

## Examination of POCSO Law in India in the light of international developments.

Prof Souvik Chatterji

(HOD and Associate Professor, JIS University, Calcutta), Priyanka Karmakar (LL.M in Criminal Laws, JIS University, Calcutta) and Samrat Samaddar(BBA LL.B(H) student at JIS University)

### ABSTRACT

Every human life starts with the stage of child. It is such a phase in which a child learn many things from family and around and gradually developed. Children we know are precious asset of the society and it is the first and foremost duty and responsibility of the society to protect them from all kinds of harm.

The nation can't ignore its responsibility to provide a good environment for the child wherein they can feel themselves good and safe.

In today's complex world a section of sociopath and perverted persons have made the children their soft target to fulfill their quest out of their perversion. To stop this dangerous motive different countries of the world have enacted many laws.

Presently Indian society is facing a big threat of "child sexual abuse" to solve this problem government of India (Ministry of Women & Child Development) have enacted a special act named The Protection of Children from Sexual offences Act, 2012 (POCSO), and after that it is amended in 2019 to make the act stricter.

This research paper explores briefly the implementation of the act and its effect and loopholes.

Date of Submission: 06-05-2024

Date of acceptance: 19-05-2024

### I. INTRODUCTION

Children play a vital role in shaping the future of any nation. It is a global imperative to prioritize the well-being of children, as their healthy development is essential for the future trajectory of a country. Regrettably, children, who represent the future citizenry, are universally disadvantaged due to their physical and mental vulnerability. Those growing up in adverse environments, such as orphans, isolated individuals, neglected children, or those facing various disadvantages, are particularly susceptible to exploitation and are often targeted in crimes committed against them.

Children are the asset of our country, if we fail to protect them our future will be in a huge danger. Sexual abuse is a kind of act that create a deep-rooted footprint to those innocent minds, and it will stays there rent free. It not only effects their present but also their future. The effect of child sexual abuse on the victims can be traumatic it may lead to long term psychological and emotional trauma.

POCSO Act known as a gender-neutral law was passed in 2012 and defines a child as someone under the age of 18<sup>1</sup>. The Indian Penal Code, 1860 fails to take into account the fact that boys can also be victims of sexual assault. The definition of a sexual offense against a child in the Act of 2012 is

wide-ranging. Sections 3 to 10 broaden the definition of sexual assault to include both non-penetrative and aggravated penetrative sexual assault. It also includes penalties for individuals in positions of trust, such as police officers, public workers, and educators.

#### Definition of Child:

- The term child is defined under the Convention on the Rights of the Child,1989 " a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."
- The term child defined under Children Act, 1960 2(e) "child" means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years.<sup>11</sup>
- Child under the Immoral Traffic (Prevention) Act "child" means a person who has not completed the age of sixteen years.<sup>12</sup>
- Under the POCSO Act, 2012 defines "child means any person below the age of eighteen years"<sup>13</sup>
- Under the Juvenile (care & protection of children) Act, 2015 the word 'child' "a person who has not completed eighteen years of age."<sup>14</sup>

<sup>11</sup> Section 2(e), Children Act, 1960

<sup>12</sup> Section 2 (aa), the Immoral Traffic (Prevention) Act

<sup>13</sup> Section 2(1) (d), POCSO Act,

<sup>14</sup> Section 2(12), the Juvenile (care & protection of children) Act, 2015

#### *Definition of Sexual Abuser*

Sexual abuser is denote a person who sexually assaulted a child, that person can be anyone they can belong to the closed family, relatives and any other person. Who tried to assault or assault the victim (child) under the age of 18 years. In every second there are uncountable victims of sexual assault in India.

Sexual abuse: It is an act upon a women, child and man without their consent. It is an act which exists in the society to dominate the weak or vulnerable person. It give them a momentary satisfaction for the pain they reflected to them, their compulsive sexual urge mainly towards the women or child. It is a crime that is consciously committed to inflict mental and physical harm to the victims.

#### *Types of sexual assault:*

- Rape<sup>15</sup>: It is a crime under the Indian penal code. An act or a sexual activity that involves sexual intercourse and sexual penetration with force against the will of a female or child and without her consent.
- Sodomy: sexual intercourse which involve insertion of any object or bodily organ through the anus or mouth without their consent.
- Attempt to commit Rape: Attempted to make a sexual intercourse forcefully without the consent of the women or child.
- Gang Rape<sup>16</sup>: when a women is raped by one or more than one person, each and every person shall be deemed to have committed rape. Punished with rigorous imprisonment which may extent to life, with fine.

<sup>15</sup> Section 375. Rape.—

A man is said to commit "rape" if he--

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or

makes her to do so with him or any other person; or (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:

First. Against her will. Secondly. Without her consent.

Thirdly. With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly. With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly. With or without her consent, when she is under eighteen years of age. Seventhly. When she is unable to communicate consent.

Explanation 1. For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2. Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act: Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1. A medical procedure or intervention shall not constitute rape.

Exception 2. Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape

<sup>16</sup>section 376D: Gang rape.

Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:

- Incest: Incest was not defined under the Indian Penal Code, it is a kind of offence of sexual activity or marriage between the family member or close blood or prohibited degrees of law.

Provided that such fine shall be just and reasonable

to meet the medical expenses and rehabilitation of the victim: Provided further that any fine imposed under this section shall be paid to the victim.

#### *Examination of need of POCSO Act*

Children are the asset of our society they are the source of our happiness. The future of the nation in their hand and protect those child is the responsibility of the state. Sexual offences is the evil in our society it destroys peoples life in an instant. India is a over populated country where still patriarchy system breathing down in people's necks. Today's Society gives freedom to women and children are given a safe place but sometimes reminded them through such actions that their lives are still subjugated. 12,500 children from the different states participated in a government sponsored survey conducted in 2007 that highlighted the enormity of pervasive sexual abuse. Children are frequently sexually assaulted without realising it or too terrified to tell their parents about it. Only 25% of the children who responded to the poll (2007) said they had told someone about the abuse and only 3% reported it to the police. This resulted from ignorance of and profoundly entrenched societal stigmas surrounding the terms "sex" and "CSA" (Child Sexual Abuse). It was hard for the children to voice their disapproval of the older individuals because they held position of authority.

Throughout, history CSA (Child Sexual Abuse) has been a veiled issue in india, often disregarded in both public discussions and the criminal justice system. Sexual offences not explicitly targeting children, such as rape, outrage of modesty of a women, and unnatural offences were the only covered offences in the Indian Penal Code. Since the conspiracy of silence was broken, the activists, NGO 's (Non-governmental organisations) and the central government's Ministry of Women and Child Development have aggressively worked to mobilise substantial political and support in order to address the important issue.

The Protection of child from sexual offences (POCSO) Act, 2012 is a significant legislation that addresses the need for extensive legal protection of children from the sexual offences and exploitation. Prior to this act the legal framework for addressing child abuse was inadequate. The existing laws often lacks to understand the meaning of the child sexual abuse and making it very difficult to prosecute these effectively.

#### *Various Forms of Child Sexual Abuse*

Child sexual abuse can take various forms, including:

##### 1. Physical Abuse:

It is an act to that inflict physical pain upon a child victim. When a parent, caregiver, or other person in a position of trust does bodily pain or injury to a kid, it is considered physical abuse of children and is a significant and harmful issue. Abuse of this kind can take many different forms, including slapping, punching, kicking, hitting, and any other physical act that injures or hurts the child. The impact of physical abuse on a child's physical, mental, and psychological health can be severe and persistent.

##### 2. Non-Physical Abuse:

Some kind of implied and explicit act or body language or sexual language, showing pornography etc. This types of act which does not include physical touch or abuse but it has the same effect as the physical abuse. It gives a child misleading thought because they unable to understand the act or body language. Its an indirect forms like exposing a child to sexual acts, pornography, or sexual language.

##### 3. Emotional Abuse:

This involves manipulating a child's emotions or using emotional coercion for sexual purposes. This also doesn't include physical abuse but it has widespread effect to their mind. Emotional abuse control the mind of the child.

##### 4. Exploitation:

Exploiting a child for sexual purposes, such as prostitution, pornography, or trafficking.it is the most known and used forms of sexual abuse. Most of the child is very simple they doesn't have so much complexity that's why it's very simple for those person to fool them and exploit them. Those people who are very closed to them or have better knowledge or access about those children usually the person who done this kind of act.

##### 5. Grooming:

Establishing an emotional connection with a child to gain their trust for the purpose of sexual abuse. This act also mostly done by the closed one or relatives of the chikd because it's easy for them to gain their trust. If this act comes from some unknown then with their act they try to convince them or gain their trust.

##### 6. Online Abuse:

Engaging in sexual conversations or activities with a child via the internet or other digital platforms. In this digital world it's very easy for a person to engaging in sexual conversation with a child or

activities via internet or any other digital platform. This heinous crimes involves the distribution, production and consumption of the child sexual abuse materials. Offenders use the social media platforms, massaging apps and other online platforms to target and exploit the children.

#### 7. Neglect:

Failure to protect a child from sexual abuse or ignoring signs of abuse.

It's important to be aware of these different forms to better recognize and prevent child sexual abuse.

### EVOLUTION OF CHILD SEXUAL ABUSE

Considering India is a home of 430 million children and that they are seen as an essential pillar of the nation's development. Since independence, the laws and the courts of India have diligently strived to secure basic rights for children from conception to legal adulthood.

The Protection of Children from Sexual Offences Act (POCSO Act) of 2012 stands as a vital shield against the abhorrent crime of child sexual abuse in India. Its enactment marked a watershed moment in the nation's legal landscape, offering much-needed deterrence, justice, and support for vulnerable children.

Prior to POCSO, the legal framework protecting children from sexual offenses was fragmented and inadequate. Existing laws often failed to recognize the unique vulnerabilities of children and lacked stringent punishments for perpetrators. This resulted in underreporting, delayed justice, and re-traumatization for victims.

#### *The Legislative history of the POCSO Act*

The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) is a landmark legislation in India that seeks to address the growing problem of child sexual abuse. The Act was passed by the Parliament of India on 22 May 2012, and came into effect on 14 November 2012.

The making of the POCSO Act can be traced back to the early 2000s, when there was growing public concern about the increasing number of cases of child sexual abuse in India. Several high-profile cases, such as the Delhi gang rape case of 2012, highlighted the inadequacy of existing laws to protect children from sexual violence.

In 2005, the Government of India constituted the *Justice Verma Commission*<sup>17</sup> to review the existing laws on sexual assault and make recommendations for reform. The Commission, in its report submitted

in 2013, recommended the enactment of a comprehensive law to address child sexual abuse.

The POCSO Act was drafted based on the recommendations of the Justice Verma Commission. The Act defines a child as any person below the age of 18 years, and prescribes stringent

<sup>17</sup> Available at <https://prsindia.org/policy/report-summaries/justice-verma-committee-report-summary> last accessed 13.02.24 at 08.51 a.m )

penalties for various forms of child sexual abuse, including penetrative and non-penetrative sexual assault, sexual harassment, and pornography. This Act also makes it mandatory for schools, hospitals, and other institutions to report cases of child sexual abuse to the police. It also provides for the establishment of special courts for the trial of child sexual abuse cases.

The POCSO Act has been hailed as a major step forward in the protection of children from sexual abuse. However, there are still some challenges in its implementation, such as the shortage of trained personnel and the low conviction rate in child sexual abuse cases.

#### *Here are some key milestones in the legislative history of the POCSO Act:*

- 2005: The Justice Verma Commission is constituted to review laws on sexual assault.
- 2011: The Protection of Children against Sexual Offences Bill is introduced in Parliament.
- 2012: The POCSO Act is passed by Parliament and comes into effect.
- 2013: The POCSO Rules are notified.
- 2018: The POCSO Act is amended to include the death penalty for aggravated sexual assault of children below the age of 12 years.

The POCSO Act is a significant piece of legislation that has helped to raise awareness of child sexual abuse in India. However, it is important to continue to work to improve its implementation and to ensure that all children are protected from sexual violence.

#### The Verma Committee

On December 23, 2012 a three member Committee headed by Justice J.S. Verma, former Chief Justice of the Supreme Court, was constituted to recommend amendments to the Criminal Law so as to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault against women. The other members on the Committee were Justice Leila Seth, former judge of the High Court and Gopal Subramaniam, former Solicitor General of India.

The Committee submitted its report on January 23,

2013. It made recommendations on laws related to rape, sexual harassment, trafficking, child sexual abuse, medical examination of victims, police, electoral and educational reforms.<sup>18</sup>

"Sixthly, when the person is unable to communicate consent either express or impliedly."<sup>19</sup>

The Committee recommended the addition of a new Section 376B, defining and punishing rape of an under-age person as follows:

**"Section 376B(1). Rape of an under-age person: If a man has sexual intercourse with a person below sixteen years of age with or without that person's consent, he shall be deemed to have committed rape of an under-age person, and shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life. Provided that the existence of a marital relationship between the accused and the under-age person shall not be a valid defence. Explanation: For the purposes of this section, sexual intercourse shall mean any of the acts specified in Section 375 (a) to (c).**

**Section 376B(2): Punishment for causing death or a persistent vegetative state in the course of committing rape of an under-age person. Whoever, commits an offence punishable under Section 376B(1) and in the course of such commission inflicts an injury which causes the death of the person, or causes the person to be in a persistent vegetative state shall be punished with rigorous imprisonment for a term which shall**

<sup>18</sup> Available at <https://prsindia.org/policy/report-summaries/justice-verma-committee-report-summary>

<sup>19</sup>Justice Verma Committee on Amendments to Criminal Law, "Report of the Committee on Amendments to Criminal Law, 2013" 440 (January 23, 2013)

*not be less than twenty years, but may be for life, which shall mean the rest of that person's natural life.*"<sup>20</sup>

Committee on Child sexual Abuse

The Committee has suggested that the Juvenile Justice Act of 2000 define the terms "harm" and "health" in order to include the juvenile's health and bodily and mental harm.

### **Salient Features of POCSO Act**

The Protection of Children from Sexual Offences (POCSO) Act, 2012 is an Indian law designed to protect children from sexual abuse and exploitation. Some salient features of the POCSO Act include:

#### **1. Confidentiality of the victim's identity:**

The child's identity may not be revealed to the media under section 23 of the act unless the Special Court has given permission. Name, address, photo, family information, school, neighbourhood, and any other details that might lead to the child's identity being revealed are all included in this identity.

In the landmark case of *Bijoy @ Guddu Das v. The State of West Bengal (2017)*<sup>21</sup>, the Calcutta High Court reiterated the law made under Section 23 and declared that any person including a police officer shall be prosecuted if he/ she commits such a breach.<sup>22</sup>

The supreme court in *Nipun Saxena & Anr v Union of India*<sup>23</sup> said that the necessity of providing additional care and security for children who have been sexually assaulted by hiding their names and identities.

#### **4 Gender neutral law:**

The primary flaw in IPC was that it only punished sexual offenses against women. The POCSO Act, which protects children of both sexes and is gender neutral in nature. It does not create any discrimination between the victim or the offenders on the basis of their gender.

The NGO *Sakshi v. Union of India*<sup>24</sup> established that existing criminal laws were inadequate in handling instances of child sex abuse in the first instance, through their PIL filed before the Supreme Court. Sexual penetration of a female victim was prosecuted under Sections 375 and 376(2) of the IPC, whereas sexual penetration of a male victim was prosecuted under Section 377 of the IPC. Non-penetrative sexual

<sup>21</sup> <https://indiankanoon.org/doc/22883435/>

<sup>22</sup> [https://blog.ipleaders.in/pocso-act-everything-you-need-to-know/#Features\\_of\\_the\\_POCSO\\_Act\\_2012](https://blog.ipleaders.in/pocso-act-everything-you-need-to-know/#Features_of_the_POCSO_Act_2012)

<sup>23</sup> *Nipun Saxena & Anr v Union of India (2019) 2 SCC 703*

<sup>24</sup> *NGO Sakshi v. Union of India, AIR 2004 SC 3566*

offenses committed against a female child were dealt with under sections 354 and 509 of the IPC, but a similar rule did not exist for a male child victim.<sup>25</sup>

#### **5 Mandatory Reporting Obligations:**

It imposes a duty on individuals and institutions to

report suspected cases of child sexual abuse to the authorities. Sometimes parents avoid to report the case because of the stigma but this act mandate the third party to report this kind of crime if that person have any knowledge.

6 Child-friendly Investigation and Trial : Specifies the procedure for investigating and trial which is designed to take into account a child's needs. During the investigation of any offence under the POCSO Act, the following considerations shall be taken into account:

- i. The statement of the child is to be made by a female police officer at his or her place of residence, in general.
- ii. Uniforms should not be worn by the officer who shall record the statement of the child.
- iii. The officer should ensure that the child does not come into contact with the defendant in the course of his examination. .
- iv. At night, no child should be taken into custody at the police station.
- v. The officer should make sure that no child's identity is revealed.
- vi. Statement of the child is to be recorded in the presence of the person in whom the child has trust.
- vii. The child's statement shall be recorded in electronic form via audio video.
- viii. Where appropriate, assistance should be provided by translators or interpreters.
- ix. During the course of the trial, regular breaks shall be permitted.
- x. The special court shall ensure that the child is not summoned to testify in a trial repeatedly.
- xi. During the trial, it is not permitted to aggressively question a child.

---

<sup>25</sup> Available on [https://legalvidhiya.com/salient-features-of-pocso-act-2012/#\\_ftn8](https://legalvidhiya.com/salient-features-of-pocso-act-2012/#_ftn8)

7 Special Courts:

It mandates the establishment of special courts for the speedy trial of offenses under the Act, ensuring a child-friendly environment.

8 In camera Trial :

The special court shall conducted cases in camera with the presence of the parents of child.

Overall, the POCSO Act aims to create a protective legal framework for children against sexual offenses and ensure justice for victims.

*POCSO Act, 2012*

● **Penetrative sexual assault:** according to section 3 of the POCSO Act defines penetrative sexual assault. And section 4 of the act discussed about the punishment. Which was more stringent after the amendment of 2019.

● **Aggravated penetrative sexual assault:** according to section 5 of the POCSO Act, Aggravated penetrative sexual assault on a child commits by a police officer, the limit of the police station where he is appointed. Premises of a station house and course of his duty. Aggravated penetrative sexual assault on a child commits by a member of the armed force within their limits . under the command of the armed forces and course of his duty. Aggravated penetrative sexual assault on a child commits by a public servant. Management, by the Staff of the jail, protection home, observation home, hospital staff, educational institution , considered aggravated penetrative sexual assault and punishable under section 6 of the POCSO Act.

**Punishment under the POCSO Act**

Relevant provision	Offences under the act	Punishment
Section 4	Penetrative sexual assault	(1) Imprisonment for ten years, but which may extend to imprisonment for life and liable to fine. (2) Penetrative sexual assault on child below the age of sixteen years, punished with imprisonment which may extend to imprisonment for life, and liable to fine.
Section 6	Punishment for aggravated penetrative sexual assault	(1) Rigorous imprisonment for twenty years, which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life, and liable to fine or death. (2) The fine imposed to sub section (1) that is just and reasonable that paid to the victim to meet medical and rehabilitation of such victim.
Section 8	Punishment for sexual assault	Imprisonment which shall not be less than 3 but extend to 5 and liable to fine.
Section 10	Punishment for aggravated sexual assault	Imprisonment for 5 years which may extend to 7 years and liable to fine.
Section 12	Punishment for sexual harassment	Imprisonment which may extend to 3 years plus liable to fine.
Section 14	Punishment for using child for pornographic purposes	(1) In the first conviction imprisonment which shall not be less than 5 years and liable to fine.

		Second conviction imprisonment which shall not be less than 7 years and liable to fine. (2) Use a child for pornographic purposes under sub section (1), commits an offence under section 3. Imprisonment for 10 years which may extend to imprisonment for life and liable to fine. (3) Commits an offence under section 5. Rigorous imprisonment for life and liable to fine. (4) Commits an offence under section 7. Imprisonment for 6 years which may extend to 8 years and liable to fine. (5) Commits an offence under section 9. Imprisonment for 8 years which may extend to 10 years and liable to fine.
Section 15	Punishment for storage of pornographic material involving child	(1) Any person stores or possesses pornographic material that involves a child, fails to destroy or delete or report to the designated authority, with an intention to transmit or share child pornography, liable to fine rupees five thousand, and for second offence fine shall not be less than rupees ten thousand. (2) Any person stores or possesses pornographic material that involves a child, for transmitting, propagating or displaying or

	<p>distributing except for reporting or use as evidence in the court. Imprisonment which may extend upto 3 years or fine or with both.</p> <p>(3) Any person stores or possesses pornographic material that involves a child , for commercial purpose, First conviction - imprisonment for 3 years which may extend to 5 years or with fine or both. Second conviction - imprisonment for 5 years which may extend to 7 years and liable to fine.</p>
--	---

**Trial under the POCSO Act**

• Section 33:<sup>26</sup>

The Act's states that how the evidence of a child who has been sexually abused must be documented. The Special Court has an obligation to allow the child to take frequent breaks during the trial and to create a child-friendly environment by permitting a family member, guardian, friend, or relative that the child has confidence or trust, to present in the court. It's expected that the Special Court will refrain from aggressive questioning or character assassination. It must guarantee that the child's dignity is upheld at all costs during trial.

• The special court would have to determine the accused's age whenever there is any question about it by recording the reasons in writing and such.

If later evidence that the age of an individual determined by the Special Court under subsection 2 of section 34<sup>27</sup> was not the individual's true age will not render the finding invalid.

<sup>26</sup> Procedure and powers of Special Court( section 33 ), POCSO Act

(1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.

(2) The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.

(3) The Special Court may, if it considers necessary, permit frequent breaks for the child during the trial.

(4) The Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court.

(5) The Special Court shall ensure that the child is not called repeatedly to testify in the court.

(6) The Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial.

(7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial:

Provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

Explanation.--For the purposes of this sub-section, the identity of the child shall include the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed.

(8) In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.

(9) Subject to the provisions of this Act, a Special Court shall, for the purpose of the trial of any offence under this Act, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, and as far as may be, in accordance with the procedure specified in the Code of Criminal Procedure, 1973 (2 of 1974) for trial before a Court of Session.

<sup>27</sup> Procedure in case of commission of offence by child and determination of age by Special court. ( section 34), POCSO Act

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.

• According to sections 35 (1) and (2)<sup>28</sup> of the Act, the Special court must record the child's whole evidence within 30 days the special court taking cognizance or reasons for delay, and the trial

must be finished within a year of the date the taking cognizance of offence.

- Section 36<sup>29</sup> states that the special court must make ensure that the child is not in any way exposed to the accused when the evidence is being recorded, at the same time it ensuring that the accused can hear the child's statement and communicate with the advocate. Special court record the child statement through video conference or by curtains or single visibility mirrors.

- Section 37<sup>30</sup> of this Act requires that the entire trial take place in camera. With the presence of child's parents and others persons.

- According to section 38<sup>31</sup> of the act, the Special Court may take the help of a translator or interpreter with the qualification and experience on payment of fees that is prescribed. If the child has a physical or mental disability, the Special Court may also enlist the help of a special educator or any other person familiar with the manner of communication of the child who is an expert on that field and having such qualification on payment of fees that is prescribed.

<sup>28</sup> Period for recording of evidence of child and disposal of case.( section 35), POCSO Act

(1) The evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court.

(2) The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.

<sup>29</sup> Child not to see accused at the time of testifying.(section 36), POCSO Act

(1) The Special Court shall ensure that the child is not exposed in any way to the accused at the time of recording of the evidence, while at the same time ensuring that the accused is in a position to hear the statement of the child and communicate with his advocate.

(2) For the purposes of sub-section (1), the Special Court may record the statement of a child through video conferencing or by utilising single visibility mirrors or curtains or any other device.

<sup>30</sup> Trials to be conducted in camera.(section 37 ) ,POCSO Act

The Special Court shall try cases in camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence: Provided that where the Special Court is of the opinion that the child needs to be examined at a place other than the court, it shall proceed to issue a

commission in accordance with the provisions of section 284 of the Code of Criminal Procedure, 1973 (2 of 1974).

<sup>31</sup> Assistance of an interpreter or expert while recording evidence of child.(section 38 ), POCSO Act.

(1) wherever necessary, the Court may take the assistance of a translator or interpreter having such qualifications, experience and on payment of such fees as may be prescribed, while recording the evidence of the child.

(2) If a child has a mental or physical disability, the Special Court may take the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed to record the evidence of the child.

Child sexual abuse is a global problem. Each and every country faces this kind of problem.

Internationally, child sexual abuse is recognized as a serious crime against children. However, the laws vary from country to country by their local definition of who is a child and what constitutes child abuse. Child sexual abuse is a violation of every child's right when an adult tries to have a sexual intercourse with a minor who is doli incapax for giving consent. This is also called as statutory rape<sup>32</sup>.

#### South Africa

South Africa is one among the top five countries which have the highest rate of child sexual abuse<sup>33</sup>. According to a 2009 report by trade union solidarity helping hand, one child is raped every three minutes in South Africa<sup>34</sup>. The Criminal (Sexual Offenses and Related Matters) Act, 2007 deals with sexual offences against children. It envisage statutory rape as well as acts of consensual sexual penetration, exploitation, and grooming of children for sexual purposes, as well as exposing or using children for pornographic purposes, compelling children to watch sexual acts or any kind of genital organ display, or any form of sexual exploitation of disabled child.

<sup>32</sup> Available at [http://www.unicef.org/zimbabwe/resources\\_15420.html](http://www.unicef.org/zimbabwe/resources_15420.html) (Last accessed February 2024 ).

<sup>33</sup> Available at <http://www.ibtimes.co.uk/child-sexual-abuse-top-5-countries-highest-rates-1436162> (Last accessed February 2024 )

<sup>34</sup> .Ibid.

#### United Kingdom

UK also witnesses high rate of child sexual abuse. The 2003<sup>35</sup> Sexual Offences Act deals with sexual offences like trafficking of children for purpose of sexual exploitation, child sexual abuse by means of prostitution and pornography, sexual abuse of children with mental disorder, voyeurism.

#### Netherlands

The Netherlands (NPM-2005) was designed as a replication of the National Incidence Studies (NISs) conducted in the United States. 1,121 experts from a variety of occupational disciplines who were trained in a comprehensive registration system of six forms of abuse and neglect reported cases of child maltreatment. Furthermore analysed were cases reported to the Dutch Child Protection Services (CPS). In 2005, the estimated prevalence rate for maltreated children aged 0-18 years was 107,200 (95% CI 102,054-112,882), or 30 cases per 1,000 children. Out of all the incidents, neglect accounted for 56%, while the lowest rate was sexual abuse (4%). Of the maltreated child, 47% had been abused more than once. Unemployment and extremely poor parental education were major risk factors.

#### US Federal Law

All states in US have their different laws dealing with child sexual abuse. 18U.S.C. Section 2241, 2242, 2243, 2244<sup>36</sup> deal with aggravated sexual abuse, sexual abuse, sexual abuse of a minor or ward respectively<sup>37</sup>. Offenders under these sections are fined as well as punished. An offender faces harsh sentences if the crime that occurred is of aggravated nature for instance, he/she abused the children by posing threat of serious injury like death, he/she kidnapped the child for committing child sexual abuse. Section 2256 of title 18 U.S.C. provides for definition

<sup>35</sup> Available at [http://www.cps.gov.uk/news/fact\\_sheets/sexual\\_offences/](http://www.cps.gov.uk/news/fact_sheets/sexual_offences/) (Last accessed February 2024)

<sup>36</sup> Available at <http://www.justice.gov/criminal-ceos/citizens-guide-us-federal-law-child-sexual-abuse/> (Last accessed February 2024)

<sup>37</sup> Ibid.

of child pornography as visually depicting any sexually explicit conduct involving a minor (less

than 18 years of age)<sup>38</sup>.

#### Canada

The Criminal code and the Canada evidence Act are two federal laws covering criminal justice matters in Canada. The amendment to these laws in January 1988 created child sexual abuse offences thus expanding the opportunity for courts to take the testimony of child in cases of their sexual abuse<sup>39</sup>. The Canadian Criminal Code covers offences like sexual exploitation of young children, anal intercourse, indecent acts, sexual assault, and offences involving parents or guardian in sexual activity.

#### Germany

Germany follows legal codes and procedures which give more protection to children as compared to many other countries. According to the Section 176 of the German Criminal code<sup>40</sup>, children under 14 years of age engage in sexual activity with himself shall liable to imprisonment from 6 months to 10 years. Under Section 174<sup>41</sup>, engage in sexual activity with a person under 18 years is also punishable in certain circumstances. For e.g. when the child is adopted and is in a state of dependence. The criminal procedure also guarantees maximum child protection. Responsible police officers themselves interrogate the child as soon as they receive any complaint.

<sup>38</sup> Available at <http://www.justice.gov/criminal-ceos/citizens-guide-us-federal-law-child-pornography/> (Last accessed February 2024)

<sup>39</sup> Available at <https://www.ncjrs.gov/pdffiles1/Digitization/128329NCJRS.pdf> (Last accessed February 2024)

<sup>40</sup> <https://www.lewik.org/term/15665/child-abuse-section-176-german-criminal-code/#:~:text=Definition,six%20months%20to%20en%20years.>

<sup>41</sup> <https://www.lewik.org/term/15660/abuse-of-position-of-trust-section-174-german-criminal-code/>

## II. CONCLUSION

The POCSO Act, 2012 represent as a noteworthy milestone in addressing the heinous crimes of child abuse. The strong legal frame-work of the POCSO Act make an huge impact to the society and also give a ray of hope to the victims and their families. Its provide them justice and protection. However, it also needs cooperation from all the sector from society, law enforcement, government e.t.c to secure the rights of the child. The challenges and the shortcomings in the

implementation of the POCSO act it remains as a **key tool** in combating child sexual abuse.

Efforts should be taken to prevent suffering must include raising awareness among all the sector of the society about the current situation.as well as the urgent need for an overhaul of the court system. Recent legislation providing a strong legal frame work for addressing sexual offences involving children, it is crucial to prevent implement specific preventive measures to minimize the risk of child sexual exploitation.

Moreover, enhanced adherence to existing laws is vital. Mere establishment of laws is insufficient without stringent enforcement and clearly defined responsibilities.

Additionally, parents, guardians, educators and other members of the society plays a very crucial role in safeguarding children from sexual exploitation and abuse. Children as innocent individual represent the future of social progress in a nation, underscoring the importance of their wellbeing in shaping tomorrow's leaders.