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ABSTRACT:

*“Child sexual abuse is one of India's most heinous and under-reported crimes against children. It often leads to an irreparable life-long effect on the physical as well as mental health of the child. Sexual abuse of children has become a matter of significant community concern as the number of cases of such abuse is increasing at an alarming rate. With the intention to protect children from sexual exploitation and provide them justice through legal provisions, **the Protection of Children from Sexual Offences (POCSO) Act, 2012, was enacted in India on 14th November 2012.** The most important objective of the Act is to effectively address the issues of sexual abuse and sexual offences such as sexual assault, sexual harassment and pornography against children through less ambiguous and more stringent legal provisions. Since the laws provided under the Indian Penal Code were inadequate to effectively deal with such sensitive and severe issues, there was a need to introduce specific legislation that could recognise sexual offences against children and provide strict punishments to the offenders.*

Therefore, the POCSO Act came into existence with a divergent progression to ensure justice prevailed. This paper highlights the causes and impacts of child sexual abuse, the scope and features of the POCSO Act, 2012 and suggestions to curb the problem of sexual abuse against children. The paper also illustrates a brief discussion on the challenges in implementing the POCSO Act”.

I. INTRODUCTION:

Child Sexual Abuse (CSA) can be defined as sexual abuse or sexual exploitation of a child by an adult, adolescent, or older person for their sexual stimulation. There are many forms of child sexual abuse, including physical and sexual contact with a child, asking, or pressuring the child to be involved in sexual activities, indecent exposure of the body parts, or using the child for pornographic content. Such abuse and exploitation are often committed with an intention to exert control, humiliate the child or in an attempt to satisfy the sexual urges of the perpetrator against the will of the child or under fear or compulsion. There are many instances where children have been sexually abused within the sphere of their own families. Tracking such cases has proved difficult because, in most cases, the victim child does not know the Act of

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sexual abuse or fears embarrassment and humiliation. In cases where the child discloses such information, it is mainly seen that such cases remain unreported because of the associated stigma, and often the parents or guardians deny involving the police in such cases.¹ Children constitute 42% of India's total population, and among them, a large population of children are vulnerable to sexual offences, which clearly indicates the extent of the problem. Being the most vulnerable section of society, children are often subjected to sexual abuse because they often lack the maturity to understand the abuse that has been done to them, especially younger children.

Sometimes, the child takes years and years to recognise and comprehend the gravity of the offence committed against them, leading to delay in reporting such offences. Another reason for delays in reporting sexual abuse after a considerable time from the date of the offence may be due to factors such as threats from the perpetrator, fear of public humiliation or absence of trustworthy confidant. Sometimes, the child keeps the abuse as a secret wherein a close family member or a known person is involved fearing that no one will believe the abuse. This may seem to contradict the established principle of criminal law that every Act of crime must be reported at the earliest because the delay in filing the complaint dilutes the efficacy of the case. The lack of evidence is one of the significant drawbacks of delayed reporting in order to advance prosecution. In such cases, gathering direct physical and medical shreds of evidence is almost impossible. In 2018, an online petition was filed by Purnima Govindarajulu, a survivor of child sexual abuse, which gathered tremendous support from the public. After a delay of more than 40 years, she tried to file a complaint against her abuser. She also launched an online campaign to raise awareness regarding the issue of child sexual abuse.² Consequently, the then Minister of Women and Child Development requested the Union Ministry of Law and Justice to clarify that no time limit shall apply in the cases under the POCSO Act. Though this

¹ Y. Arya and A. Chaturvedi, Analysis of underreporting of cases of child sexual abuse in India. The World Journal on Juristic Polity (2017) <<https://www.ipinnovative.com/journal-article-file/8163>> accessed on 25th January 2022.

² Ambika Pandit, Woman fights on for justice four decades after being abused as a kid, The Hindu (17/12/2018) <<https://timesofindia.indiatimes.com/india/woman-fights-on-for-justice-4-decades-after-being-abused-as-a-kid/articleshow/67126738.cms>> accessed on 26th January 2022.

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was a much-needed clarification to help strengthen the POCSO jurisprudence, it still failed to address the cases of children who were victims of sexual abuse before 2012.

II. CONSEQUENCES OF CHILD SEXUAL ABUSE:

There are various physical and mental effects on a child who suffers from sexual abuse. Consequences on reproductive health and sex-related diseases, such as HIV and other sexually transmitted infections and diseases, are a few health issues observed in a victim of child sexual abuse. The child who experienced sexual abuse may develop certain eating disorders to cope with the *stress of abuse, resulting in obesity, diabetes, heart diseases, and other health problems*. Sometimes, rape committed on a child may result in a pregnancy that could be very complicated and dangerous for a child's physical and mental health. In cases of teen pregnancy, the complications of the abortion could also result in danger to life.

There are also some severe and damaging psychological effects associated with child sexual abuse, which includes *Post-Traumatic Stress Disorder (PTSD), depression, anxiety, dissociation, low self-esteem, suicidal behaviour, substance abuse, personality disorder* etc. In some instances, the suffering of the child may be immeasurable. Sometimes, the children who suffered traumatic sexual assault at a tender age may endure its impact during their whole life. Child sexual abuse can also have a devastating effect on the psychological well-being of the child. The impact of the abuse is not just limited to the child alone but also affects the people who are close to them, such as family, friends, relatives, and the surrounding community. Such children may lose the ability to form, maintain and trust close, loving relationships and people.

They may face difficulties in forming intimate relationships with their partners. In many cases, the relationship of victims with their parents or siblings may suffer mostly in instances where a family member or close family friend is the perpetrator. The victims may feel responsible for the change in family dynamics. There are other difficulties such as bullying, being talked about by peers or causing loneliness and isolation faced by the victims in day-to-day life. Child sexual abuse often results in both short term and long-term harm to the mind and body. The abuse can

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have a wide-reaching and long-lasting impact on the child, depending on the severity of the traumas experienced.

III. THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT, 2012:

The POCSO Act, 2012, was enacted in India on 14th November 2012. The cases relating to the attempt or commission of any sexual offence, sexual abuse or harassment against a child below 18 years of age is filed under this Act. Any person who is below 18 years of age is considered a child under the Act. Prior to 2012, the cases related to sexual offences and exploitations of children were dealt under the *Indian Penal Code (IPC)*. There were no specific laws to address this issue. Various sections of the IPC dealing with sexual offences were applied to the cases of sexual abuse against children, which resulted in failure to impart justice to the child victims, especially if the victim was a male, as the provisions under the IPC were not reasonably sufficient for their application in cases of child sexual abuse.

The growing instances of child sexual abuse, child rape, sex tourism, child trafficking and pornography in the country led to increased activism for children protection issues in the media as well as a public discourse which ultimately pressurised the Government of India to draft the offences against *Children's (Prevention) Bill, 2005*. Finally, in 2012, the POCSO Act was passed by the Parliament. The implementation of the POCSO Act has been hailed as a step forward to bring out stringent laws and measures to tackle the increasing cases of child sexual offences and sexual abuses separately and effectively and meet the needs of the children. The POCSO Act is progressive in its approach. It is gender-neutral legislation with a diverse goal to protect every child regardless of gender from sexual assault, sexual harassment, and pornography. It also provides provisions to establish special courts for the speedy trial of such offences and related matters. The Act is envisioned as comprehensive legislation that intends to safeguard the interest and well-being of the victim child as being of paramount importance at every stage of the judicial process, incorporating a child-friendly procedure for reporting, recording of evidence, investigation and speedy trial of offences in designated special courts.

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The purpose of establishing special courts is to conduct speedy and in-camera trials in the presence of the child's parents or any other person in whom the child has trust or confidence. The Act classifies sexual offences against children into various categories, including penetrative and non-penetrative sexual assault, sexual assault, sexual harassment, and pornography. All these forms are considered specific offences and have been recognised as punishable offences under the Act. The assault deems to be aggravated when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority vis-a-vis the child, like any family member, relative, teacher, doctor or police officer.³

The POCSO Act prescribes stringent punishments depending upon the gravity of the offence;

- 1. Penetrative sexual assault- imprisonment not less than seven years and may extend to life imprisonment and fine.⁴***
- 2. Aggravated penetrative sexual assault- imprisonment not less than ten years and may extend to rigorous life imprisonment and fine.⁵***
- 3. Non-penetrative sexual assault- imprisonment not less than three years and may extend to 5 years and fine.⁶***

³ The Protection of Children from Sexual Offences (POCSO) Act, 2012. Ministry of Law and Justice, Government of India.

⁴ Section 4: Punishment for penetrative sexual assault-

[(1)] Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

[(2)] Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine.

[(3)] The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.

⁵ Section 6: Punishment for aggravated penetrative sexual assault-

[(1)] Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death

[(2)] The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.

⁶ Section 8: Punishment for sexual assault-

Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

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4. **Aggravated sexual assault**- imprisonment not less than five years but may extend to 7 years and fine.⁷
5. **Sexual harassment**- imprisonment for three years and a fine.⁸
6. **Use of child for pornographic purposes**- imprisonment for not less than five years and fine, and in case of subsequent conviction, it shall exceed seven years and fine.⁹

Recognising the child's vulnerability and physical and mental immaturity, the Act prescribes several procedural measures to be followed during the trial of such cases, ensuring that the children are not subjected to re-victimisation and feel secure and supported throughout the judicial proceedings.

Following are some mandatory guidelines to be followed during the court proceedings:

1. *The special court must protect the identity of the victim child. However, if the court has reason to believe that the disclosure of identity is required for the child's best interest, it may permit it to do so.*¹⁰
2. *The Act provides that the victim child must be accompanied by a family member, relative or any person in whom the child has trust in the court proceedings so that a child-friendly environment is created, and the child is not intimidated during the trial.*¹¹
3. *The victim child must not be directly questioned by the **Special Public Prosecutor (SSP)** or the defence lawyer during the trial to ensure that the child does not feel threatened*

⁷ Section 10: Punishment for aggravated sexual assault-

Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

⁸ Section 12: Punishment for sexual harassment-

Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

⁹ Section 14: Punishment for using child for pornographic purposes-

[(1)] Whoever uses a child or children for pornographic purposes shall be punished with imprisonment for a term which shall not be less than five years and shall also be liable to fine and in the event of second or subsequent conviction with imprisonment for a term which shall not be less than seven years and also be liable to fine.

[(2)] Whoever using a child or children for pornographic purposes under sub-section (1), commits an offence referred to in section 3 or section 5 or section 7 or section 9 by directly participating in such pornographic acts, shall be punished for the said offences also under section 4, section 6, section 8 and section 10, respectively, in addition to the punishment provided in sub-section (1).

¹⁰ Section 33(7), POCSO Act, 2012.

¹¹ Press Information Bureau, Government of India (August 09), POCSO Act- Providing Child-Friendly Judicial Process <<http://pib.nic.in/newsite/efeatures.aspx.?relid=86150>> accessed on 26th January 2022.

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*or intimidated. During examination-in-chief and cross-examination, all the questions must be put before the child by the special court and not by the SSP or defence lawyer.¹² The Supreme Court in the case of ***Sakshi vs. Union of India***¹³, held that during child sexual abuse or rape trials, the Presiding Officer of the court should be given in writing the questions to be asked during cross-examination to ensure that the questions put forth to the victim or witnesses are clear and not embarrassing.*

- 4. The court must ensure that victim children are not called repeatedly to the court to testify.¹⁴*
- 5. The special court must ensure that the child is not exposed to the accused while testifying to prevent the child from getting traumatised by the presence of the accused during the trial.¹⁵*
- 6. The provisions of the Act also provide the involvement of support persons or experts such as child psychologists, educators, interpreters, and other experts as per the child's requirement, especially in serious cases involving younger children.¹⁶*
- 7. The Act provides compensation to the victim child and medical expenses and expenses for rehabilitation.¹⁷*
- 8. Reporting of sexual offences is mandatory under the Act. Any person who knows of a child being sexually abused avoids reporting the offence shall be punished as per the Act.*

The POCSO Act was amended in the year 2019, which came into effect on 16th August 2019, with an intent to make the legislation stricter and more effective to stop the rising trend of child sexual abuse.¹⁸ The Act was amended with the intention to increase the punishment and make it more stringent. The Act has provided the definition of 'aggravated sexual assault' in a more broadened perspective, provisions relating to procedures to report child pornography

¹² Section 33(2), POCSO Act,2012.

¹³ Sakshi v Union of India (UOI) and Ors., AIR 2004 SC 3566.

¹⁴ Section 33(5), POCSO Act,2012.

¹⁵ Section 36(1), POCSO Act,2012.

¹⁶ Section 39, POCSO Act,2012.

¹⁷ Section 33(8), POCSO Act,2012.

¹⁸ SCC Online, POCSO (AMENDMENT) ACT 2019, <<https://www.scconline.com/blog/post/tag/pocso-amendment-act-2019/>>.

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specifically and empowered the courts to impose the death penalty as the maximum punishment in the rarest of the rare cases. The Government has also introduced a new set of rules in 2020 to be followed in the POCSO cases, including mandatory police verification of staff at home or in schools, imparting child rights education, and reporting child pornography.¹⁹ Police verification of every staff is also mandatory in institutions housing children or coming in regular contact with children such as schools, tuitions, sports academies etc. Training programmes such as orientations, sensitisation workshops, and other counselling courses need to be conducted periodically for all the people in regular contact with the children to spread awareness among them about child safety and protection.

The rule also provides provisions to ensure that the victim of child sexual abuse receives the required care and protection, including counselling and therapy from time to time. The victim must also be provided with the needed medical aid and care as well as special relief for contingencies like food, clothes, transport or other essential necessities. The POCSO Act, 2012 has proved to be effective legislation to combat the offences of sexual assault, sexual exploitation and harassment; however, the Act has never been without controversies and deficiencies. At times, it is often observed that even after nine years of its existence, there have been difficulties in the correct implementation and interpretation of the provisions of the Act by the stakeholders.

Justice Pushpa Ganediwala, Nagpur bench of the Bombay High Court, had given a very controversial judgment in the case of ***Satish Ragde vs. State of Maharashtra (2021)***²⁰, wherein the accused had partially stripped the victim's clothes and pressed her breast after taking her to his house. In this case, the Act of pressing breasts without removing clothes was not contemplated as sexual assault by the court on the basis that there must be “*skin-to-skin*” contact with sexual intent to amount sexual assault. Since there is no description as to whether the top of the victim was removed or not, it was held that the Act would not fall within the

¹⁹ SCC Online, Protection of Children from Sexual Offences Rules, 2020,
<<https://www.sconline.com/blog/post/2020/03/12/protection-of-children-from-sexual-offences-rules-2020-comes-into-force-r-11-provides-procedure-for-reporting-of-pornographic-material-involving-a-child/>>.

²⁰ Satish Ragde v State of Maharashtra, Criminal Appeal 161 of 2020.

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ambit of sexual assault under section 7 and therefore, the High Court acquitted the accused under section 8 of the POCSO Act, which provides punishment for the sexual assault while maintaining the conviction under section 354 of the IPC. Later on, the Supreme Court had to injunct the 'skin-to-skin' interpretation of the Bombay High Court, calling it a 'narrow and pedantic interpretation of law'. The Supreme Court held that the sexual intent is enough to constitute the offence of sexual assault under section 7 of the Act and 'skin-to-skin' is not an essential factor.

Within less than a week, Justice Pushpa Ganediwala delivered another judgment that turned into controversy. In the case of *Libnus vs. State of Maharashtra*²¹, the accused was found molesting a 5-year-old girl child by holding hands and unzipping his pants in front of the child. The High Court held that mere holding of hand and unzipping pants does not constitute the offence of sexual assault unless the Act of touching the private parts or making the child do so does not occur.

Similarly, in the case of *State vs. Bijender (2014)*, the Delhi High Court, held that in order to constitute sexual assault, it is necessary to establish that the accused has touched the private parts such as the vagina, anus or breast of the victim. The Act of tearing the clothes will not constitute sexual assault even if sexual intent was present, and thus, the accused was acquitted under section 8 of the Act.

These judgments resulted in massive public outrage that pressurised the Supreme Court to intervene in the matter and order the stay of the issue. From these judgments of the Bombay High Court, it can be presumed that the reason for such absurd misinterpretation is partly due to the vague and ambiguous wording of the Act. The rule of interpretation states that whenever there is any ambiguity in the provisions of the statute, then the court should adopt that interpretation that would best serve the purpose or intent of the legislation. In these cases, the ridiculous interpretation of section 7 of the Act by the court has undermined the legislative

²¹ Libnus v. the State of Maharashtra, 2021 SCC OnLine Bom 66.

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intent of the Act, which aims to protect and safeguard children from sexual offences. Any absurd interpretation of the provision that would defeat the provision's objective cannot be accepted. Therefore, there is an inherent need to mend the loopholes of the POCSO act; otherwise, such judgments that contradict the very objective of the POCSO act will resurface again and again, causing the people to lose faith in the Judiciary.

IV. CHALLENGES RELATING TO THE POCSO ACT, 2012:

Though the Act has undoubtedly played an essential role in recognising the offences of sexual abuse against children, there are still some challenges that need to be addressed;

- 1. There is a lack of awareness about the provisions of the POCSO act among the general public. The limited knowledge makes it difficult for people to approach the legal system in cases of child sexual abuse, which often results in delays in reporting such crimes and therefore starting the court procedure.*
- 2. The Act requires mandatory reporting of child sexual offences. However, often it is witnessed that either the victim or their family or relatives or even the doctors and medical practitioners who are aware of such abuse avoids reporting such instances due to the fear of legal hassles.²² Most of the time, the cases remain unreported because a close family member is involved, creating more trauma and embarrassment.*
- 3. One of the most controversial challenges unaddressed under the POCSO Act is consensual sex between adolescents. Any sexual activity with a person under 18 years of age is considered a criminal offence irrespective of gender. Therefore, the concept of victim and perpetrator becomes interchangeable in cases of consensual sex between minors since both are under 18 years of age.*
- 4. The Act has tried to make the whole judicial process child friendly. However, every time the child visits the court during the proceedings or discloses information about the traumatic incidents and the abuses suffered to the family, medical practitioner, police, judge, media, and society, he/she is subjected to re-victimisation.*

²² Mansi Binrajka, Mandatory Reporting Under POCSO: Are We Ready? The Journal of Indian Law and Society Blog (2015) <<https://jilsblognujs.wordpress.com/2015/06/27/mandatory-reporting-under-pocso-are-we-ready/>> accessed on 27th January 2022.

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5. *The Act provides speedy trial and justice, which is not yet in practice.*

V. OTHER LAWS WHICH ENSURE CHILD RIGHTS:

The Government of India has enacted various other child-centric laws from time to time in order to recognise and safeguard the rights of the children. The two important laws include the *Commission for Protection of Child Rights Act (CPCR) 2005 and Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act)*, which protects and promotes child rights. The objective of the JJ Act is to ensure the safety, security, dignity and well-being of children and administer justice to the juvenile in need of care and protection.²³ The Act has tried to emphasise making the juvenile justice system more effective to a child or juvenile by adopting a restorative justice system, unlike the criminal justice system applied to adults. It also provides for various effective provisions and measures for rehabilitation and social reintegration of the abandoned or neglected delinquent juvenile or child through adoption and foster care. The fundamental objective of the Commission for Protection of Child Rights Act, 2005 is to provide provisions to constitute the *National Commission for Protection of Child Rights (NCPCR), State Commission for Protection of Child Rights (SCPCR)* as well as Children’s Court to provide speedy trial in cases of offences committed against children, violation of child rights, or for matters connected in addition to that.²⁴ The NCPCR and SCPCR shall also monitor the implementation of the provisions of the POCSO Act, 2012.

VI. CONCLUSION:

The Parliament passed the POCSO Act on 14th November 2012 with an intent to address the problems of sexual offences against children under 18 years of age. The Act aims to deal with obnoxious offences against children such as sexual assault, sexual exploitation, sexual harassment and pornography with more stringent punishments. The Act provides for various provisions relating to the establishment of special courts for speedy trials and the appointment

²³ Anjali Dingra, Ipleaders, All About Juvenile Justice Act. (24 June 2019) <<https://blog.ipleaders.in/all-about-juvenile-justice-act/>> accessed on 24th January 2022.

²⁴ Wikipedia, Commissions for Protection of Child Rights Act, 2005, <https://en.wikipedia.org/wiki/Commissions_for_Protection_of_Child_Rights_Act,_2005>.

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of a special public prosecutor. It also lays down various guidelines regarding mandatory reporting of sexual offences and the procedure to be followed in the court to safeguard and support the victim during the trial. Therefore, the POCSO act is considered a balanced tool to combat child sexual abuse and encourages children who have been victims of any kind of sexual offences and seek redress and assistance to overcome the trauma. Although the POCSO act may qualify as ideal legislation to protect children from sexual offences, some loopholes in the Act need to be reworked. Certain provisions in the Act are vague and ambiguous, which often results in absurd interpretation by the court, defeating the legislation's very intent. Therefore, a detailed definition of the offences and punishments should be included in the Act so that there is no lack of clarification and lucidity and the children's rights can be recognised, and no child is denied proper justice due to the narrow interpretation of the provisions in cases of ambiguity. There should be more transparency in the adjudication process and the effective contribution of the police in such cases of offences. There is a sense of contention and credibility among people during the whole process, from initiation to adjudication. All the shortcomings of the Act need to be eliminated, which prevents from justice being served.

There is a need to spread awareness about the provisions and objectives of the Act among the general public. The majority of people, especially those living in the rural areas, are unaware of this Act, and because of which most of the instances of the sexual offence committed against a child result in marriage or exclusion of the entire family from that society or complete silence on such crimes and often the victim child is blamed for the crime committed against them. No importance is given to the repercussions of such heinous offences upon a child; instead, the families are more concerned about their respect and dignity in society. This issue can be resolved by educating such people about their rights and duties, introducing sex education in schools, sensitising families, counselling children, and making people aware of the laws available to address such offences. Therefore, it can be said that the establishment of an enactment cannot be considered enough unless there is rigorous applicability of the provision of the enactment. Rigorous application of the provision is needed to overcome and eradicate the issue of child sexual abuse and exploitation from the grass-root level.