's responsibility to support the court by presenting all evidence gathered during the inquiry. A public prosecutor must carry out the prosecution in court with objectivity, justice, and candour.

Section 32 of the amended POCSO Act allows for the appointment of a Special Prosecutor (SPP) in the Special Court to hear cases under the Act. The only requirement is that the SPP have at least seven years of employment experience. The SPP's expertise with interacting with children who have been sexually abused is not recognised. The above appointment process was reviewed by the Kerala High Court in *Aju Mathew v. State of Kerala* where specific instructions regarding these appointments are sought. However, the judge cast a blind eye to the abovementioned claims, holding that the mechanism given forth by law was adequate and that no more judicial directions were required.

The criminal justice system in India has been reformed, but public prosecution has received little attention, which has resulted in the marginalisation of crime victims. The aforementioned brief comment on prosecution advancements pertaining to sexual offences against minors merely serves as an example of the aforementioned ignorance. The only viable solution is to ensure that victim-friendly processes are implemented and that prosecution systems are specialised. This is only possible if the public prosecutor has had specialised training in handling a particular group of victims, such as those who have been sexually assaulted, abused as children, or subjected to domestic violence.

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<sup>61</sup>The State Government shall, by notification in the Official Gazette, appoint 4 Special Public Prosecutor for every Special Court for conducting cases only under the provisions of this Act.

<b>POCSO ACT VICTIMS AGE PROFILE 2021</b>					
	<b>Below 6</b>	<b>6-12 years</b>	<b>12-16 years</b>	<b>16-18 years</b>	<b>Total</b>
<b>Total child Victims</b>	<b>675</b>	<b>3297</b>	<b>13256</b>	<b>16275</b>	<b>33503</b>
<b>Girls</b>	<b>650</b>	<b>3157</b>	<b>13173</b>	<b>16206</b>	<b>33186</b>
<b>Boys</b>	<b>25</b>	<b>140</b>	<b>83</b>	<b>69</b>	<b>317</b>
<b>% of girl victims</b>	<b>96.30</b>	<b>95.75</b>	<b>99.37</b>	<b>99.58</b>	<b>99.05</b>

*Image 11 - POCSO Act Victim Age range*



# Chapter 5 – Issues with the Implementation of the POCSO Act

## 1. Difference between Chargesheet crimes and actual Convictions

Records collected by the NCRB in the last three years<sup>62</sup> (2017, 2018, 2019) have revealed many cases where the police closed investigations without permission under the POCSO Act, 2012 (India, 2019). In 2017 and 2018, 6% of the total number of POCSO investigation cases were resolved at the civil level; The rate in 2019 was slightly higher.

Although the rate is low, actual figures show that around 3,000 POCSO cases are solved by the police. No charges were filed in 2019. Additionally, crime statistics in India show that between 2017-19, police lost more cases due to one of five explanations<sup>63</sup>

- Cases ended with final reports that were unrecognisable.
- Cases concluded with fraudulent final reports.
- Cases that resulted in a dispute over facts, law, or civil rights.
- True cases without any supporting documentation, untraced, or clueless cases.
- Cases that subsided while the inquiry was underway

There are often two explanations given by the police when they close or reopen a case. These consist of:<sup>64</sup>

- cases where the accused is a member of the family. In the sake of the family's honour, the person who died and their parents have changed from what they initially said when the FIR was filed.

<sup>62</sup><https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%201.pdf>

<sup>63</sup><https://satyarthi.org.in/wp-content/uploads/2021/03/Police-Case-Disposal-Pattern.pdf>

<sup>64</sup><https://satyarthi.org.in/wp-content/uploads/2021/03/Police-Case-Disposal-Pattern.pdf>

- situations where the victim belongs to a marginalised community. Children of low-income parents, domestic workers, victims from low-income households, and kids from Scheduled Castes and tribal communities all find it challenging to follow up on their initial allegations.





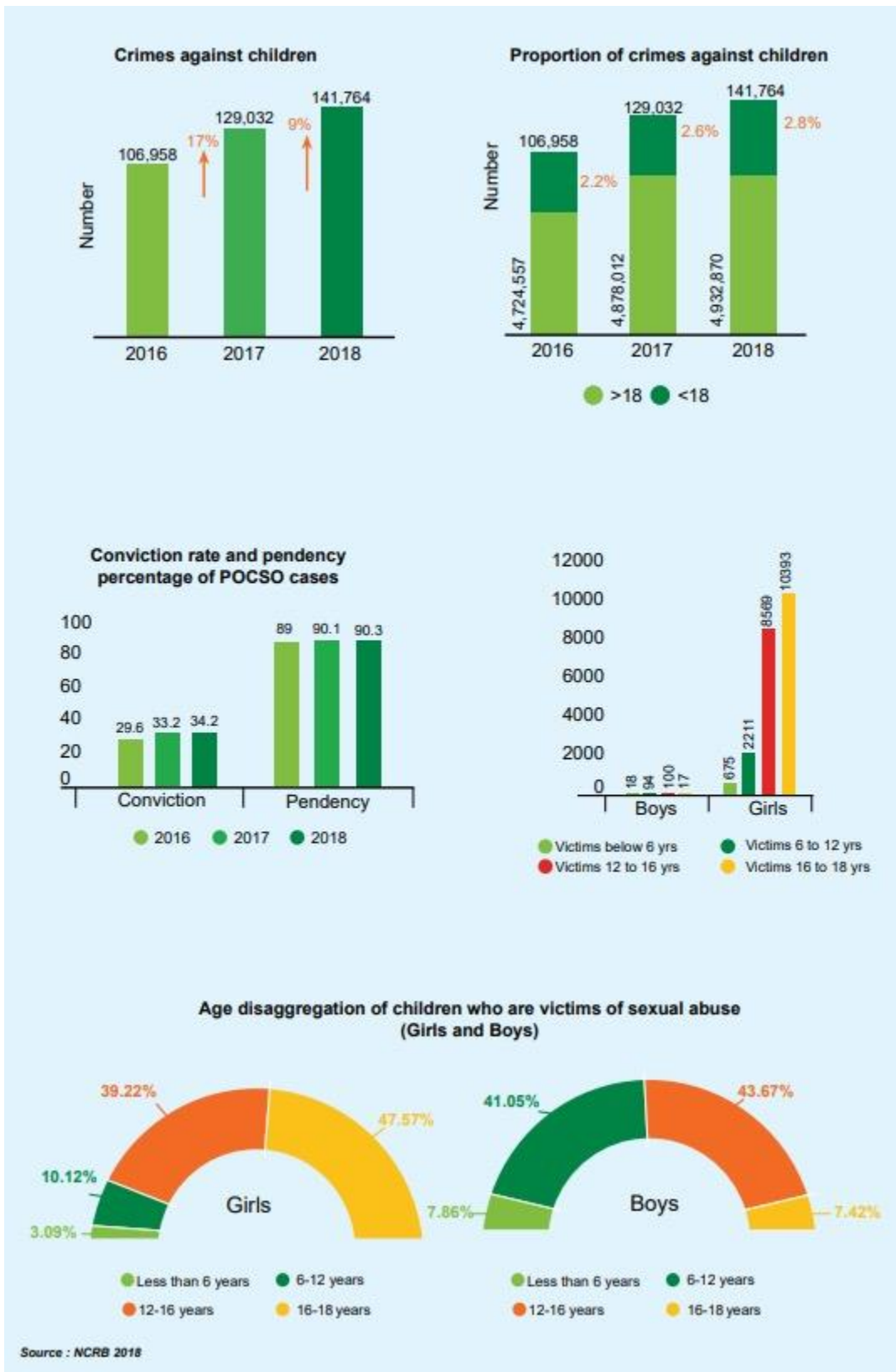


Image 12 – Representation of aftereffects of POCSO

## 2. AGE OF CONSENT AND “ROMANTIC RELATIONSHIPS”

The POCSO Act has strict liability rules pertaining to penetrative and aggravated sexual assault, wherein the accused is presumed guilty. The victim's consent or choice is therefore irrelevant, and engaging in sexual activity with a minor is illegal. Judges of the Special Court must apply the law in a manner that doesn't criminalise romantic relationships<sup>65</sup> and permits the accused to be found not guilty when handling such instances. Courts frequently find it challenging to handle situations of "romantic relationships" when the target and the offender are married or the girl is becoming pregnant, particularly when special courts no longer have discretion over the appropriate sentence. There are no gender restrictions when it comes to starting a love relationship; both partners must provide their consent. However, the act's gender-neutral tenet is frequently disregarded. Regardless of the boy's age, legal action would often be pursued against him, with girls being viewed as the innocent party. However, it might be challenging to pinpoint the exact amount of psychological manipulation the perpetrator inflicted on the victim if grooming is employed as a tactic, particularly when the victim is in a position of trust. As a result, the most hotly contested issue in the nation is whether or not the age of consent should be above 18. A considerable proportion of teenagers between the ages of 13 and 19 stated that they have engaged in some type of sexual contact with their love relationship. However, from a legal perspective, this kind of sexual activity is viewed as abnormal.

## 3. Backlog of Cases

One major barrier to the efficient implementation of child sexual assault laws is the continual litigation and investigation into child sexual abuse. Section 309<sup>66</sup> of the procedure legislation mandates that rape cases in chapter 376<sup>67</sup> of the penal code be finished within two months, if at all possible. It is clear from these legislative requirements how important it is to avoid undue delays in trial proceedings. The Supreme judicial noted the increasing amount of child rape allegations and their low judicial disposition rate on July 12, 2019<sup>68</sup>. To avoid delays, the judge filed an application

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<sup>65</sup>Romantic relationship means marriage or a relationship between individuals involving casual or serious dating, sexual contact, intimacy, or any other conduct typically associated with a romantic or sexual relationship.

<sup>66</sup>Section 309 of the Code of Criminal Procedure requires that all investigations and trials be completed as soon as practicable. The Section urges the courts to swiftly continue with criminal proceedings on every day till every witness present have been interviewed.

<sup>67</sup>Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

<sup>68</sup>*Re: Alarming Rise in Number of Reported Child Rape Incidents*, Suo Moto Writ Petition (Criminal) No. 1/2019

for writ of its own in order to establish guidelines. India is one of the leading countries if backlog of cases is considered.<sup>69</sup>

The court directed the Union government to use the POCSO Act to fund the creation of unique courts in all districts wherever there exist at least 100 pending cases. The order required the special courts to be established within sixty days. The most concerning aspects of child sexual assault and the current legislation are the sections relating to obligatory reporting, severe maximum and minimal consequences, and increasing the minimum consent age to 18 years old.

#### **4. Non-Reporting of cases specially in case of Child Marriage**

In India, schools and school-related organizations find the reporting process problematic because the police are the first agencies to receive reports compared to other countries. Because spreading misinformation is illegal and victims often become crueler when they are afraid. No person or organization is willing to take the time until the victim (if a child) and their parent or guardian are ready to make a report.

The public's distrust of the government, the drawn-out legal process<sup>70</sup>, and the stigma and shame surrounding sexual assault all contribute to the problem. Opponents of mandatory police reporting frequently argue that it inhibits victims from obtaining alternate forms of support, which are sometimes the most urgent kinds of consolation people require. Some children communicate to their instructors or programme facilitators about their experiences as a result of school awareness exercises, however the majority of children find other ways to get support besides calling the police. The problem of underreporting child marriages is far more significant. Relationships Child marriage marks the early conclusion of a child's childhood. Following the ruling in Independent Thought versus the Union of India, the Supreme Court declared that child marriages were illegal from the start<sup>71</sup>, and it is now illegal to have sex with a minor bride under the POCSO Act<sup>72</sup>. It is the state's grave responsibility to carry out the verdict of the highest court in letter and spirit in order to rescue the lives of millions of young girls who are being pushed into prostitution.

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<sup>69</sup><https://www.reuters.com/world/india/india-has-court-backlog-40-million-cases-chief-justice-says-2022-04-30/>

<sup>70</sup><https://www.oecd.org/governance/trust-in-government/>

<sup>71</sup><https://www.scobserver.in/cases/independent-thought-union-of-india-exception-to-rape-within-child-marriages-case-background/>

<sup>72</sup>It was previously treated as an exception – Section 375(2) provides an exemption for the crime of rape, where a man forces his wife to have sex if she is 15 years of age or older. This has not been amended and results in an anomalous situation where forced sexual intercourse by a husband with a minor wife between the ages of 15 and 18 is permitted.

## 5. Lack of Judicial Staff

Based on NCRB data, more than 90% of cases that had been filed in both 2014 and 2015 were still pending trial and the figures have only risen up<sup>73</sup>. Under the POCSO Act, the Supreme Court mandated that districts under more than 100 ongoing cases establish fast-track courts with a 60-each day settlement cap. A measure suggesting the creation of 1,023 accelerated courts for POCSO cases was introduced in the Rajya Sabha<sup>74</sup>. For example, fast-track courts do not solve the issue of court vacancies. Nominee judges<sup>75</sup> for the POCSO Act's special courts will be drawn from an identical pool of justices and will have the same seniority as session judges. There are presently 17,891 judges in district & subordinate courts, handling 28.7 million cases, compared to the required 22,750 judges.

There are currently more than four million cases pending before the country's top courts, requiring 8,152 extra judges to make decisions. According to the economic data, 62% of authorised judges work in high courts, where 621 out of 1,079 judicial positions are occupied<sup>76</sup>. Since only matters involving kids are handled by the top magistrate of the juvenile justice Board, they have a greater opportunity to be more understanding. Furthermore, the bill ought to have attempted to establish guidelines for better police investigation of comparable incidents.

## 6. Pitfalls in Judiciary

One of the key features of the POCSO Act is to provide speedy justice to sexually abused children. On the other hand, some important institutional problems make it difficult for children under the age of 18 to receive legal protection. A clear example of this is the timing of victim statement and conclusion of trial as stipulated in Section 35 of the POCSO Act. This means that the hearing must be held within one year of the court's notice, and the children's statements must be given within one month of the notice. Due to the overload of Indian courts, these laws are violated more often than obeyed.

A related topic is the propensity of solicitors to take suspensions, or adjournments brought on by outside circumstances like courtroom strikes. The child's attorney plays an equally important role. The role of the attorney is to assist the prosecution. Close cooperation among the office of the public prosecutor and the child's lawyer will be required for this. In addition, it is important to evaluate the

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<sup>73</sup><https://thewire.in/government/ncrb-data-conviction-rates>

<sup>74</sup><https://www.thehindu.com/news/national/cabinet-gives-nod-for-extension-of-fast-track-special-courts-scheme-sources/article67586665.ece>

<sup>75</sup>[https://judicialacademy.nic.in/sites/default/files/nomination\\_2.pdf](https://judicialacademy.nic.in/sites/default/files/nomination_2.pdf)

<sup>76</sup>[https://www.ibef.org/download/Key\\_Highlights\\_of\\_Economic\\_Survey\\_2018-19.pdf](https://www.ibef.org/download/Key_Highlights_of_Economic_Survey_2018-19.pdf)



function of a child victim's attorney in our adversarial legal system, even though the duties of the public prosecution and defence attorney are clearly established.

## 7. Administrative Pitfalls

Three significant administrative errors with POCSO should be avoided. To begin with, police officers face many challenges in conducting a comprehensive investigation into POCSO instances, even with the greatest of intentions. The first step is to register the FIR. The police have to make sure that the Medical-Legal Case investigation and the submission of the FIR are finished as soon as possible (MLC).

Second, since the perpetrator's family is misinformed regarding the MLC's long-term negative health effects on the child, the victim's MLC is typically avoided. Forcibly undergoing an MLC or an abortion on a child usually results in a serious hospital setting. Doctors need to be trained on how to talk to minors in a sympathetic way about what they are going through in order to prevent more stress. In addition, police-obtained forensic samples often become corrupted or putrefied as a result of improper storage. To ensure that the evidence is evaluated properly and the testing process runs smoothly, law enforcement must be aware of the most effective methods for gathering forensic evidence.

Lastly, under Sections 43<sup>77</sup>–44<sup>78</sup> and the sixth rule<sup>79</sup> of the POCSO Act, institutions to safeguard children should routinely assess and monitor the Act's implementation and increase public awareness of its provisions. Nonetheless, information on how these departments function and how they monitor and evaluate their performance is kept confidential. In order to achieve this, it is crucial to look at the strategies developed by these organisations and evaluate how well they work to deliver significant outcomes.

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<sup>77</sup> (a) To disseminate the provisions of this Law regularly and widely through mass media such as television, radio and print media in order to inform the public, children and their parents and guardians of the provisions of this Law;

(b) Central and state authorities and other relevant personnel, including the police, are regularly trained in implementation of the provisions of the Act.

<sup>78</sup>The National Commission for Protection of Child Rights was established under Chapter 3 of the Commission for Protection of Child Rights, 2005 (4/2006) or Chapter 17 of the Commission for Protection of Child Rights, 2005 (4/2006). National Commission Institutions Responsible for the Protection of Children's Rights, in addition to the duties assigned to them by the Constitution, monitor the implementation of the provisions of this Law as specified.

<sup>79</sup>A person who commits sexual violence is punished with imprisonment for not less than twenty years, but life imprisonment, which means imprisonment for the person's previous life, is punishable by death. may be fined or sentenced to death.

## Overview

Despite very strict legal rules, the study of criminal records on cases of sexual abuse in India revealed that the legal maximum time for inquiry and trial processes is exceeded. The troubling facts of the low rate of convictions and the enormous backlog of sex assault cases before trial courts call for action and answers. Understanding cause-and-effect correlations is challenging in several critical areas where crime data is unavailable for in-depth investigation. The Indian National Crimes Record Bureau may think of gathering yearly crime data on a variety of topics, such as the socioeconomic origins of both defendants and victims and the duration of crimes.

The interval between the commission of an offence and its enrolment, the availability of legal aid, the types of general forensic evidence gathered, the most frequent grounds for acquittals, the quantum of damages, and so forth. Publicly available official crime statistics have the potential to expedite analytical research skills and facilitate the formulation of evidence-based treatments. To give a comprehensive picture of India's criminal justice system, more details regarding the filing of challenges in constitutional courts, the length of time it takes these kinds of appeals to be decided, and the results of these appeals may be obtained.

When the government imposes the death penalty for certain offences, it frequently presents a severe and serious image. It elegantly avoids the reality that "it is the predictability of penalty rather than its degree of severity that has deterrence in the actual sense," while primarily diverting attention from the main issues of incompetent infrastructure, procedural errors, and trial delays. It's important to note that these incidents have not decreased even after the Criminal Code (Amendment) Bill, 2018<sup>80</sup> was passed and the death penalty was added for raping an underage girl. The federal government needs to investigate a plethora of sectors. It would be ineffective to simply impose the death penalty in light of the rising number of cases of child sexual abuse.

## Chapter 6 – Finding and Suggestions

The prevalence of sexual offences against minors has escalated to epidemic levels, and POCSO is unlikely to be able to handle the issue if the Indian government and state governments take decisive

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<sup>80</sup>[https://www.mha.gov.in/sites/default/files/2023-02/CSdivTheCriminalLawAct\\_27022023.pdf](https://www.mha.gov.in/sites/default/files/2023-02/CSdivTheCriminalLawAct_27022023.pdf)

action to guarantee that it is carried out correctly. The first few chapters covered the causes of child sexual abuse as well as the laws that are in place to prevent it.

The death penalty has not helped to decrease child sexual abuse; rather, it has been recognised that the child's life may be in danger since it was introduced<sup>81</sup>. The legislative purpose of the Special Act is not being met in terms of giving adolescent victims for sexual offences justice. There are challenges at every stage of the procedure, from filing a report of the incident to holding a trial. Based on the aforementioned issues, this chapter offers a few recommendations. It offers recommendations that can be implemented to enhance the functioning of child safety committees, trial and appellate courts, and the investigative process.

India is the domicile of 472 million children. Children make up over one-third of the total Indian population, specifically 39%<sup>82</sup>. Children's Day is celebrated in India on November 14th to commemorate the birthday of Jawaharlal Nehru, the very first prime minister of the nation of India, who is affectionately referred to as "Chacha Nehru". He aspired to transform India into an idyllic haven for children. Nevertheless, the actuality differs. On November 17, 2020<sup>83</sup>, a heinous crime occurred where a 6-year-old girl was subjected to rape and death as part of a black magic ritual. The individuals responsible for this atrocious act were apprehended and charged against the legislation known as the Protection of Children against Sexual Offences (POCSO) Act. This incident took place in Kanpur, Uttar Pradesh, as reported by The Tribune. The lifeless body<sup>84</sup> of a 17-year-old female was discovered in close proximity to her residence in the Lakhimpur Kheri region of Uttar Pradesh on August 26, 2020<sup>85</sup>.

Earlier, there was another horrific incident in the same state involving a lonely 13-year-old Dalit girl. Due to the individual's social standing, this particular case received less attention and discussion. In India, the term "child sexual abuse" is used to describe a serious but often downplayed offence. Only a small number of incidents receive public coverage, and the citizens of India are seeking justice.

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<sup>81</sup><https://theprint.in/india/governance/pocso-death-penalty-will-spell-life-threat-for-victims-prolong-trials-say-experts/261916/>

<sup>82</sup>[https://www.mospi.gov.in/sites/default/files/publication\\_reports/Children%20in%20India%202018%20-%20A%20Statistical%20Appraisal\\_26oct18.pdf](https://www.mospi.gov.in/sites/default/files/publication_reports/Children%20in%20India%202018%20-%20A%20Statistical%20Appraisal_26oct18.pdf)

<sup>83</sup><https://indianexpress.com/article/india/uttar-pradesh-hathras-gang-rape-9194405/>

<sup>84</sup><sup>84</sup><https://www.bbc.co.uk/news/world-asia-india-66495417>

<sup>85</sup>(Express, 2020)



The majority of the instances remain un-investigated. The most widely discussed occurrence related to the Protection of Children from Sexual Offences (POCSO) Act in India was the "Kathua rape case". The case involves a serious crime committed against an 8-year-old girl named "AsifaBano" from Lasana village near Kathua in the Indian state of Jammu and Kashmir. He was brutally attacked and later killed in January 2018. It is an undeniable fact that sexual abuse against children has reached epidemic proportions in India.<sup>86</sup> In 2019, Sikkim reported the highest rate of POCSO, according to the National Crime Record Bureau, with a rate of 44.8%. UttarPradesh (8.6%) was rated 16th out of the twenty-eight Indian states in the list of crime rates<sup>87</sup>. This data clearly demonstrates the lack of reporting or underreporting of cases of "child sexual abuse"<sup>88</sup>. According to the report, just 36.5% of crimes against children were officially reported under the POCSO Act in 2021<sup>89</sup>

The following policy recommendations aim to reduce the incidence of "child sexual abuse" in India.

The primary rationale for the adverse outcome is that enhancing the "quality of life" will have advantageous effects on all members of society. Enhancing the "quality of life" not only guarantees child protection but also enhances human capital development. This leads to the improvement of socio-economic situations, which in turn enhances the peace of mind and security of everyone. Hence, it is imperative for both state and national governments to prioritise enhancing the "quality of life" of their inhabitants.

Education will empower individuals, providing them with the ability to identify and differentiate between appropriate and inappropriate physical contact, enabling them to speak out against any form of sexual misconduct without hesitation, and ultimately giving them the strength to challenge and overcome unfounded societal prejudices. Education is the sole means by which individuals can have the ability to identify and object to instances of "sexual abuse" perpetrated by someone they are familiar with. Therefore, it is only through promoting parental involvement and continuous instruction of their kids, including girls, that we may hope to reduce the number of reported occurrences of POCSO in the future.

It is imperative to acknowledge that individuals belonging to lower castes are particularly vulnerable to many forms of criminal activities, including "child sexual abuse". Therefore, there is a pressing

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<sup>86</sup>an outbreak of disease that spreads quickly and affects many individuals at the same time

<sup>87</sup><https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%201.pdf>

<sup>88</sup><https://ncrb.gov.in/en/Crime-in-India-2021>

<sup>89</sup>Express, Indian



need for a specific legal provision to safeguard the rights and well-being of these individuals. The "Scheduled Classes and Tribe <sup>90</sup> Act, 1989" exists specifically to safeguard those belonging to the Scheduled Castes (SC) and Scheduled Tribes (ST). Nevertheless, the mere presence of such actions does not ensure the safeguarding of individuals belonging to the Scheduled Castes (SC) and Scheduled Tribes (ST). Only by promptly identifying and penalising such transgressions can we expedite the reduction of such illicit activities. The consolidation of power within the upper caste individuals is a contributing factor to these criminal activities.

The distribution of power, especially political power, may provide some solutions. To resolve the conflict, the Indian government allocates special seats to certain communities such as Scheduled Castes and Scheduled Tribes. However, unless there is a change in people's hearts, these oppressions cannot be ended. Additionally, the evaluation of a state's security problem is represented by the "Justice and Public Security Score".<sup>91</sup> This implies enhanced safeguarding for everyone. Enhancing the law-and-order circumstances will enable the state to create a suitable atmosphere for economic and social endeavours. Regardless of the current position of the JPSS, it is advised that Indian states make efforts to enhance their law-and-order situation. It is evident that there is a clear connection between the increase in "reported POCSO cases" and the process of "urbanisation". Therefore, it is undeniable that the issue of "child protection" is becoming more prominent in urban areas of India. It is necessary for the municipal, state, and central governments to collaborate effectively.

## **6.1 Findings**

### **6.1.1 Determinants of Sexual Abuse**

The results show that sexual assault of children is a complex phenomenon influenced by societal, familial, belonging, and individual factors. One of the most common descriptive themes that increased the likelihood of child sexual abuse was the prevalence of patriarchal cultural norms and power imbalances based on socioeconomic status, gender, or sexual preferences. Exposure to child sexual abuse in early childhood has also been associated with an increased risk of victimisation again and recruitment into the commercial sex industry<sup>92</sup>.

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<sup>90</sup><https://socialjustice.gov.in/writereaddata/UploadFile/Annual%20Report-PoA-2017636988121973975658.pdf>

<sup>91</sup>Score on judicial effectiveness in India based on the Economic Freedom Index ranking from 2017 to 2023

<sup>92</sup>Jangam K, Muralidharan K et al., *Incidence of childhood abuse among women with psychiatric disorders compared with healthy women: Data from a tertiary care centre in India*, 50 CHILD ABUSE NEGLIGENCE 67–75 (2015).

### **6.1.2 Perpetration of Child Sexual Abuse in India**

According to study, the children who are harmed by sexual assault by adults in India are aware of the offenders, many of them are relatives<sup>93</sup>. A multitude of factors at the individual, familial, and societal levels significantly impact the continuation of child sexual abuse. The abusers, who are often well-known to the sufferers, make use of their close proximity to possible victims, and the fact that family members tend to be supportive of the abuser and do not punish the offender severely often results in the incident remaining undetected<sup>94</sup>.

The growth and development of delinquent youth can be attributed to many factors, including early exposure to sexuality and behaviours, sexual trauma in children, sexuality and exploration, desperation and relationships, and boys being forced to participate. in relationship. behaviour.

### **6.1.3 Health Outcomes**

There are four health categories related to child abuse: behavioural, physical, emotional, and social. High risks for psychiatric diseases, such as depression, suicidal thoughts and behaviours, and obsessive-compulsive disorders, were noted in the investigations, both quantitative and qualitative. Additionally, it was discovered that there was a higher chance of behavioural issues, inadequate social skills, distrust, and uneasy parent-child relationships among those who had experienced child sexual assault. The relationships between child sexual abuse and an increased incidence of STIs were only examined in one quantitative study. According to the studies, women who have been sexually trafficked, engaged in commercial sex work, or who have undergone sexual abuse as children are more likely to be HIV positive and to exhibit risk behaviours.

### **6.1.4 Interventions of Child Sexual Abuse**

India's legal framework, which includes the POCSO Act of 2012, has resulted in increased reporting of child abuse cases, according to NCRB numbers for 2019<sup>95</sup>. Implementation issues could arise, nevertheless, due to issues like the need for mandatory reporting of child sexual abuse incidents, professional confusion on the law among medical officers and police, and a general dearth of professional assistance for victims of child sexual abuse in India.

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<sup>93</sup>Jaya J, Hindin MJ, Nonconsensual sexual experiences of adolescents in urban India, 40(6) THE JOURNAL OF ADOLESCENT HEALTH: OFFICIAL PUBLICATION OF THE SOCIETY FOR ADOLESCENT MEDICINE 573 (2007).

<sup>94</sup>Sahay S, *Socio-Cultural Factors and Young Sexual Offenders: A Case Study of Western Madhya Pradesh (India)*, 14(2) INTERNATIONAL JOURNAL OF ADOLESCENCE AND YOUTH, 113–34 (2008)

<sup>95</sup>NCRB Annual Report, 2019

Fear of humiliation, remorse, rejection by the community, and related sociocultural stigma (particularly if the abuse takes place in the family). A significant concern in India was the absence of efficient oversight across multiple domains.<sup>96</sup>

## **6.2 Suggestions**

### **6.2.1 Improvement in the Investigation Process**

Justice in the inquiry and evidence collection processes is the real foundation of a fair trial. The inquiry needs to be enhanced because it is of low quality, especially in the area of gathering scientific evidence. The many sanctions for procedural errors have not been applied frequently. Police file charge sheets in the great majority of instances, but the evidence frequently falls short of establishing guilt "above a reasonable doubt," leading to a disproportionate number of cases that appear to be acquittals.

The goal of special law is defeated by the issue of witnesses, particularly victims, becoming hostile due to threats and intimidation. As noted in Chapter 1, there are various ways that child sexual abuse can manifest itself, such as both penetrative and nonpenetrative sexual assaults and abuse using pornography. There is no one set of behaviours that can be utilised during an investigation under a single set of criteria because every type of sexual abuse demands a different collection of evidence, and every case has its own unique set of circumstances. In order to make the connections and establish beyond reasonable doubt that a crime was committed, scientific study actually requires an open mind and a voracious appetite for information. But the following are a few of activities that are in connection with coding the investigation

#### **1. Police Officers**

As mentioned in the first few chapters, each district has to designate and train a dedicated group of police officers to conduct scientific investigations. To prevent case overloading, these officers must be arranged according to the volume of cases. The gathering of forensic proof and the sample of tangible evidence pertinent to sexual offences require expert involvement from the investigative staff. Incorrect law enforcement officers who knowingly cause trouble when looking into allegations of child sexual assault are subject to legal action under the provisions of section 166 A (a) (b) of the IPC. For supervisory officers to make a significant contribution to high-quality inquiry, their tasks must be clearly defined. According to Article 36 of the CrPC, superior officers of police have

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identical authority as the station house officer for the jurisdiction. Superior officers who oversee child sexual abuse investigations and trials, such as Deputy Administrators of Police (Dy.SP) and Administrators of Police (SP), are required to possess the necessary training. They have to be informed on the latest rulings on the matter.

## **2. Forensic Medical Experts**

The court will need access to the medico-legal examination footage if it is to be videotaped and preserved as live evidence throughout the trial. The inclusion of forensic perspectives in the process of gathering evidence fosters a scientific approach and enhances the reliability of court rulings.

Every state needs to upgrade its forensic facilities in terms of both machinery and skilled personnel in order to provide expert opinions in a timely manner. Taking a youngster to the doctor and subjecting them to testing for both legal and medical issues. If required, the Investigating officer shall provide the medical expert with writing instructions about the age opinion. Maturity can also be ascertained later on by a medical examination, if needed. When learning about child sexual abuse, sincere efforts must be done to quickly and effectively apprehend the accused, if he is known. Every effort should be taken to identify the criminal as quickly as feasible if he is unknown. CCTV video or intelligence from humans may be helpful in this regard. The last seen method is crucial for connecting the criminal to the victim. If a disagreement arises during an investigation concerning the age of a victim kid who is younger than 18, the court designated to handle such cases may determine the victim's age.

### **6.2.2 Need for Better Infrastructure and Dedicated judicial officers**

The delayed trial process leads to a high number of cases pending in the courts, that contradicts the POCSO Act's goal. Judges sometimes lacked acceptable reasoning for evaluating sentence severity and other aspects of adjudication. The constitutional courts have been waiting on petitions for an extended time, resulting in endless delays.

To address the increasing incidence of child crime, tough legislation must be implemented to deter future incidents. To address child pornography, it is necessary to create rules and establish accountability for those who commit the crime. The capital punishment was recently added to the statute, and as most criminals are known family members of the victim, the family may be hesitant to disclose the case. The system of criminal justice should prioritise rapid case resolution to prevent



victims from experiencing the same trial and events repeatedly, which can worsen their suffering and anguish. Rapid investigations can compromise the quality of the inquiry, resulting in acquittals. To address the low conviction rate, the Supreme Court authorised the state to establish a special court for POSCO Act cases. Achieving this goal requires adequate infrastructure and devoted personnel to address the issue.

Hiring of judges and special public prosecutors should be prioritised.

### **1. Lawyers**

The total amount of Special Prosecutors is determined by the number of cases. Overburdened prosecutors can negatively impact the quality and efficiency of their trials. Handling hostile witness situations, particularly those involving prosecutors, requires caution and care. The defence should conduct a reasonable cross-examination of these witnesses. Prosecutors are accountable for effective court follow-up. Each court must form a group of investigators for this purpose.

### **2. Courts**

The Special Court's equipment must be enhanced to meet POCSO Act standards. A training and awareness programme is required for court workers dealing with child sexual abuse cases. Throughout the trial, it is critical to maintain consistency in decision-making. Judges make dramatically diverse decisions in similar situations, indicating an unduly judge-centric approach to interpreting the law. Reasoning and verbal judgements are required. Throughout the process, the court must keep a child-friendly environment. The accused should not be permitted to have contact with the victim. The prosecution and defence should not conduct direct interviews with the youngster. Each Special Court should have a roster of professional interpreters, translators, and experts on standby to help with recording of the kid's victim's statement. Despite significant physical injuries to private parts, the law and courts exonerated the rape suspects without providing a convincing explanation. To challenge a medico-legal expert's or forensic judgement, it's important to articulate logic (speaking commands) for the sake of justice. Each high court requires an independent evaluation regarding the Special Courts' operation, and the evaluation report may be maintained confidential, however general criticisms may be shared with those courts for improvement.

### **3. Courts Infrastructure**

Historically, the connection among the availability of justice and court infrastructure has been examined through vacancies and pending cases. As a consequence, infrastructure disputes have centred mostly on numerals, such as the building of additional courtrooms. While new courts and

housing developments must be built, old courtrooms and facilities are rarely upgraded. Because present courts have received significant financing, discussions should centre on formulating strategies to upgrade them and provide enhanced technology and infrastructure. The state law departments and the Ministry of Justice ought to work together to create a plan for restoring and maintaining historic courthouses.

It should be mandatory for all High Courts to provide the Supreme Court with yearly reports on the state of its infrastructure. These reports should include details on budgetary expenses and the steps taken to preserve and refurbish current court complexes, as well as construct new ones. In a similar vein, the High Court ought to order the district courts to comply. Supervise the creation of District Court grievance redressal cells and an online complaint portal where the public can register grievances.

### **6.2.3 Registration of FIR**

After a crime is reported, speed is of the essence for the collection of evidence. Consequently, a protracted delay in submitting a First Information Report (FIR) jeopardises the evidence and affords the defence an opportunity to refute the allegations.

- When the kid who was harmed shows up at the police department, she should be handled gently, preferably by a female officer.
- Notifying her parents, relatives, or a reliable person is necessary.
- The relevant senior police officials and the "One Stop Centre" must be informed about the specifics of the crime.
- Police have the authority to open a case as an investigation on their personal initiative if they gather evidence but no complaint comes forward.

### **6.2.4 Non-functional Child welfare committees**

Since the State Governments and the Department of Women and Child Development of the Government of India have failed to execute the JJ(C&PC) Act in its entirety, the sexual abuse of children in juvenile justice homes has continued unabatedly. Four crucial areas that are necessary to address child sexual abuse in juvenile justice institutions were not covered: having functional Inspection Committees; registering all juvenile justice homes; having efficient and effective Child Welfare Committees; and separating offenders based on age, sex, and type of offence<sup>97</sup>. This prevents the CWC from conducting random or surprise inspections to ensure institutions are "fit" for the

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<sup>97</sup>Section 29 of the Juvenile Justice (Care and Protection of Children) Act of 2015.

JJ(C&PC) Act requirements<sup>98</sup>. On April 16, 2012, the Allahabad High Court heard a case of sexual abuse at RajikiyaShishuGrih<sup>99</sup> in Allahabad and ruled that it was under. Direct that no resources be awarded to juvenile justice homes, whether managed by State Governments or NGOs, unless the Inspection Committees submit their most recent quarterly report for consideration of future awards.

The Court is disappointed that the Children's Welfare Committees, primarily made up of Social Workers under the Juvenile Justice Act (2000), have not been proactive in addressing children's welfare issues. Instead, they have passed orders in a physical and bureaucratic manner, lacking a sense of mission and providing little relief to children. Instruct state governments to shift staff in Juvenile Justice Homes on a regular basis to prevent vested interests and potential criminal ties. Create separate residential institutions for boys and females up to 12 years of age, 13-15 years, and 16 years or older.

### **6.2.5 Need For tracking licences granted to Child care homes**

Juvenile justice homes were set up to offer care and protection, as well as reintegration, rehabilitation, and restoration for juveniles in conflict with the law and kids in need of protection and care. It would be an understatement to say that these homes have turned into India's hellholes, where prisoners are tortured, ill-treated, and forced to live in appalling conditions in addition to being subjected to sexual misconduct and exploitation.

Section 34(3)<sup>100</sup>, which states that "all organisations, whether the state government run or those run through non-profit organisations for kids who are in require of protection and care shall, become registered under the provisions of this Act in such way as may be prescribed," does not apply to the majority of privately owned or non-governmental organisation homes. Notwithstanding the institutionalised assaults on women in the juvenile detention facilities, POCSO Section 19(5)<sup>101</sup> mandates that the reasons for the reports be documented as soon as feasible. POCSO's Section 19(6)<sup>102</sup> further mandates that the issue be reported to CWC right away.

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<sup>98</sup>Juvenile justice in Karnataka: A case for systematic change, by Concerned for working children and Asian centre for human rights.

<sup>99</sup>Matter Of Government Childrens Home AtShivkuti Allahabad v. Manju R. Chauhan, PIL No. 4207 Of 2012.

<sup>100</sup>UVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT

<sup>101</sup>Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reason in writing make immediate arrangements to give them such care and protection (including admitting the child into shelter home or to the nearest hospital) within twenty-four hours of the report, as may be prescribed.

<sup>102</sup>Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.



Order the State administration to conduct a six-month survey of unregistered juvenile justice houses and file complaints against their authorities for violating Section 23 of the Juvenile Justice (Caring for and safeguarding of Children) Act. Establish a Special Fund within the Comprehensive Child Protection Plan to support prosecution of POCSO offenders. - Provide sufficient financial and technical resources to the NCPCR and SCPCR for Child Rights to carry out their responsibilities.

### **6.2.6 Establishment of Inspection Committees**

The 65th section of the JJ(C&PC) Act mandates that Inspection Committees inspect juvenile justice homes; the majority of state governments have not established such committees. "Visit and oversee the circumstances in the institutions and the suitability of the processes for safety, well-being, and permanence, review the norms of protection and care being followed within the institutions, look out for any incidence of infringement of child rights, appear into the operations of the Management Committee and Children's Committee," is what Rule 63 of the Juvenile Justice <sup>103</sup>(Care, Protection, and Welfare of Children) Rules, 2007 requires of the Inspection Committees.

When sanctioning projects for all of the states and union territories under the Integral Child Protection Scheme (ICPS), the Department of the Ministry of Women and Child Development themselves has consistently neglected to bring up the necessity of establishing Inspection Committees. Provide guidelines for Inspection Committees, Child Welfare Committees, and other authorities to conduct interviews with inmates without fear of retaliation or punishment from staff. Interviews should be conducted without the involvement of any juvenile home staff and the Inspection Committee's mandate.

### **6.2.7 Sex Education**

Children are not taught about sex education in schools or in the community at home with any seriousness. In India, the majority of private and public schools don't teach anything about sexuality. Few schools actually give those lessons any emphasis on health and cleanliness. The majority of Indian parents, according to a study, do not talk to their kids about sexuality either. This is a result of the conservative social fabric within the family, which prevents discussions on sexuality-related issues from being started in an open forum.

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<sup>103</sup>witness", in relation to any criminal proceedings, means any person called, or proposed to be called, to give evidence in the proceedings



The adults fail to recognise the necessity for official comprehensive sexuality education because they were not educated about sexuality themselves and do not have a culture in which they address their own sexuality difficulties with others. There's also a widespread worry that these "unnecessary" discussions may upset the long-standing social order or have an impact on family values and culture. It addresses a person's sexuality as well as their bodily, biological, psychological, and social components of who they are. It covers everything from discussing significant social concerns like bullying, abuse, diseases, and breakups to talking about physical changes and differences as well as interactions with other kids, educators, and society at large.

In a world where there is a rise in crimes towards women and children, a noticeable rise in elopement cases among young people, and the patriarchal system is still in place, sex education will help young people navigate their sexuality in a mature way, maintain their physical and mental health, make responsible decisions, and cultivate respect for others of all gender identities.

In India, discussions regarding sex and any related topics have always been considered taboo. It has been associated with a sense of unease and personal guilt for many generations. This is mostly attributed to a multitude of factors, with socio-cultural factors being the most significant contributors. Indian society is comparatively more traditional than Western countries, wherein youngsters can engage in discussions regarding sex/sexuality with more ease and comfort. Indian families, due to their conservative nature, prohibit healthy discussions around adolescence and sexuality.

Adolescents often lack knowledge about the physical transformations they will undergo during their early years. During this phase, individuals typically explore and establish their sexual identities, need access to trustworthy and accurate sources of information. Considering the familial structure and cultural norms of Indians, it is advisable to discuss topics pertaining to sexuality in a setting other than one's own family. Regarding educational and knowledge-providing organisations, they can achieve this by implementing specialised programmes in schools.

The purpose of sex education is to provide young individuals with accurate and reliable information regarding sexuality and sexual health, as well as assist them in recognising and exploring their own sexual identities. Numerous people and non-profit organisations endeavour to improve and offer a comprehensive and health-focused approach to sex education and its various components. As to the World Organisation of Sexual Health Organisations (WAS), knowledge about sexuality is considered

a fundamental human right that is encompassed within an individual's "reproductive rights". Sex education encompasses not only sexual activity, but also provides a comprehensive understanding of an individual's psychological, physical, mental, and social health.

The Indian curriculum is highly deficient in terms of offering comprehensive sex education. Indian schools suffer from a deficiency in meaningful discourse around sex and sexuality. There exists a significant social prohibition surrounding the terms 'sex' and 'sexuality', which hinders casual conversations. The discussions typically focus solely on menstruation hygiene. In many schools, it is common to observe the separation of girls and boys for discussions on specific subjects. Schools discourage girls from discussing such matters with their male counterparts and male teachers, deeming it 'inappropriate'.

It is imperative to comprehend the reasons behind the incorrectness of something. Sex education is to provide knowledge and establish an inclusive environment where individuals can honestly and fearlessly communicate their opinions and concerns without the fear of being judged. It is imperative that all genders are exposed to identical signals simultaneously, pertaining to gender, sexuality, and relationships. By abstaining from doing so, we perpetuate the perception of avoiding conversations about sex in a varied assembly, so reinforcing the already present social disapproval.

Sex education offered in Indian schools has encountered significant resistance from various sectors of our society. Several parents, educators, and politicians hold the belief that providing sexual education in schools will have a negative influence on children's brains and goes against the moral and cultural norms of India. They argue that it could encourage experimentation and promote irresponsible sexual activity. Comprehensive sexual education has demonstrated multiple advantages, such as postponing the initiation of sexual activity, encouraging the adoption of safe sexual practices, aiding in the prevention of sexually transmitted illnesses, and decreasing instances of sex-related offences.

The media has significantly contributed by highlighting these subjects and promoting open discussions. The teenage demographic is highly attracted to social media because of its convenient accessibility, low cost, and the degree of anonymity it provides, sometimes known as the "Triple-A". Individuals have the ability to search for information on topics that pique their curiosity and obtain several responses, all without having to engage in unpleasant or uncomfortable dialogues. Given that this material is freely accessible, it enables individuals from diverse backgrounds to acquire

understanding of their autonomy and rights, so contributing to the ultimate objective of educating the general population.

For certain individuals, maintaining anonymity is essential because of the negative associations attached to certain subjects. This is particularly important as it could potentially expose them to distressing or even perilous circumstances, mostly influenced by cultural and religious factors. Although our cultural standards endorse and encourage chastity & abstinence before to marriage, it is essential to possess knowledge about these subjects. Despite its problematic nature, pornography has both positive and negative aspects that are often debated.

### Should sex education in middle and high school include the following topics...

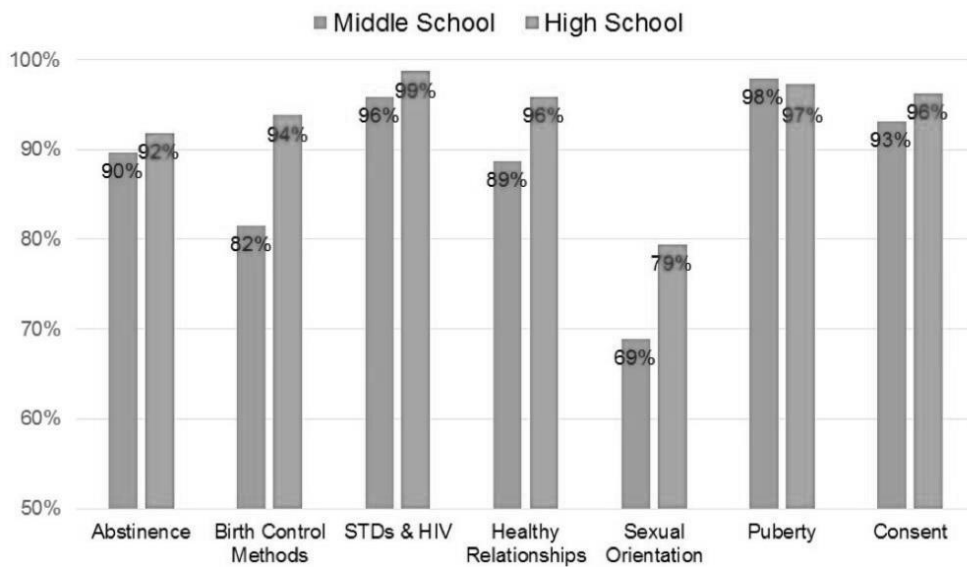


Image 13- Advice from United Nations regarding Sex Education

# SEX EDUCATION 101

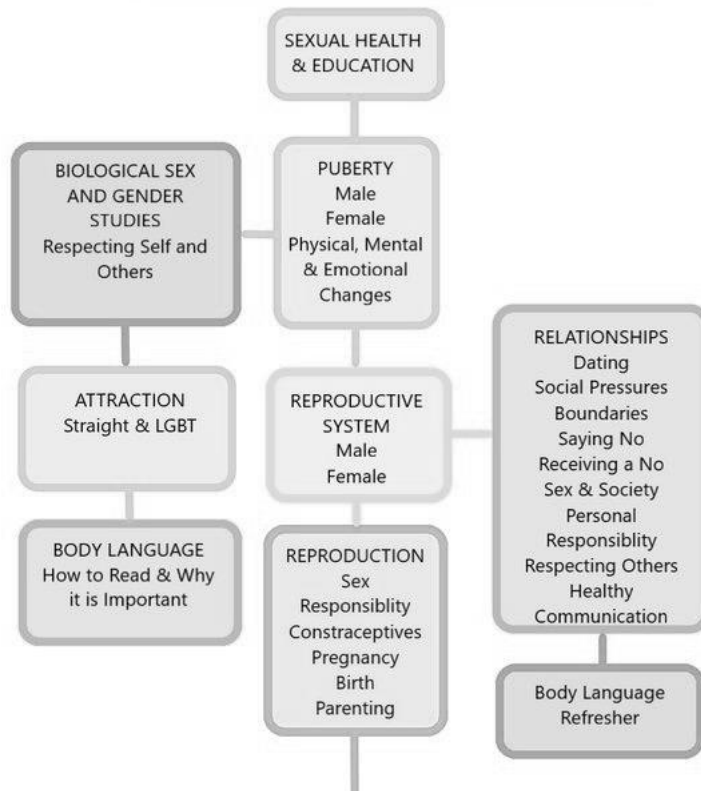


Image 14 – Inclusions in Sex Education

## Chapter 7 – Conclusion

Child sexual abuse is not a sign of sensitivity or sexuality; rather, it is a brutal act of cruelty that leaves victims' lives permanently scarred. There are a lot of abused children, and they suffer in silence. Child abuse and incest are prevalent yet unseen evils. A multifaceted approach tackling all interconnected issues is necessary to achieve the intended results from child sexual abuse, which is a heinous criminal act that leaves an emotional scar on humanity's future. We must keep working towards this goal for the benefit of future generations. Unless the intent of the legislation is observed, every word of the laws will remain unenforceable. This can only be achieved by a radical change of perspective.

Enhancing the efficiency of the court system to ensure prompt dispensation of justice will have a deterrent effect. Additionally, it is imperative to establish an operational child protection system to effectively mitigate violence against children. The Integrated Child Protection Scheme (ICPS), which is currently almost completely ineffective, has to be revitalised and given significant investment as a matter of urgency. According to this plan, it is necessary to establish child protection committees at



the state, district, and community levels, staffed with trained personnel at the community level. Children have the option to attend these places if they're feeling unsecured, and the staff members are responsible for taking action to prevent and resolve instances of violence.

It is imperative to raise awareness among children, parents, and the wider society regarding violence perpetrated against children. Integrating personal safety instruction into the curriculum is crucial, beginning from Class I to advanced anganwadis, in a way suitable for the students' age. Conversations should take place within resident groups and panchayats, and implementing uncomplicated measures will effectively protect youngsters.

Despite making up 40% of our total population, children receive only a meagre 4.52% allocation from the entire Union budget. The allocation for child protection has consistently accounted for only 0.05% of the entire Union Budget in the past four years, making it the lowest priority area. The ICPS, which encompasses measures under the provisions of the POCSO Act, that include special courts and shelters for children, received a total allocation of Rs 725 million for the nation as a whole in the fiscal year 2017-18. This is grossly insufficient, considering the vast number of children that require care and safety.

The prevalence of assault against children is extensive, yet our indignation is intermittent and immobilised. If we genuinely prioritise the safeguarding of our children, it is imperative that we take concrete actions that address the fundamental underlying factors. It is imperative for our society to maintain a constant and watchful attitude towards ensuring the security of our children. In order to make India more secure for all children, it is imperative that the government increases its investment in the enactment of the POCSO Act and the strengthening of ICPS. This includes the recruitment and training of a skilled team of professionals dedicated to child protection.

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