

POCSO ACT 2012's EFFECTS IN THE INDIAN SOCIETY

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Campus)Best Citation - Vidhi Singh, POCSO ACT 2012's
EFFECTS IN THE INDIAN SOCIETY, 2 (2) LIU & 59
(2021)**ABSTRACT**

The Protection of Children from Sexual Offences (POCSO) Act, 2012 is lauded for recognizing the rights of the children who are vulnerable to sexual offenses. When the rate of sexual offenses against children was spurting, the 2012 Act was formulated to ensure the safety and security of children by establishing judicial bodies to safeguard their rights and by instituting an efficacious right enforcement mechanism. Although the legislation and policies devised for its enforcement have been a commendable effort of the Union Ministry of Law & Justice in recognizing the need to protect children from sexual abuses, still the taboo of child sexual abuse prevails in Indian Society. This prompts the need to analyze the scope and impact of the POCSO Act on Indian Society. Hence, the present study is an attempt to assess the positive as well as the negative impact of the POCSO Act on Indian society while identifying the loopholes in the legislation and making valuable suggestions for rectifying the same. Analyzing the historical evolution of the POCSO Act, highlighting the experts' opinions on the Act, comparing it with other prevalent legislations including Juvenile Justice Act and Indian Penal Code, ascertaining its scope, and critically examining the impact of its provisions on Indian Society is the sole objective of the research paper. Implications of these findings & inferences for future research, as well as, suggestions for uniform efficacious implementation strategies and analyzing certain disputed

provisions of the aforesaid legislation, form the core of this research endeavor.

Key Words: *Child Protection, POCSO Act, Child Sexual Abuse, Child Rights, POCSO's Impact on India, Positive Effects of POCSO, Negative Effects of POCSO, Loopholes in POCSO Act.*

OBJECTIVE

The research paper aims at scrutinizing the Scope of the Protection of Children from Sexual Offences Act, 2012 (*hereinafter referred as 'POCSO Act'*) while analyzing its effects in Indian society. The research paper aims at divulging the opinions of the researcher on various research questions including, *inter alia*,

1. What is the effect of the Act on Indian Society?
2. Whether the Act has fulfilled its purpose in Indian Society?
3. Whether the Act is being implemented appropriately?
4. Whether the implementation policies of the Central Government are efficacious?

HYPOTHESIS

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

1. The POCSO Act is bona fide legislation and has been enforced to safeguard children's rights against sexual abuse and to effectuate international agreements to which India is a party.
2. The POCSO Act has positive effects on Indian Society.
3. Spurt in the all India Rate of Crime against children is owing to increased reporting of cases of child sexual abuse and a real increase in commission of criminal offenses constituting child sexual abuse.
4. The policies formulated by the Central Government for implementation of the POCSO Act are efficacious.

5. The POCSO Act is being misused as a ‘*weapon of harassment*’.

RESEARCH METHODOLOGY

The researcher has adopted Doctrinal Research Methodology. The Researcher has made excessive use of primary and secondary data available on the Internet in form of articles, thesis, research projects, blogs, statistical data by the National Crime Records Bureau, and other sundry miscellaneous sources including books, commentaries, legal research databases which are duly accredited with appropriate citations hereunder.

INTRODUCTION

“*Childhood should be carefree, playing in the sun; not living a nightmare in the darkness of the soul.*”⁹⁹ As per the 2011 All India Census, 39% of the population residing in India are children¹⁰⁰ but many of these children are susceptible to Child Sexual Abuse (CSA)¹⁰¹. The Rate of Crime against children across the nation increased from 21.1 in 2015 to 28.9 in 2017 as reported by National Crime Records Bureau (NCRB).¹⁰² The period of childhood is the foundational period which is ought to be safe, secure, and jovial but for some of the children, the reality of childhood is altogether different. Children look up to adults to ensure their safety and care but they often unknowingly fall prey to the exploitation termed as CSA. Poverty, violence, discrimination, conservative community structure, and social prejudices are the primary impediments in their path to justice which makes them the “*most innocent and vulnerable casualties of exploitation*”. They are facing various challenges from the

day they are born and subjected to physical, psychological, emotional, and sexual abuse. Child abuse is a violation of basic child rights that adversely affects the well-being of children.¹⁰³

CSA is a social menace that is quite pervasive in Indian society as is explicit from the reports of NCRB. The World Health Organisation (1999) defines CSA as follows;

“*Child sexual abuse is the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity being intended to gratify or satisfy the needs of the other person. This may include but is not limited to:*

1. *the inducement or coercion of a child to engage in any unlawful sexual activity;*
2. *the exploitative use of a child in prostitution or other unlawful sexual practices;*
3. *the exploitative use of children in pornographic performance and materials.*¹⁰⁴”

⁹⁹ DAVE PLEZER, A CHILD CALLED “IT” 98 (1995, Simon and Schuster).

¹⁰⁰ MINISTRY OF WOMEN AND CHILD DEVELOPMENT, GOVERNMENT OF INDIA, ANNUAL REPORT 2020-2021, <https://wcd.nic.in/annual-report> (last visited on Dec. 1, 2021).

¹⁰¹ NATIONAL CRIME RECORDS BUREAU, GOVERNMENT OF INDIA, *Crimes in India*, <https://ncrb.gov.in/en/crime-in-india> (last visited on Dec. 1, 2021).

¹⁰² *Id* at p. 95; NCRB defines Rate of Crime against Children as “*number of crimes registered against children per 1,00,000 population of children*”.

¹⁰³ Nidhi Marothiya, Sarita Saini, & Deepika Vig, *An Appraisal of Awareness Regarding the POCSO Act, (2012) among Primary School Teachers of Punjab*, 5 IJSHW 59, 59-61 (2019).

¹⁰⁴ WORLD HEALTH ORGANISATION, *Guidelines for Medico Legal Care for Victims of Sexual Violence*, <https://apps.who.int/iris/bitstream/handle/10665/1878/AFR.RC54.15%20Rev.1.pdf?sequence=1%26isAllowed=y#:~:>

To successfully address the heinous crimes of child sexual abuse and exploitation through less ambiguous and more stringent legal provisions, the Ministry of Women and Child Development championed the introduction of the 'Protection of Children from Sexual Offences (POCSO) Act, 2012'.¹⁰⁵ The Protection of Children from Sexual Offences (POCSO) Act, 2012 was enforced to facilitate the implementation of legislation to protect children from sexual offenses. POCSO Act is a gender-neutral Act and it promotes victim-friendly prosecution. People who traffic children for sexual purposes are also punishable under the provisions relating to abetment in this Act. This Act shields the child from offenses of sexual assault, sexual harassment, and pornography and operates to watch the best interest of the child during every stage of the judicial process. All this is ensured through the adoption of a child-friendly method for reporting, documenting of evidence, investigation along with the speedy trial of offenses through designated special courts (POCSO Act, 2012).¹⁰⁶ The act penalizes six types of sexual offenses and prescribes appropriate punishment for the same: Penetrative Sexual Assault¹⁰⁷; Aggravated Penetrative Sexual Assault¹⁰⁸; Sexual Assault¹⁰⁹; Aggravated Sexual Assault¹¹⁰; Sexual Harassment¹¹¹; and Using Child for Pornographic Purposes¹¹².

Historical Background

Crimes against children include physical and emotional abuse, neglect, and exploitation, such a through child pornography or sex trafficking of minors.¹¹³ Numerous

protective and preventive special and local laws were enforced before the POCSO Act which specifically mentioned the offenses wherein children are victims of sexual abuse including, *inter alia*, the Indian Penal Code (IPC), 1860; Prohibition of Child Marriage Act, 2006; Transplantation of Human Organs Act 1994; Child Labour (Prohibition & Regulation) Act, 1986; Immoral Traffic (Prevention) Act, 1956; and Juvenile Justice (Care & Protection of Children) Act, 2000 [later succeeded by the Act of 2015].¹¹⁴ Indian Penal Code penalized the offenses of Rape *u/s* 376, Assault on Girl Child with Intent to Outrage her modesty *u/s* 354, sexual harassment *u/s* 354A, use of criminal force to Girl Child *u/s* 354B, Voyeurism *u/s* 354C, Stalking *u/s* 354D, Insult to the Modesty of Girl Child *u/s* 509, Procurement of Minor Girls *u/s* 366A, Importation of Girls from Foreign Country *u/s* 366B, Buying of Minors for Prostitution *u/s* 373, and Selling of Minors for Prostitution *u/s* 372. Not only the aforesaid legislations but the Constitution of India accords the highest priority to the safety and well being of children under Article 15(3), 21, 21A, 23(1), 24, 39(f), 41, 45, 47, and 51A(k). Later, on 20th January 2006 the Central Government notified the Commissions for Protection of Child Rights Act, 2005 which constituted the National Commission and State Commissions for proper enforcement of children's rights and effective implementation of laws and programmes relating to the children.¹¹⁵

ext=Child%20sexual%20abuse%20(CSA)%20is,or%20social%20taboos%20of%20society%E2%80%9D., 75 (last visited on Dec. 1, 2021).

¹⁰⁵ Nidhi Marothiya, Sarita Saini, & Deepika Vig, *An Appraisal of Awareness Regarding the POCSO Act, (2012) among Primary School Teachers of Punjab*, 5 IJSHW 59-60, 59-61 (2019).

¹⁰⁶ *Id* at 60.

¹⁰⁷ The Protection of Children from Sexual Offences Act, 2012, § 3, No. 32, Acts of Parliament, 2012 (India).

¹⁰⁸ The Protection of Children from Sexual Offences Act, 2012, § 5, No. 32, Acts of Parliament, 2012 (India).

¹⁰⁹ The Protection of Children from Sexual Offences Act, 2012, § 7, No. 32, Acts of Parliament, 2012 (India).

¹¹⁰ The Protection of Children from Sexual Offences Act, 2012, § 9, No. 32, Acts of Parliament, 2012 (India).

¹¹¹ The Protection of Children from Sexual Offences Act, 2012, § 11, No. 32, Acts of Parliament, 2012 (India).

¹¹² The Protection of Children from Sexual Offences Act, 2012, § 13, No. 32, Acts of Parliament, 2012 (India).

¹¹³ NATIONAL CRIME RECORDS BUREAU, GOVERNMENT OF INDIA, *Crimes in India (2015)*, <https://ncrb.gov.in/en/crime-in-india> (last visited on Dec. 1, 2021).

¹¹⁴ *Id*.

¹¹⁵ NATIONAL CRIME RECORDS BUREAU, GOVERNMENT OF INDIA, *Crimes in India (2007)*, <https://ncrb.gov.in/en/crime-in-india> (last visited on Dec. 1, 2021).

However, the aforesaid legislations were not enough to meet the need of the hour for a speedy and effective relief in cases of child sexual abuse. The following schedule divulges the

increasing trend of rate of crime (all India) against the children before the enactment of the POCSO Act:

Table 1: Rate of Crime against Children and No. of Victims of Child Sexual Abuse in India during 2006-2012

<i>During (In Years)</i>	<i>Rate of Crime against Children (All India)</i>	<i>No. of Victims of Child Sexual Abuse* (All India)</i>
2006	1.7	11,237
2007	1.8	11,381
2008	2.0	12,344
2009	2.1	12,679
2010	2.3	13,624
2011	2.7	15,407

Source: National Crime Records Bureau Statistical Reports from the calendar year 2006-07 to 2011-12

***Note:** Only the statistics related to the following offenses have been considered for the calculation from 2006 to 2012: Rape, Procurement of Minor Girls, Buying of girls for Prostitution, Selling of Girls for Prostitution & Other Crimes.

International Pressure

The Child Sexual Abuse report of 2007 by the Ministry of Women and Child Development stated that there is a deep silence around the issue and majority still feels that this is a western issue and does not happen in India. Lack of awareness, conservative community structure, poor implementation strategies at ground level and corruption could be the primary reasons for such setback. The rising rate of crime against the children prompted the need for a specific legislation which can safeguard their interest in an efficient manner.

In 1989, all the leaders across the world made a historic commitment to the children across the world by adopting the United Nations Convention on the Rights of Child (UNCRC). UNCRC is an international agreement on childhood which aims at safeguarding the fundamental human rights of children throughout the world.¹¹⁶ It is the most widely ratified human rights treaty in the history of manhood and has helped transform children's lives. Article 19 of the convention states that,

“1. State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of

¹¹⁶UNICEF, <https://www.unicef.org/child-rights-convention#:~:text=In%201989%2C%20world%20leaders%20made,an%20international%20agreement%20on%20childhood> (last visited on Dec. 1, 2021).

¹¹⁶UNICEF, <https://www.unicef.org/child-rights-convention#:~:text=In%201989%2C%20world%20leaders%20made,an%20international%20agreement%20on%20childhood> (last visited on Dec. 1, 2021).

physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of the social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial development.”¹¹⁷

Furthermore, Article 34 of UNCRC provides that,

“State Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, State Parties shall in particular take all appropriate national, bilateral and multimedia measures to prevent:

- (a) The inducement of coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices; and
- (c) The exploitative use of children in pornographic performances and materials.”¹¹⁸

India acceded to the CRC on 11th December 1992 and Article 51(c) of the Indian Constitution bestows the duty of enforcement of foreign agreements on the Government of the

¹¹⁷ OHCHR, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (last visited on Dec. 1, 2021).

¹¹⁸ OHCHR, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (last visited on Dec. 1, 2021).

¹¹⁹ Sakshi v. Union of India, Writ Petition (Crl.) 33 of 1997 (SC).

State and Article 253 further confers the power on the Central Government to enact any legislation for enforcement of an International Agreement.

Judicial Advancements

In the case of *Sakshi v. Union of India*¹¹⁹ the Hon’ble Supreme Court expressed the need for a specific legislation to safeguard children’s rights against child sexual abuse. The judgement order written by the bench comprising Hon’ble Justice Rajendra Babu (Former Chief Justice of India) & Hon’ble Justice G.P. Mathur dated 26th May, 2004 stated that,

“The cases of child abuse and rape are increasing at alarming speed and appropriate legislation in this regard is, therefore, urgently required.”

The Court mentioned that the aforesaid directions are in addition to the directions given in the case of *State of Punjab v. Gurmeet Singh & Ors.*¹²⁰ wherein the Court emphasized on the need for maintaining confidentiality of information of a rape victim and maintaining anonymity of the victim of the crime as far as possible during prosecution to save the victim from further harassment.¹²¹ It can be said that the case recognised rights of a rape victim including right to privacy, right to live with dignity, right to personal liberty, right to *in camera* trial. All these rights were further enshrined in the POCSO Act too. It was further reiterated in the following decisions: *Independent Thought v. Union of India*¹²², *Shreemati Vishakha Devi v. State of Rajasthan*¹²³, and *K.S. Puttaswamy v. Union of India*¹²⁴.

¹²⁰ State of Punjab v. Gurmeet Singh & Ors., 1996 SCC (2) 384.

¹²¹ *Id.*

¹²² Independent Thought v. Union of India, Writ Petition (Civil) No. 382 of 2013 (SC).

¹²³ Shreemati Vishakha Devi v. Union of India, AIR 1997 SC 3011.

¹²⁴ K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

Enactment of the Bona fide Legislation

The International developments and judicial advancements motivated the Central Government to devise law for the protection of children from sexual abuse. It thus prepared the draft POCSO Bill in 2012 to give effect to Articles 19 & 34 of the UNCRC. The POCSO Act received the assent of President on 19th June 2012 and was enforced on 14th November 2012 which is celebrated as National Children's Day in India. It aims at the protection of children from sexual assault, sexual harassment, and pornography. It also establishes special courts for the trial of such offenses and other matters concerned therewith. It safeguards children's right to protection from sexual offenses and their fundamental rights ensured under Article 19, 21, 21A including, *inter alia*, Right to Privacy, Right to Education, Right to Live with Dignity to ensure proper development of children in the country.¹²⁵

Further Amendments

The Hon'ble Supreme Court of India took *suo moto* cognizance of alarming rise in number of reported child rape incidents in the *suo moto* writ petition (Criminal) No. 1/2019 wherein it directed the central government to make amendments. Accordingly, the POCSO Act, 2012 was amended in 2019 by the Protection of Children from Sexual Offences (Amendment) Act, 2019. The Amendment Act specifically penalized "*child pornography*" via digital media¹²⁶ and forced consumption of drugs, hormones or any chemical substance¹²⁷. The punishments and penalties for

certain offenses were increased in the light of the spurting rate of child sexual abuses.¹²⁸ The amendment Act prescribed strict punishments including, *inter alia*, capital punishment for "*aggravated penetrative sexual assault*" of children.¹²⁹ In addition to this, it had provisions to guard children from assault in times of disasters, natural calamities, and communal or sectarian violence.¹³⁰ Although the POCSO Act was enacted to oust the menace of child sexual abuse from Indian Society but since there hasn't been a significant decline in the crime rate so far it becomes crucial to scrutinize the impact of the stringent provisions of the legislation on Indian Society.

ANALYSIS & INTERPRETATION

Statistical Progression of the Act

"Abuse is never contained to a present moment, it lingers across a person's lifetime and has pervasive long-term ramifications."¹³¹ Child sexual abuse is a social menace which often gets unreported and the victim suffers abuse merely owing to fear of society. The conditions turn worst when the offender is one of the known ones. In last few years, the Nation has witnessed an alarming increase in the number of incidents of child sexual abuse as is elucidated in the schedule below:

¹²⁵ The Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012 (India).

¹²⁶ The Protection of Children from Sexual Offences (Amendment) Act, 2019, § 2(a), No. 25, Acts of Parliament, 2019 (India).

¹²⁷ The Protection of Children from Sexual Offences (Amendment) Act, 2019, § 6, No. 25, Acts of Parliament, 2019 (India).

¹²⁸ The Protection of Children from Sexual Offences (Amendment) Act, 2019, § 3 & 4, No. 25, Acts of Parliament, 2019 (India).

¹²⁹ The Protection of Children from Sexual Offences (Amendment) Act, 2019, § 5(1), No. 25, Acts of Parliament, 2019 (India).

¹³⁰ The Protection of Children from Sexual Offences (Amendment) Act, 2019, § 6, No. 25, Acts of Parliament, 2019 (India).

¹³¹ LORRAINE NILON, BREAKING FREE FROM THE CHAINS OF SILENCE: A RESPECTFUL EXPLORATION INTO THE RAMIFICATIONS OF PAEDOPHILIC ABUSE 1st ed. (2017, Lorraine Nilon).

Table 2: Rate of Crime against Children and No. of Victims of Child Sexual Abuse in India during 2012-2018

<i>During (In Years)</i>	<i>Rate of Crime against Children (All India)</i>	<i>No. of Victims of Child Sexual Abuse* (All India)</i>
2013	13.23	26,952
2014	20.1	45,051
2015	21.1	46,027
2016	24	**
2017	28.9	1,29,032 [#]
2018	**	1,41,764 [#]
2019	**	1,48,185 [#]

Source: National Crime Records Bureau Statistical Reports from the calendar year 2013 to 2019;

[#]Status of POCSO Cases in India Report, 2021 by Kailash Satyarthi Children's Foundation

*** Note:** Only the statistics related to the following offenses have been considered for the calculation from 2013 to 2019: Rape, Procurement of Minor Girls, Assault against women, Insult of women to outrage her modesty, Buying of girls for Prostitution, Selling of Girls for Prostitution, Protection of Children from Sexual Offenses Cases & Other like Crimes.

****Appropriate Data not available on NCRB website.**

The above schedule shows a sudden increase in reporting of crimes against children from 15,407 in 2011 to 26,952 in 2013. This increase is majorly owing to the enactment of the POCSO Act which penalized child sexual abuses. But it can be further observed that from 2013 to 2015 the cases have increased from 26,952 to 46,027 which symbolize two things that either the increase can be due to increasing awareness among people promoting reporting of cases or it can be owing to real increase in crimes even after enactment of the POCSO Act. Furthermore, an exponential increase in the number of reported cases can be observed during the period 2015 - 2017 from 46,027 to 1,29,032. This sudden increase

in reporting of cases symbolizes increasing awareness among people as various awareness programmes were initiated by the Central Government and various Non-Government Organisations. The increase of the number of victims from 1,29,032 in 2017 to 1,48,185 in 2019 depicts a real increase in the commission of sexual offenses against children. The schedule shows that the people of Indian Society have accepted the legislation constructively and progressively manner but still the rate of crime against children is increasing incessantly.

The number of child victims of offenses penalized under the POCSO Act in 2019 increased by 18% from 40,810 victims in 2018 to 48,043 in 2019.¹³² The total no. of victims are

¹³² KAILASH SATYARTHI CHILDREN'S FOUNDATION, STATUS OF POCSO CASES IN INDIA 4 (2021, Kailash Satyarthi Children's Foundation).

more than the number of cases registered which shows that in some cases an F.I.R. entails more than one child victim.¹³³ 55% of the total cases registered under the Act were u/s 4 & 6 read with Section 376 of the I.P.C. in 2019 where 99% of the victims were females. In the proportion of boys and girls victim of child sexual abuse weight has been much more on girls' end since past several decades but however there has also been a rise in the number of male child victims of "penetrative sexual assault". In 2018, the number of male child victims increased by 25% from 183 male child victims in 2017 to 229 in 2018 which further increased by 17% in 2019 from 229 male child victims in 2018 to 268 in 2019.¹³⁴ The reports do not divulge the ground reality. Studies have shown that male child victims mostly refrain from reporting the crime owing to "shame and fear resulting from social stigma".¹³⁵

Positive Effects on Society

Unlike the existing legislations, POCSO Act is wider in scope since the word "person" brings every person ordinarily residing within the country within the ambit of the legislation irrespective of their gender identity or sexual orientation. Thus, the liability for any offense committed by any person will be equally attributed to all genders be it male, female or transgender. The legislation framers have emphasized the deterrent theory while inscribing the penal provisions for commission and abetment of sexual assault, sexual harassment, and pornography but regard has been also made to the degree of the crime for attributing criminal liability on the offender.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ The Protection of Children from Sexual Offences Act, 2012, § 19(1) & (2), No. 32, Acts of Parliament, 2012 (India).

¹³⁷ The Protection of Children from Sexual Offences Act, 2012, § 19(3) & (4), No. 32, Acts of Parliament, 2012 (India).

Section 19 of the Act prescribes the procedure for reporting the offenses penalized under the Act. A CSA case must be reported to either the Special Juvenile Police Unit or the local police unit in writing with an entry number which shall be recorded in a book kept by the respective Police Unit.¹³⁶ The report shall be recorded in the language and manner such that the child victim can easily understand the report filed by him or her.¹³⁷ The Police unit may, if deems necessary in light of the facts and circumstances, provide care and protection to the child victim or may refer the matter to the Child Welfare Committee (CWC), Special Court or Sessions Court, as the case maybe, within 24 hours of registering the report.¹³⁸ Section 21 of the Act further ensures that no offense remains off-record by penalising the personnel who, by any reason whatsoever, failed to register the complaint. Furthermore, Section 23 abhors the practice of 'malicious prosecution' to prevent the legislation from being a tool of harassment.

'Victim-friendly prosecution' is another praiseworthy feature of the legislation. Confidentiality of personal information of the child victim safeguards the Right to Privacy of the child victim and helps in evading media interference.¹³⁹ Further, Chapter VI of the Act prescribes an effective procedure for recording the statements of the child victim. The statements of a child victim shall be recorded in day time at the residence of the victim by a woman police officer, not below the rank of sub-inspector, who should not be in uniform while recording the statements.¹⁴⁰ It is also to be ensured that the child victim in no manner comes in contact with the accused.¹⁴¹ Also, the statements shall be recorded in the presence of the parents or trusted guardians of the child

¹³⁸ The Protection of Children from Sexual Offences Act, 2012, § 19(5) & (6), No. 32, Acts of Parliament, 2012 (India).

¹³⁹ The Protection of Children from Sexual Offences Act, 2012, § 24(5), No. 32, Acts of Parliament, 2012 (India).

¹⁴⁰ The Protection of Children from Sexual Offences Act, 2012, § 24(1) & (4), No. 32, Acts of Parliament, 2012 (India).

¹⁴¹ The Protection of Children from Sexual Offences Act, 2012, § 24(3), No. 32, Acts of Parliament, 2012 (India).

victim.¹⁴² The statements may also be recorded by a Magistrate under Section 164 of the Criminal Procedure Code, 1973 (Cr.P.C.).¹⁴³ Specific provisions have been enshrined for physically handicapped and lunatics in the Act to ensure fair prosecution.¹⁴⁴ Section 26 (4) of the Act further provides that,

*“Wherever possible, the Magistrate or the police officer, as the case may be, shall ensure that the statement of the Child is also recorded by audio-video electronic means”.*¹⁴⁵

The aforesaid provision was inserted to ensure transparency. Furthermore, the Act provides the procedure for medical examination of the child victim under Section 27. It provides that the medical examination of the child victim shall be conducted according to the provisions of Section 164A of Cr.P.C. and in presence of the parents of the victim.¹⁴⁶ If the victim is a girl then the examination shall be conducted by a woman doctor.¹⁴⁷ Amidst trial, only the Court may ask the questions from the Child which are placed before it by the Public Prosecutor or Counsel for Accused for examination-in-chief, cross-examination, or re-examination.¹⁴⁸ This entire procedure ensures a victim-friendly prosecution.

The most important feature of this legislation is the establishment of “Special Courts” to ensure speedy trial of the offenses penalized under Section 28 of this Act. This feature differentiates the POCSO Act from the previous

legislations. The Special Court is deemed to be a “Court of Sessions”.¹⁴⁹ The jurisdiction of the special courts is not limited to offenses under the Act but also to other offenses with which the accused is charged under the Cr.P.C. at the same trial.¹⁵⁰

Another noteworthy feature of the Act is “presumption of guilt”. Section 29 of the Act states that where a person is being prosecuted for committing or abetting or attempting to commit an offense penalized under the Act then “the Special Court shall presume, that such person has committed or abetted or attempted to commit the offense, as the case may be unless the contrary is proved”.¹⁵¹ This provision shifts the *onus probandi* (the burden of proof) from the victim to the accused unlike other legislations. Unless the accusations against the accused are proved fallacious “beyond reasonable doubt¹⁵²”, the Special Court will assume the accused as ‘guilty’.¹⁵³

The Act also imposes a reasonable time limit for the Special Court to complete the trial which is one year.¹⁵⁴ It ensures an effective and efficient trial of the offense. Also, to ensure confidentiality of personal information of the child victim, the Act mandates the Special Courts to try cases *in camera*.¹⁵⁵ The *National Commission for Protection of Child Rights* and the *State Commissions for Protection of Child Rights* constituted under Section 17 of the *Protection of Child Rights Act, 2005* are bestowed with the responsibility to

¹⁴² The Protection of Children from Sexual Offences Act, 2012, § 26, No. 32, Acts of Parliament, 2012 (India).

¹⁴³ The Protection of Children from Sexual Offences Act, 2012, § 25, No. 32, Acts of Parliament, 2012 (India).

¹⁴⁴ The Protection of Children from Sexual Offences Act, 2012, § 26 & 38(2), No. 32, Acts of Parliament, 2012 (India).

¹⁴⁵ The Protection of Children from Sexual Offences Act, 2012, § 26(4), No. 32, Acts of Parliament, 2012 (India).

¹⁴⁶ The Protection of Children from Sexual Offences Act, 2012, § 27(1), No. 32, Acts of Parliament, 2012 (India).

¹⁴⁷ The Protection of Children from Sexual Offences Act, 2012, § 27(2), No. 32, Acts of Parliament, 2012 (India).

¹⁴⁸ The Protection of Children from Sexual Offences Act, 2012, § 33, No. 32, Acts of Parliament, 2012 (India).

¹⁴⁹ The Protection of Children from Sexual Offences Act, 2012, § 31, No. 32, Acts of Parliament, 2012 (India).

¹⁵⁰ The Protection of Children from Sexual Offences Act, 2012, § 28(2), No. 32, Acts of Parliament, 2012 (India).

¹⁵¹ The Protection of Children from Sexual Offences Act, 2012, § 29, No. 32, Acts of Parliament, 2012 (India).

¹⁵² The Protection of Children from Sexual Offences Act, 2012, § 30(2), No. 32, Acts of Parliament, 2012 (India).

¹⁵³ The Protection of Children from Sexual Offences Act, 2012, § 33, No. 32, Acts of Parliament, 2012 (India).

¹⁵⁴ The Protection of Children from Sexual Offences Act, 2012, § 35(2), No. 32, Acts of Parliament, 2012 (India).

¹⁵⁵ The Protection of Children from Sexual Offences Act, 2012, § 37, No. 32, Acts of Parliament, 2012 (India).

monitor¹⁵⁶ and report the implementation of the provisions of the Act¹⁵⁷. *In toto* the legislation has set up a structure to safeguard rights of child against sexual abuse.

Table 2 shows exponential increase in the reporting of sexual offenses against children. It was owing to the victim-friendly provisions of the Act that reporting of the crime against children became easy and effective but the legislators were unable to keep the legislation aloof of certain cons which had a negative impact on Indian Society.

Negative Effects on Society

Section 29 of the Act states that where a person is being prosecuted for committing or abetting or attempting to commit an offense penalized under the Act then “*the Special Court shall presume, that such person has committed or abetted or attempted to commit the offense, as the case may be unless the contrary is proved*”.¹⁵⁸ This provision shifts the *onus probandi* (the burden of proof) from the victim to the accused unlike other legislations. Unless the accusations against the accused are proved fallacious “*beyond reasonable doubt*”¹⁵⁹, the Special Court will assume the accused as ‘*guilty*’.¹⁶⁰ Although this provision might appear palpable in light of the increasing crime rate but it is against the principles of criminal jurisprudence. It is a cardinal principle of criminal jurisprudence that the guilt of the accused is to be established by the prosecution beyond the possibility of any reasonable doubt. Even if there may be an element of truth against the accused but considered as a whole there is invariably a long distance to travel and whole

of distance must be covered by legal, reliable and unimpeachable evidence before an accused can be convicted.¹⁶¹

“*Presumption of guilt*” before conviction is one of the major impediments in the path of justice for innocent people who fall prey to malicious prosecution. Since the year of its enactment is being used as a ‘*weapon to harass*’ then a ‘*tool to get justice*’. The offenses under the POCSO Act are cognizable and thus the innocent people who are charged under the Act suffer unwarranted persecution. Not only this but since the cases are to be disposed off within 1 year of their reporting thus the accused gets merely 1 year’s time to prove his innocence which is much less *de facto*.

“*Presumption of guilt*” is not palpable with the principles of natural justice. Natural justice “*is not an unruly horse, no lurking landmine, nor a judicial cure-all*”¹⁶² and the “*courts cannot look at law in the abstract or natural law as a mere artefact*”¹⁶³. One of the principles of natural justice is *audi alteram partem* which means ‘no man should be condemned unheard’.¹⁶⁴ This principle ensures ‘*right to fair trial*’ and ‘*right to access to justice*’. Also, the Hon’ble Supreme Court in the case of *Union of India v. W.N. Chadha*¹⁶⁵ held that the rule of *audi alteram partem* may be jettisoned only “*in very exceptional circumstances where compulsive necessity so demands and not to “defeat the ends of justice”*. It has to be shown that there was denial of reasonable opportunity.¹⁶⁶ When an accused is called ‘*guilty*’ without trial and suffers without getting an opportunity of being heard, no prudent

¹⁵⁶ The Protection of Children from Sexual Offences Act, 2012, § 44(2), No. 32, Acts of Parliament, 2012 (India).

¹⁵⁷ The Protection of Children from Sexual Offences Act, 2012, § 44(3), No. 32, Acts of Parliament, 2012 (India).

¹⁵⁸ The Protection of Children from Sexual Offences Act, 2012, § 29, No. 32, Acts of Parliament, 2012 (India).

¹⁵⁹ The Protection of Children from Sexual Offences Act, 2012, § 30(2), No. 32, Acts of Parliament, 2012 (India).

¹⁶⁰ The Protection of Children from Sexual Offences Act, 2012, § 33, No. 32, Acts of Parliament, 2012 (India).

¹⁶¹ Sarwan Singh Rattan Singh v. State of Punjab, AIR 1957 SC 637; Anil W. Singh v. State of Bihar, (2003) 9 SCC 67;

Reddy Sampath W. v. State of Andhra Pradesh, (2005) 7 SCC 603; Ramreddy & Rajesh Khanna Reddy v. State of Andhra Pradesh, (2006) 10 SCC 172; Sher Singh alias Partapa v. State of Haryana, 2015 Cr LJ 1118 (SC).

¹⁶² Union of India v. W.N. Chadha, AIR 1993 SC 1082.

¹⁶³ *Id.*

¹⁶⁴ The Collector v. K. Krishnaveni, Writ Appeal (SC) No. 1995 of 2018.

¹⁶⁵ Union of India v. W.N. Chadha, AIR 1993 SC 1082.

¹⁶⁶ Chairman Mining Board v. Ramjee, 1977 AIR 965 SC.

person can refute it to be violation of principles of *audi alteram partem*.

In a recent case a 51 year old music teacher named Narendra Babu (a native of Vaikom, Kerala) who was booked under the Act for harassing a students’ counsellor at the Model Residential School, Ettumanoor, Kerala committed suicide and left a suicide note stating that he had been wrongly arraigned in the case following a conspiracy hatched by three school employees.¹⁶⁷ Later a division bench of the High

Court of Kerala comprising Hon’ble Justice K. Vinod Chandran and Hon’ble Justice C. Jayachandran while acquitting the accused booked for penetrative sexual assault under POCSO Act held that¹⁶⁸,

“Forensic and semantics apart, child molestation is a shame on society; but if the allegations are false, it is lethal to the life of the accused, more so if the accused is a parent; even if he is eventually acquitted.”¹⁶⁹

Table 3: Reasons Stated in the Final Report for disposal of child sexual abuse cases during the year 2017-2019

Year	Total cases for investigation u/s 4 & 6 (POCSO) r/w Sec. 376 I.P.C. (including previous year backlog)	Total cases for investigation u/s 8 & 10 (POCSO) r/w Sec. 354 I.P.C. (including previous year backlog)	Cases ended with as FIR False	Cases ended as a mistake of fact or law, or civil dispute	Cases true but insufficient evidence, untraced, or no clue
2017	24,144	16,331	556	243	612
2018	29,412	19,893	440	459	663
2019	35,297	23,148	728	448	1147

Source: National Crime Records Bureau Statistical Reports from calendar year 2013 to 2019 & Police Case Disposal Pattern: An Enquiry into the cases filed under POCSO Act in India Report, 2021 by Kailash Satyarthi Children’s Foundation

The issue is not “*presumption of guilt*” but if the person is acquitted from the Court of Law then too it becomes difficult for him to resurrect his previous social image. It is thus crucial to ensure that the legislation is not used as a ‘weapon

of harassment’ and that no *bona fide* person is accused of vexatious, frivolous and mala fide complaints. Although the Act has a staunch provision restricting people to file a vexatious and frivolous complaint inasmuch under *Section 23* but the most effective solution to deal with this problem

¹⁶⁷THE HINDU, *POCSO Accused teacher commits suicide*, THE HINDU (Feb. 20, 2020, 11:04 IST) <https://www.thehindu.com/news/national/kerala/posco-accused-teacher-commits-suicide/article30873905.ece>.

¹⁶⁸THE NEW INDIAN EXPRESS, *False Allegations in child molestation case can be lethal, even if acquitted later:*

Kerala HC, THE NEW INDIAN EXPRESS (Nov. 10, 2021, 10:27 PM) <https://www.newsindianexpress.com/states/kerala/2021/nov/10/false-allegations-in-child-molestation-case-can-be-lethal-even-if-acquitted-later-kerala-hc-2381956.html>.

¹⁶⁹ *Id.*

could be that the personal information of the accused is kept confidential until found guilty.

Another point of observation is that the number of cases that were true but were disposed of owing to lack of evidence have increased from 612 in 2017 to 1147 in 2019 (almost 88% increase) which is an issue of grave concern because even when the case was true and the facts in F.I.R. do *prima facie* constituted an offense but owing to lack of evidence to substantiate the accusations, the cases were disposed of which is gross injustice with the victims.

Implementation of the Act

The *National Policy for Children, 2013* and *National Plan for Action for Children, 2016* directed stakeholders (including Central and State Governments, National Commission for Children and State Commissions and Child Welfare Committees) to strategise and initiate programmes to protect children from ‘emerging concerns’ including sexual abuses.¹⁷⁰ In response to the directions, the Central Government has initiated several programmes for implementation of the POCSO Act and to ensure protection of children from sexual abuses which are elucidated as follows:¹⁷¹

1. The POCSO E-box was launched by the Ministry of Women and Child Development on 26th August, 2016. It is an online complaint portal for easy and direct reporting of sexual offenses against children and for ensuring timely action against the offenders.
2. A short clip was prepared by the Ministry in collaboration with UNICEF which was telecasted on ‘Doordarshan’ for one week from 2nd to 9th October, 2019 for spreading awareness regarding POCSO Act and Child Safety.
3. All the educational institutions were directed by the Ministry of Human Resource Development

(MHRD) to place a POCSO Box in the premises where any student can drop a complaint on being victim of such a crime. They were also advised to make students aware about the POCSO Act and the Childline Helpline Number ‘1098’. MHRD also started showing a short movie titled ‘*Komal*’ on Child Safety in all the schools for spreading awareness among children. NCERT has also published Childline Helpline Number ‘1098’ and POCSO E-box details in every textbook.

4. The Ministry of Home Affairs has developed ‘*Investigation Tracking System for Sexual Offenses*’ portal for timely completion of investigations in cases pertaining to Section 4 & 6 f POCSO Act read with Section 376 of I.P.C. Bureau of Police Research and Development is conducting various courses for sensitisation of personnel. States and Union Territories have been advised to send officers for these courses and for timely completion of Investigations of POCSO cases.
5. Department of Justice has formulated *Fast Track Special Courts (FTSC) Scheme* under which a total of 1023 Courts are to be set up out of which 389 will be exclusively for POCSO Cases and will be established in the Districts where the number of pending cases under POCSO exceeds 100, whereas the other 634 will be set up as per the need and pendency of Rape and POCSO Cases. These will be funded from ‘*Nirbhaya*’ Fund.
6. POCSO Rules 2020 were notified by the Parliament on 9th March 2020 which prescribes effective rules regarding awareness generation, capacity building, and care & protection of child victims.

Loopholes in the Implementation Strategies

The biggest loophole in the implementation strategy is withdrawal of cases at the pre-trial stage. There are primarily

¹⁷⁰ MINISTRY OF WOMEN AND CHILD DEVELOPMENT, GOVERNMENT OF INDIA, ANNUAL REPORT 2020-2021,

<https://wcd.nic.in/annual-report> (last visited on Dec. 1, 2021).

¹⁷¹ *Id.*

three major reasons for closure and cancellation of a case booked under the Act by the Police:

1. *firstly*, mostly the offenders are family members of the victim and in the name of the honor of the family, the victim and their parents turn away from their original statements made during the registration of the F.I.R.¹⁷² As per the Annual Reports of Ministry of Women and Child Development and Statistical Reports of National Crime Records Bureau, almost 50% of the offenders were relatives or trusted people whom the

victim knew and this proportion has been almost identical in last few years¹⁷³;

2. *secondly*, when the victim is from a poor economic background, he or she always faces the challenge to continue with the original complaint. In many instances, coercion makes the victim hostile or turn away from his or her original statements registered in the F.I.R.¹⁷⁴; and
3. *thirdly*, the rich accused often influences the police to manipulate the report in such manner that the case becomes false. Corruption thus becomes an impediment in the path of justice for the poor and indigent.¹⁷⁵

Table 4: Trend of Police disposal of cases during the years 2017-2019

Year	No. of cases under investigation during the year	No. of cases in which the investigation was completed during the year	Cases in which final report submitted but not charge sheet		Cases in which charge sheet submitted and sent to Court for trial	
			No.	% of total cases in which investigation was completed	No.	% of total cases in which investigation was completed
2017	44,924	29,817	1,700	6%	28,063	94%
2018	54,924	37,718	2,080	6%	35,568	94%
2019	65,184	45,760	2,984	7%	42,681	93%

Source: National Crime Records Bureau Statistical Reports from calendar year 2013 to 2019 & Police Case Disposal Pattern: An Enquiry into the cases filed under POCSO Act in India Report, 2021 by Kailash Satyarthi Children’s Foundation

¹⁷² KAILASH SATYARTHI CHILDREN’S FOUNDATION, POLICE CASE DISPOSAL PATTERN: AN ENQUIRY INTO THE CASES FILED UNDER POCSO ACT 3 (2021, Kailash Satyarthi Children’s Foundation).

¹⁷³ MINISTRY OF WOMEN AND CHILD DEVELOPMENT, GOVERNMENT OF INDIA, ANNUAL REPORT 2020-2021, <https://wcd.nic.in/annual-report> (last visited on Dec. 1,

2021); NATIONAL CRIME RECORDS BUREAU, GOVERNMENT OF INDIA, *Crimes in India*, <https://ncrb.gov.in/en/crime-in-india> (last visited on Dec. 1, 2021).

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

It is explicit from the schedule that in the years 2017-18, 6% of the total no. of cases pending for investigation were disposed of at the police level without the filling of the charge sheet. This percentage increased marginally by 1% in the year 2019 to 7% which in figures might appear frivolous but it raises a severe concern as the number of cases which were disposed off in the pre-trial stage were around 2,700s to 3,300 cases.

Another notable point is the percentage cases in which the investigation was completed during the year which increased from 66.37% in 2017 to 68.67% in 2018 and 70.02% in 2019. Increase in the percentage completion of investigation depicts that the training programmes being conducted by the Ministry of Home Affairs are yielding fruitful results. Timely completion of investigation will aid administration of justice to the victim.

Differential Disposition of the Act

POCSO Act specifically addresses child sexual abuse unlike other legislations like I.P.C., J.J. Act, etc. and this is the major reason for its differential disposition. The remedies provided under the Act ensure quick relief to the child victim without disseminating his or her personal information. Victim-friendly prosecution and provision for speedy disposal of cases are some features which make this legislation stand out.

SUMMARY & OBSERVATIONS

The POCSO Act was enacted to safeguard children from sexual abuses which encompassed laudable provisions ensuring victim friendly prosecution, safety of child victim, easy and effective reporting procedure and presumption of 'guilt' of the accused which shifts the *onus probandi* from the victim on the accused. Although the Act has motivated children and their guardians for reporting the abuses they face but still a uniform effective implementation policy is awaited which can implement the provisions of the Act in an efficacious manner. There is need for public awareness regarding POCSO Act and reconsideration of certain

provisions of the Act including Section 29 & 2(d) so that children do not fear in reporting such abuses.

CONCLUSIONS

After scrutinising all the provisions of the POCSO Act and statistically analysing the impact of POCSO Act on Indian Society, the following results are ascertained:

1. The POCSO Act is indeed a *bona fide* legislation and has been enforced to safeguard children's rights against sexual abuse and to effectuate international agreements to which India is a party. Therefore, Hypothesis 1 tests positive.
2. The POCSO Act indeed has positive effects on Indian Society and therefore, Hypothesis 2 tests positive.
3. Spurt in the all India Rate of Crime against children is owing to increased reporting of cases of Child Sexual Abuse and a real increase in commission of criminal offences as is explicit from Table 2. Therefore, Hypothesis 3 tests positive.
4. The policies formulated by the Central Government are laudable attempt to implement the provisions of the Act but the difference between *de jure* policy making and *de facto* policy implementation has not been spanned yet. Although Central Government has strived a lot to spread awareness among people but this verity cannot be refuted that there is an urgent need for an efficacious implementation policy. Therefore, Hypothesis 4 tests negative.
5. The POCSO Act is being used as a 'weapon of harassment'. Therefore, Hypothesis 5 tests positive.

RECOMMENDATIONS

Need for Public Awareness

Ignorance of law excuses no man from practicing it. Unawareness of the rule of law is thus a vice as an unaware citizen can neither refrain himself from doing an unlawful activity nor can he enforce his rights in the Court of Law. It is well said that an aware citizen is an asset to the Nation but

an unaware citizen is a liability to the Nation. People in India are still unaware of the POCSO Act and its *bona fide* provisions. Although “Child Line” has leaped forth several miles in achieving this goal but still there is a need to aware the younger generation and their guardians about their rights and the methods of their enforcement.

Need for Uniform Efficacious Implementation Policy

There is a need for an efficacious implementation policy to implement the provisions of the Act so that the main purpose of the Act can be fulfilled. For example, recently Uttar Pradesh State Government hired a private company named “Ooumph” which will “keep an eye” on what is being searched on the internet through data by 11.6 million users across the State. If any person, within the territory of the State, searches for any obscene and pornographic content then the analytics team will get the information which will be saved for future reference and an alert & awareness message will be sent to the person.¹⁷⁶ As per the plan in initial stages the crime rate is deemed to drop but if somehow still women get harassed then strict actions will be taken against the person by an action team called “1090”.¹⁷⁷ The project was tested in six districts of Uttar Pradesh and the Government received a positive response from the public. This is how Uttar Pradesh Government is tackling the problem of “pornography” which is one of the major factors which incite the commission of sexual offenses. This is the perfect epitome of an efficacious implementation policy.

Similarly, the central government must devise some innovative methods to deal with the increasing crime rate in India which focuses on the root causes of commission of crime like increased exposure to obscene content over the World Wide Web, social stigmas and prejudices, poverty,

indigence, corruption, conservative community structure, unawareness regarding provisions of the Act. It could be done in collaboration with private enterprises which can make it efficient or by introducing online redressal mechanism, or by introducing no cost prosecution mechanism where the case is not frivolous, vexatious or derived out of mala fides.

Also, in the March 2021 Report on “*Status of POCSO Cases in India*” prepared by the Kailash Satyarthi Children’s Foundation recommended that “since women and children constitute one of the most vulnerable sections of society, they deserve special attention and the crimes against them need to be treated on priority and with utmost sensitivity. Instead of ‘coercive policing’, ‘compassionate policing’ is needed to deal with such cases. Therefore, there is a need for a dedicated unit headed by the Additional Superintendent of Police (ASP) and the Deputy Commissioner of Police (DCP) including experts from forensics from investigating sexual offenses against women and children. The unit is required to have adequate workforce, infrastructure, and equipment so that these cases are investigated thoroughly and on priority” which will supervise and aid in investigation of reported cases.¹⁷⁸

Need for Reconsideration of Certain Provisions

Section 29 of the Act which mandates the Special Courts to presume culpability of the accused shall be reconsidered as it is not palpable with the principles of natural justice and criminal jurisprudence and some relaxations shall be provided for application of the aforesaid provision in certain cases such as: (i) where there is no sufficient evidence to constitute a *prima facie* offense; or (ii) where it is proven that the victim or his/her relative(s) has/have filed the complaint out of mala fides in personal grudge or vengeance; or (iii)

¹⁷⁶ Qazi Faraz Ahmed, *UP Government to “Keep an Eye” on Internet Search Data, Surfing Porn Can Land Viewers in Trouble* (Feb. 13, 2021, 23:17 IST) <https://www.news18.com/news/india/up-govt-to-monitor-search-data-of-millions-of-internet-users-in-state-and-alert-porn-viewers-3430520.html>.

¹⁷⁷ *Id.*

¹⁷⁸ KAILASH SATYARTHI CHILDREN’S FOUNDATION, *STATUS OF POCSO CASES IN INDIA 9* (2021, Kailash Satyarthi Children’s Foundation).

when it is proved that the complaint is vexatious, frivolous, or has been filed with the intent to harass the accused; or (iv) where the accused is a *bona fide* citizen of India who does not have any prior record of committing a crime of equitable disposition.

The personal information of the accused shall not be disclosed to general public to ensure fair trial lest it will be lethal for the social image of an accused who is acquitted by the Court and the accused will be exposed to unwarranted persecution.

Although the Act provides for a limitation period for disposal of cases but in reality the Court hearings are conducted at variable intervals. Thus, a fixed interval shall also be prescribed within which at least one Court hearing shall take place to ensure that reasonable opportunity is available with the accused to prove his or her innocence. Presence of accused in every hearing shall be made mandatory to avoid delay in the proceedings.

Furthermore, the definition of “*child*” in the Act must be reconsidered. Section 2 (d) defines “*child*” as a “*person below the age of eighteen years*”. Although this definition is merely biologically sound but it does not take into account such person who is suffering from psychological or physical disability. Hon’ble Supreme Court in a recent case where a woman whose biological age was 38 years and mental age was 6 years was raped held that the legislators felt it appropriate to define the term “*age*” by biological age to be the safest yardstick, rather than referring to a person having mental retardation.¹⁷⁹ It was argued that “*failure to consider the mental age will be an attack on the very purpose of the Act*”. The Court further held that while ‘awarding maximum compensation’ to a mentally retarded rape victim who is not mature enough to understand the nature of the offense not

only the physical age but mental age must also be taken into consideration but not otherwise.¹⁸⁰

Also, a reasonable limitation period shall be imposed on making of complaint of an act of abuse lest any act since the enforcement of the Act can be reported at any point of time which not only makes investigation difficult but the cause of action also turns obsolete with the time. Alternatively, reasonable fine can be imposed on causing an inordinate delay in reporting of the crime. People may take advantage of this lacuna and may use it for filing malicious prosecution.

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¹⁷⁹ THE TIMES OF INDIA, *Is a 40 year old woman with mental age six entitled to compensation under POCSO Act*, THE TIMES OF INDIA (Mar. 3, 2017, 08:26 IST) <https://m.timesofindia.com/india/is-a-40-year-old-woman->

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