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Shaswat Soni (B.A.LL.B), Shambhunath Institute of Law, Prayagraj,
Email Ids: rudrapnde@gmail.com, rudrapandey103@gmail.com.***



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ABSTRACT:

“It would be very worthwhile to quote a line “There can be no keener revelation of a society’s soul than the way in which it treats its children”¹. The Protection of Children From Sexual Offences Act, 2012, provides the mechanism/the way through which the children of the country feel safe. The research includes various aspects of the POCSO Act,2012. As we know child sexual abuses had gone on the very high level, So for controlling the same and safeguarding the children from these abuses, making the society free from these kinds of offenders the Act came into enforce in November 2012. “One in four girls will experience sexual abuse by the time she is sixteen, and 48 percent of all rapes involve a young woman under the age of eighteen. It’s not surprising then, that in a society where sexual abuse of young women is rampant, many women never share their stories. They remain hidden and invisible.”²

The research includes the procedure for trail of the child sexual abuses under the Act. What are the procedures to be followed by the authorities while investigating the case and all the other things which relates with the same. Herein the research also includes the comparative study between the two NATIONS. And thereafter the loopholes and the remedy in the Act are mentioned and at the end The Landmark Judgements by Hon’ble Supreme Court are quoted. There are various Acts been quoted in the manuscript as references. The research also includes the statical data based on different researches done by different institutions”.

I. INTRODUCTION:

“A nation’s children are its supremely important asset and nation’s future lies in their proper development. An investment in children is indeed an investment in future. A healthy and educated child of today is the active and intelligent citizen of tomorrow.” - Rabindra Nath Tagore

¹ Nelson Mandela, Former President of South Africa.

² The Truth About Sexual Abuse--A Book for Teen Girls, Young Women, and Everyone Who Cares About Them

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Child sexual abuse in a broad term used to describe sexual offence against children to put it simply,

Child sexual abuse occurs when a person involves the child in sexual activities for his/her sexual gratification, commercial gain or both. Under *POCSO Act sec-2(1)(d)* define a “child” as a person below eighteen years.

From statistics of the past few years from crime in India report of “*National Crime Report Bureau*” suggest that 80-90% cases the offender is known to the victim. Offender can be of any gender- male, female and third gender But, according to the statistical data the majority of the offender are male but not exclusively so.

So, basically may be divided into two mandates:

- 1. Physical Contact Form of Abuse:*** *In bit cases, physical contact between the offender and child occurs instantly by penetrative sex, fondling of the child genitals or making the child touch the offender genitals touching any parts of child body with sexual intent, kissing with sexual intent etc.*
- 2. Non-Physical Contact Form of Abuse:*** *child sexual abuse can also occur without contact between the offender and the child such as showing pornographic videos or photos to child, verbal abuse making lewd gestures to the child, playing sexualized games, stalking or chatting with sexual intent with child over the internet etc.*

“*Childhood is a promise that is never kept*”, said *Ken Hill*. Child sexual abuse has expanded an expository situation in India. Various studies both from governmental and non-governmental sources show a grim canvas of the society. An *NGO named RAHI (Recovery and Healing from Incest)* conducted India’s first study of child sexual abuse. It looks over 600 English speaking women belonging to the middle class and upper class of community. 76% of these women had been abused in teenage or adolescence, from which in 40% cases the crook was kin, mostly the relatives. A really muddling fact is that the survey established that 72% of the victims said they were abused and they did not report the incident to anybody. Only 3% of the suffered families complained to the public authorities or made the abuse public, fascinating, foregoing to the study of government of India in 2007. Despite the research making its

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application publicly, nothing much was done by the government or related organization to address the complication with seriousness. The Indian government backed a survey of 1,25,000 teens in thirteen states, 53% said that they had been subjected to one or more configuration of sexual abuse. Over 20% of those interviewed said they were put through to various forms of abuse of those who confirms the completion of sexually abused, where 57% were minor male child. The study provided alarming resource of sexual abuse on teens. According to the survey almost 54% children reported to faced once or several forms of sexual abuse. Andhra Pradesh, Bihar, Assam and Delhi reported the greatest percentage of such abuse among both boys and girls. *‘Approximately, 22% child defendants facing several forms of sexual abuse and 51% other different forms of sexual abuse. Also, out of the child respondents, nearly 5.5% reported being sexually assaulted³’*. While, minors in Assam, Bihar and Delhi reported the highest cases of sexual assault, teen on street, teen at work and alarmingly, teen in institutional care top the catalogue. In just about half of the cases, persons were known to the minor or in a position of trust and authority. It was also concluded that, most children did not report the incidence to anyone.

As well as the girls who suffered emotional abuse due to an additional trauma of abuse were neglected. Every second child reported facing emotional abuse, with a same percentage of both boys and girls. In an extensive 83% of the cases parents were the abusers. It’s sad, but on the other hand it is very true, that approximately 48% of the girls thought that they were boys. The Act has come into force on the 14th of the November, 2012, along with the rules framed thereunder. The act is very comprehensive law which provide for the protection of children from the offence of sexual assault, sexual harassment and pornography etc. While safeguarding the interests of the children at different stages of the judicial process by incorporating the child-friendly mechanism for reporting, recording of evidence, investigation and speedy trial of offences through appointment of Special Public Prosecutors and establishment of Special Court. The Act provides child friendly procedures for reporting, recording investigation and

³ www.ncbi.nlm.nih.gov

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trial of offences. The Act provides for harsh punishments which have graded as per the gravity of offence.

II. GENERAL BACKGROUND:

Child Sexual Abuse Laws in India have been enacted as part of the child protection policies of India. The Parliament of India passed the '*Protection of Children Against Sexual Offences Bill (POCSO), 2012*', regarding child sexual abuse, on 22 may 2012 making it an act. A guideline was passed by the Ministry of Women and Child Development, India. The rules formulated by the government in accordance with the law had also been notified on the November 2012 and the law become ready for implementation. There have been many calls for more stringent laws. India has one of the largest population of children in the world. Census data from 2011 shows that India has a population of 472 million children below the age of eighteen. Protection of children by the state is guaranteed to Indian citizens by an expansive reading of Article 21 of the Indian constitution, and also mandated given India's status as signatory to the UN Convention on the Rights of the Child.

Goa Children's Act, 2003, was the only particularly specified construction of child abuse legislation before the Act of 2012. Child sexual abuse was prosecuted under the following sections of The Indian Penal Code, 1860:

- i. Section 375 deals with Rape*
- ii. Section 354 consider Outraging the modesty of a woman*
- iii. Section 377 deals with Unnatural offences*

However, the IPC is not effective to secure the child from various loopholes like:

- *Section 375, does not protect male victims or anyone from sexual assault of penetration other than the "traditional" peno-vaginal intercourse.*
- *Section 354, lacks a statutory definition of the word "modesty". It carries a frail punishment and it is a compoundable offence. Further, it does not protect the "modesty" of a male victim.*

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- *Section 377, does not define the term "unnatural offences". It only applies to victims penetrated by their perpetrators sexual conduct, and is not constitute a criminalized sexual abuse of child victims.*

Therefore, before the commencement of POCSO Act, 2012, there was no specific law in India that could address sexual crimes against children were used to book under the Indian penal code, 1860, further on account of that many form of sexual abuse, like showing pornographic material to child could not be prosecuted unless there was penetrative sexual assault (*define under section 3*) also there was no provisions that could prosecute sexual offences against the minor boys. Journeying through judicial system was daunting preposition for victims and families. Intense, ardent questioning to the child by the defense council and on the other side media coverage around the in short grave risk of the child revisiting or meeting with the trauma. Victim and families also have to experience general fatigue with the complexity and delays in the judicial pronouncement. Other rehabilitative and compensatory measures were lacking, also the burden of proof does not lie on the offender but on the victims only.

The Constitution of India in its Article 15(3), deals with POCSO, which permits states to make special provisions for children. POCSO stands for 'Protection of child against sexual offences Act of 2012', with its enactment India now has one of the most comprehensive as well as exhaustive legislation that only allow justice for children who are victims of sexual offences but also brings into account of the best interest and wellbeing of the child it is the landmark legislation in the field of child protection.

III. RUDIMENTARY PROCEDURE FOR TRIAL IN CHILD

SEXUAL ABUSE UNDER POCSO:

III.I REPORTING THE INTENT TO THE LOCAL PUBLIC/SJPU:

As soon as the offence has been committed, firstly the child must tell the whole incident to their entrusted person that may be his mother, father, and teacher or any close relative. Onwards it's the duty of the entrusted person to immediately contact on child care helpline i.e., 1098 where child can also call on this number and complain the whole incident by itself to the special

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juvenile police unit that has been advanced under POCSO Act, 2012, or under any local police station which must be in writing. So, from onwards a criminal proceeding can be started against accused.

III.II RECORDING OF STATEMENT BY SJPU/ LOCAL POLICE AND MAGISTRATE UNDER 24 HOURS:

After the incident the offence must be reported by the informant against the accused the step of recording comes into play. The report must be recorded in written form in such a way or in straightforward language in order to understood by the child contents being recorded. And in case statement being recorded in the such language not which the child unable to understood, a translator or an interpreter must be appointed to translate it to the child in simpler form. Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reason in writing, make immediate arrangement to give such care and protection including admitting the child into shelter, home, or to the nearest hospital within 24 hours of the report as may be prescribed⁴. And if the offence has been committed by any family member along with the child has been living, the SJPU have right to acquire the custody of the child till the matter is being presented to the magistrate\special court.

III.I.I RECORDING OF STATEMENT OF CHILD VICTIM BY THE PUBLIC AUTHORITY:

Where the child’s statement shall be recorded?

A child statement shall be recorded at his or her residence or a place where he or she used to live or at a place where he/she is comfortable⁵. Under no circumstances any child shall be detained in the police station at the night for any reason⁶. The police officer should also try and ensure that the statement is being recorded by the audio-visual means or (*at least by audio means*).

⁴ Sec:19(5) of POCSO Act,2012

⁵ Section 24(1) of POCSO Act, 2012.

⁶ Section 24(4) of POCSO Act, 2012.

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By whom statement shall be recorded?

In general, the statement of the child shall be recorded by a women police officer who is not below the rank of Sub-Inspector⁷. “*The police officer while recording the statement of the child shall not be in uniform*”⁸. The help of experienced translator or interpreter may be taken while recording the statement. In the presence of guardian/family member the statement shall be recorded or in the presence of any other person in whom the child show trust.

What steps should be taken by the police in order to protect the child?

While examining the child, the police officer who is investigating the case must assure that the child should not come in contact with the alleged person at any point⁹. The identity of the child should also be protected from the media/press until and unless the Supreme Court, directs in the interest of the child, otherwise¹⁰.

What measures should be taken by the police officer while recording the statements of a child with disabilities?

The police officer should seek the guidance of a qualified special educator or a person who is familiar with the manner of communication of the child or an expert in the related field, while recording the statement of a child who is suffering from mental or physical disability¹¹.

III.II.I RECORDING THE STATEMENT OF THE CHILD BY THE MAGISTRATE:

How the statements should be recorded?

A Magistrate while recording the statement of child under The Code of Criminal Procedure¹² must record it verbatim i.e., in the exact language spoken by the child. The statement should be record in the presence of the guardian or by any other person in whom the child trusts or has

⁷ Section 24(1) of POCSO Act,2012.

⁸ Section 24(2) of POCSO Act, 2012.

⁹ Section 24(3) of POCSO Act, 2012.

¹⁰ Section 24(5) of POCSO Act, 2012.

¹¹ Section 26(3) of POCSO Act, 2012.

¹² Section:164 of The Code of Criminal Procedure,1973.

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confidence¹³. The guidance of a qualified translator or interpreter may be taken at the time of recording of the statement¹⁴. Although Magistrate is bound make sure that the statement is recorded by means of visual or at least by means of audio. The Magistrate should also provide the child and his/her guardian or representative, a copy of the document of the concerned matter¹⁵.

What measures should be taken while recording the statement of a child with disabilities?

The magistrate should seek the guidance of experienced special educator or a person who is familiar with the manner in which child communicates or an expert in that field, while recording the statement of a child having mental or physical disability¹⁶.

III.III EMERGENCY MEDICAL CARE AND COUNSELLING:

The procedure of medical Examination of the Child:

- *After the commission of offence, the child should be taken for medical examination immediately.*
- *A medical examination of a child may be conducted even before a FIR is lodged or a complaint got registered.*
- *It should be conducted by a registered medical practitioner working in a government hospital or any hospital run by local authority within twenty-four hours from the time of receiving information about the employment of the offence. If such practitioner is not available, the examination may be conducted by any other medical practitioner who is registered, by the consent of the child or a person who is competent to give consent on the behalf of the child¹⁷. In case the victim is a girl child, the examination should be conducted by a female doctor¹⁸. The examination shall be conducted in the presence of the guardian*

¹³ Section 26(1) of POCSO Act, 2012.

¹⁴ Section 26(2) of POCSO Act, 2012.

¹⁵ Section 25(2) of POCSO Act, 2012.

¹⁶ Section 26(3) of POCSO Act, 2012.

¹⁷ Section 164A of The Code of Criminal Procedure, 1973.

¹⁸ Section 27(2) of POCSO Act, 2012.

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of the child or a person over whom the child reposes trust or confidence¹⁹. If a guardian or such other person can't be present, due to any reason, the medical examination should be conducted in the presence of a qualified female nominated by the head of the medical institution²⁰.

Emergency Medical Care and Counselling:

Where an officer of the SJPU, or local police receives information under section 19 of the Act that an offence under the Act has been committed, and is satisfied that the child against whom an offence has been committed is in need of urgent medical care and protection, he shall, as soon as possible, but not less than 24 hours of receiving such information, arrange to take such child to the nearest hospital or medical care facility center for emergency medical care²¹. The medical examination of child shall be conducted whether FIR or complaint is lodged or not, (*suo motu*) by a women doctor, if the victim is girl. In case parent is not available for any reason, medical examination of child shall be conducted in the presence of a women appointed by the head of the medical institution²².

Child Victim shall be provided translator or an interpreter, having such qualification, experience to understand the content and language of FIR *{under section 19(4)}*. Child may take help of *interpreter/translator/special educators under Rule 3(7)* at any stage after information is received under section 19. The family or the parents of the child shall be entitled to the guidance of a legal counsel of their own choice for any offence committed under the Act. They are also entitled to get free legal counsel from Legal Services Authority under section 40 of the Act.

III.IV SPEEDY TRIAL:

After the reporting and recording of offence as well as ensuring the safety of the child, the special court are bound to complete the trial as far as possible i.e., within the period of one year

¹⁹ Section 27(3) of POCSO Act, 2012.

²⁰ Section 27(4) of POCSO Act, 2012

²¹ Rule 5(1) of POCSO, 2012

²² Sec:27(4) of POCSO Act,2012

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from the date of the offence taken into cognizance against the accused²³. Earlier in the trial the burden of proof of the offence is upon the victim to prove that the particular offence has been committed but with the arrival of POCSO Act, 2012, the burden of proof is shifted from the victim to the accused in order to prove that particular offence has been not committed by him²⁴. Now in any prosecution of any offence under this act which require a culpable mental state on the part of the accused, the special court shall presume the existence of such mental state but it shall be an immunity for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution²⁵. Here, ‘*Culpable Mental State*’ include intention, motive, knowledge of a fact and the belief in, or reason to believe a fact.²⁶

At pre-stage of the trial the evidence of the child, that has been obtained by the statement or from medical examination must have to be recorded within a period of thirty days of the special court taking cognizance of the offence as far as delay shall be recorded by the Special court²⁷. So far from the beginning to end of the case, the Special Court must have to ensure that the child identity or any his personal information is not to be exposed in any way to accused at the time of recording of the evidence, the Special Court may also record the statement of child through video conferencing or by utilizing single visibility mirrors or curtains or any other device²⁸. “*The main purpose for doing so is to avoid the face-to-face contact of the accused with the child which will result in getting statement which can be considered as evidence that will fall in the favour of the accused*”²⁹. The major or drastic change that has been come across by the POCSO Act,2012 is that, “*The Special Court must have to try all the case of offence under the act in cameras as well as in the presence of the parents of the child or any other person in whom the child has trust or confidence*”³⁰. “*The state government shall prepare guidelines for use of non-governmental organization (NGO), professional and expert or*

²³ Section 35(2) of POCSO Act, 2012.

²⁴ Section 30(1) of POCSO Act, 2012.

²⁵ Section 30 of POCSO Act, 2012.

²⁶ Section 30(explanation) of POCSO Act, 2012

²⁷ Section 35(1) of POCSO Act, 2012

²⁸ Section 36 of POCSO Act, 2012

²⁹ POCSO-ModelGuidelines.pdf.

³⁰ Section 37 of POCSO Act, 2012

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persons having knowledge of psychological, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child”³¹.

III.V COMPENSATION:

Rule-7 of the Protection of Children from Sexual Offences Rules, 2012 specifically deals with the compensation to the child for his every sufferance. The Special Court may, in appropriate cases, on its own or on an application filed by or behalf of the child, pass an order for interim compensation to meet the immediate need of the child for relief or rehabilitation at any stage after registration of the First Information Report. Such interim compensation paid to the child shall be adjusted against the final compensation, if any³². *“As well as the Special Court may, on its own or on application filed by or on behalf of the victim, recommend the award of compensation where the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified, and in the opinion of the Special Court the child has suffered loss or injury as a result of that offence”³³.*

The Special Court may also make a direction for the indemnification and compensation to the victim, under ‘section-33(8) of POCSO Act’ read with sub-section (2) and (3) of section-357A of Code of Criminal Procedure’ ***this shall be only takes effect on loss or injury to the victim through various relevant factors that are;***

- *type of abuse, gravity of the offence and the severity of the mental or physical health or injury suffered by the child.*
- *the expenditure incurred or likely to be incurred on his medical treatment for physical and/or mental health.*
- *loss of educational opportunity as a consequence of the offence, including absence from school due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason.*
- *the relationship of the child to the offender, if any*

³¹ Section 39 of POCSO Act, 2012

³² Rule 7(1) of POCSO Rule, 2012

³³ Rule 7(2) of POCSO Rule, 2012

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- *whether the abuse was single isolated incidence or whether the abuse took place over a period of time.*
- *whether the child become pregnant as a result of the offence.*
- *whether the child contracted a sexually transmitted disease (STD) as a result of the offence*
- *whether the child contracted with human immunodeficiency virus (HIV) as a result of the offence.*
- *any disability suffered by the child as a result of the offences.*
- *financial condition of the child against whom the offence has been committed so as to determine his need for rehabilitation.*
- *Any other factor that the Special Court may consider to be relevant*³⁴.

The State Government pay compensation granted by the Special Court from Victims Compensation Fund or other scheme or fund established by it for the purpose of compensating and rehabilitating victims under section 357A of the Code of Criminal Procedure or any other laws for the time being in force, or, where such fund or scheme does not exist by the State Government³⁵. The State Government must have to pay all amount of the compensation that is ordered by the Special Court within thirty days of receipt of such order which has been issued³⁶.

IV. CHILD ABUSE PROTECTION AND PROCEDURE – AN

INDIAN OVERVIEW:

Child abuse refer to the intentional or unintentional perceived maltreatment of child habitual or not habitual, including the following:

- *Psychological and physical abuse, neglect, cruelty, sexual and emotional maltreatment. Any act deed or word which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being.*

³⁴ Rule 7(3) of POCSO Rule,2012.

³⁵ articles.in [by Sri G. Uday Kumar, Senior Civil Judge]

³⁶ Rule 7(5) of POCSO Act, 2012.

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Shaswat Soni (B.A.LL.B), Shambhunath Institute of Law, Prayagraj,
Email Ids: rudrapnde@gmail.com, rudrapandey103@gmail.com.***

- *Unreasonable deprivation of his/her basic needs for survival such as food and shelter; or failure to give timely medical treatment to an injured child resulting to serious impairment of his/her growth and development or his/her permanent incapacity or death*³⁷

Code of criminal procedure, Indian penal code and Protection of child sexual offence Act are some legislations identifying the law and procedure relating to children. Code of criminal procedure is the first and general code of procedures identifying child abuse and its reporting and procedure.

IV.I RECORDING OF STATEMENT:

Under section 164 of the Code of Criminal Procedure, a magistrate should record statement of child in the exact language delivered by the child. The statement should be recorded in the presence of the guardian of child or any person of the child choice. The guidance of the experienced translator or interpreter can be taken and, the statement should be recorded by the audio or visual means (*not less than audio*). The magistrate may also make sure that the child and the guardian or representative of the child are given a copy of police report of the matter³⁸. While recording of the disable child, the guidance of the person having knowledge or a person familiar with the manner in which child communicate or an expert in the field, must be sought³⁹. Once the police have registered the case a fixed procedure of CrPC has to be followed. Once the police have register FIR which after collecting the evidence files the case in the designated court of prosecution.

IV.II INVESTIGATION:

The Code of Criminal Procedure Code, states the investigation have to be done in the cases of sexual abuse in a time bound manner. *‘The investigation in relation to rape of a child may be completed within two months from the date on which the information was recorded by the officer in charge of the police station*⁴⁰.

³⁷ www.thelawbrigade.com

³⁸ Section 25(2) of POCSO Act, 2012.

³⁹ Section 26(3) of POCSO Act, 2012.

⁴⁰ Section 173(1A) of The Code of Criminal Procedure, 1973.

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IV.III PROTECTION OF CHILDREN FROM SEXUAL OFFENCE

ACT 2012:

The POCSO Act, 2012 defined a child as a person below the age of 18 years and provide protection to all children under the age of 18 year from sexual abuse. It also intent to protect the child at all the stages of judicial process to give paramount importance to the principle of “*best interest of the child*”. Penetrative and aggravated penetrative sexual assault, sexual harassment and using a child for pornographic purpose are the five offences against the child that are covered by this Act. POSCO has stated many children friendly procedure which were not there earlier in the code of criminal procedure. It also gives for special courts for children⁴¹.

IV.IV QUESTIONING CHILDREN:

POSCO Act prohibits that the child could not questioned directly by the special public procedure and the defence lawyer. All question during the examination in chief and cross examination must be routed though the special court. It’s a judge of the special court who can pose the question to the child. Under no circumstances, can the question be posed by the special public prosecutor, defence lawyer or the investigation officer⁴². Further the Act provides safeguards regarding the character assassination of the child assures the dignity of the child is maintained at all times during the trial⁴³.

IV.V CREATION OF CHILD FRIENDLY ATMOSPHERE:

Section 33(4), help in creating the child friendly environment in the court by asking their parents or guardians or any entrusted person or relative whom they are comfortable with to be in the court with the children. And most of the time this procedure must complied with. Sometime judges move a step a further to make the child comfortable. For ex. Making the child sit with them on the dias and then asking question.

IV.VI MINIMUM APPEARANCE IN THE COURT AND GIVES FREQUENT BREAKS BETWEEN THE TRIALS:

⁴¹ <https://pdfcoffee.com/moot-court-4-pdf-free.html>

⁴² Section 33(2) of POCSO Act,2012.

⁴³ Section 33(6) of POCSO Act, 2012.

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Under section 33(3) and section 33(5) of the court ensure that the appearance of the child in the court should be minimum so as not to startle the child. And it also keeps in mind the trial which have to be given frequent breaks so as not to overwhelm the child who is in the proceeding.

IV.VII PROTECTION OF IDENTITY:

Section 3(7) of the Act, provides for the protection of the identity of the child which cannot be disclosed. And can only be disclosed if the special court permit to do so. Because according to several respondents the identity of the children is poorly which brings the children in lime light and can affect his eminent future or may result in poorly exposing them to the public in their revered position.

IV.VIII AWARD OF COMPENSATION:

A conviction did not automatically result in an award of compensation. Compensation was awarded in only 36 cases out of 667 cases by special court i.e., a measly 5.39% of cases. The quantum was determined by the special court in all cases except one. 14year old daughter. Recognizing that imprisonment of the breadwinner could stall the education of the girl, the judge recommended that a suitable compensation be paid u/s 357A, Cr.P.C to enable her to complete her study and become financially independent. He directed the secretary, DLSA to determine the quantum of the compensation.

IV.IX PROMPT RECORDING OF EVIDENCE AND DISPOSAL OF THE CASE:

“The evidence of the child shall be recorded within a period of 30 days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court”⁴⁴. “And the Special Court shall complete the trial, as for as possible, within a period of one year from the date of taking cognizance of the offence”⁴⁵.

IV.X IN CAMERA TRIAL:

⁴⁴ Section 35(1) of POCO Act,2012.

⁴⁵ Section 35(2) of POCSO Act, 2012.

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Section 37 of the Act require the court to resume the proceeding recorded in the, it is not compulsory to keep the proceeding in the court room only, if the special court deems fit it can the proceeding can be held somewhere else also where the child is comfortable⁴⁶.

IV.XI AVOIDING EXPOSURE TO THE ACCUSED:

Section 36(1) of the Act, requires the court to appoint supports which can take the child to some place when the proceeding of the accused is going on because exposure takes place almost every time when the child is in the court or waiting outside the courtroom.

IV.XII ASSISTANCE OF THE PRIVATE LEGAL

PRACTITIONERS:

Section 40 of the act provides the party to appoint legal assistant if they want and require court to appoint a govt. litigator if the party cannot afford one. Independent advocate related to NGOs or other private organization dealing with the case can also be appointed to make the child comfortable.

V. CHILD ABUSE PROTECTION AND PROCEDURE: IN UNITED KINGDOM:

The child protection mechanism is far more developed in the United Kingdom. Guideline by the government should be designed to protect the victim of child abuse of the further harm and to give them protection under Crown Prosecution Services. The child protection mechanism in UK is far more developed at local level as agencies likes local Safeguarding Children Board was created in 1974 because of the public outrage of not being able to give any law for protecting children in the country in the country. *The procedures laid down by the agencies includes:*

- *Concerns about a specific child should be reported immediately by telephone to the DSP*

⁴⁶ User Handbook on POCSO Act,2012.

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- *Confirmed in writing within 24 hours using the form at Appendix E. Delay could prejudice the welfare of a child. ‘National Society For Prevention Of Cruelty To Children’*
- *Gives certain guidelines regarding protection and procedure regarding child victim.*

V.I CRIMINAL INVESTIGATION OF CHILD ABUSE:

All police forces in UK have a Specialize unit known as child abuse investigation unit. Their main purpose is to investigate the case of child abuse in their jurisdiction. The unit makes the decision of filing criminal complaint against the accused after looking into the matter. Other agencies relating with child protection can also work with police units in helping them in taking care of the children abused.

V.II CRIMINAL PROSECUTION IN CASE OF CHILD ABUSE:

The Crown Prosecution Service decide whether or not a prosecution is in the public interest. *The Code for Crown Prosecutors (Crown Prosecution Service, 2010)* is a public document that sets out the basic principles to be followed when making a decision. Crown Prosecution must be satisfied that there is enough evidence to provide a ‘realistic prospect of conviction’ against each defendant on each charge. They must also decide whether the evidence can be used and whether it is reliable. If the evidential stage of the decision making process is passed then the case moved to the public interest stage. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspects.

V.III POLICE PROTECTION:

In an emergency situation the police can take the child away from the family and can keep him or her under protection for 72 hours. The police do not need the permission of the court for doing so but the local authorities have to be informed about the child and where he or she is being kept. If the situation seems safe the child can be returned to the family and if not then the court take proper action.

V.IV CHILDREN AS WITNESS:

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In various child abuse cases children are the witness during the proceeding. If that happens police inform this to Crown prosecution Service about it. Many Crowns Courts have child liaison which help the child during the proceeding. **Many guidelines are also issued by CPS for children who have to attend the proceeding;**

- *Entrance of the child from different gate away from the general public.*
- *Placing a child in different waiting are and the person who is with the child.*
- *Arranging the child to visit the court before the trial so they can get familiar with the environment.*
- *Requesting the court to minimize the time limit for a child for giving evidence.*

V.V ORGANISING LUNCH AND TOILET FACILITIES:

Between the trial in the Special Court, the court will ensure the lunches for the child and a separate toilet facility for the child.

V.VI TAKING AN OATH:

Some victims of child abuse want to stand in court in front of a jury and the person who has hurt or abused them, but if you don't want to see the defendant or their family when you're answering questioning, you could ask for a screen around the witness box.

If you are fourteen years old or over, you may be asked to take oath if you have-

- *made a written statement, and*
- *decided to give evidence in the court room.*

V.VII OTHERS SPECIAL RULES:

The judges and lawyer go to an extend of taking off their wings to make the child comfortable in the atmosphere of the court.

V.VIII IDENTIFICATION OF CHILD:

Though the evidences are given in the open court the name and address and other identifying qualities of the child cannot be disclosed and published in their life time. Court can lift the restriction circumstances.

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VI. COMPARATIVE STUDY BETWEEN INDIA AND UNITED KINGDOM:

As child abuse has always been a problem in the countries, the government has come up with many laws and legislations regarding safeguarding interest of children. If in case child is the victim of any kind of abuse then more care has to be taken in dealing with the matter that is what the legislation is trying to do while framing the procedure of the trial and investigation in the cases of child abuse. The laws and procedure regarding child abuse and harassment are more or less same in both the countries. Both countries focus upon rehabilitating the child, providing him or her with utmost protection so as they are no more abused in any other form during the trial. Special courts are made for dealing with the trials and proceedings of child abuse. And both the countries have look into this matter. As in India POCSO is legislated under which special courts can be setup for the trial of these kind of cases. In United Kingdom Crown courts are there to handle these kinds of cases. Judges and advocates go out of their way to make the child comfortable during the trial, as again these things can create a bad image in the mind of the child and he or she can be psychologically can get effected by it. Police in both the countries take special care while dealing with these kinds of cases. NGOs and other agencies are also allowed to help the children and their parents during the trial and investigation process⁴⁷.

VI.I LOOPHOLES IN THE ACT:

POCSO Act may be examine as the absolute legislation to protect children from sexual offences. However, there are few conceptual problems in the Act. There is no rule or possibility of consent by person under 18 of age in the Act. It means that if a seventeen years old boy(minor) or girl had a nineteen years old sexual partner (major), the major partner would be liable under the provisions of the POCSO Act. The next elephant in the room was the Act also does not provide any clarity on what happens when two minors attract in any form of sexual activities. Technically, they both are minors who in *Need of Care and Protection (CNCP)* and *Children in Conflict with Law (CCLs)*. In general application where, the police declare girls

⁴⁷ thelawbrigade.com; Procedural Aspects of Child Abuse

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to be CNCPs and the boys to be CCLs. A further problem that looks over by victims is proving or manifesting his/her own age. Subsequently the POCSO Act is silent on what documents or evidences are to be examine in order to decide the age of the child victim, the provisions of Rule 12 of the Juvenile Justice Rules have been read by judiciary that are applying to child victims as well. This rule acknowledges only the birth certificate or school certificate of the child and the matriculation certificate. Therefore, children who produces other legal documents such as a passport – must have to go through a bone ossification test. This test may provide a rough approximate age of the minor at best. There must be a clear and direct provisions of the POCSO Act which may lays down what documents or evidences should be contemplate for proving the age of the minor, and whether the benefit of the doubt would be given to the minor if the ossification test cannot prove an exact evaluation. Same as to the law of rape defined under the Indian Penal Code, 1860. The pronoun used for the accused is “*he*” hence, again, only a male can be charged for the offences under the particular and relevant provisions of the POCSO Act. So, unlike rape, a child victim under the POCSO Act can be any child irrespective of the gender as well as the accused can also be a male and females are again given a protective guard. Saying that females do not subject children to forceful sexual assault is false.

These are direct instance of the unexplained gender bias in the legislation relating to sexual intercourse in India. Also, since the POCSO Act only refer with the age aspect, a teenage girl below the age of 18 who experiences coercive sexual assault may later have the boy charged under the IPC. But, vice-versa would not be true because of biased definition. A woman who commits a like offences can be charged only for sexual assault under the POCSO Act, the conviction under the Act, being much less compared to sexual assault under the IPC.

VI.II PITFALLS IN JUDICIARY AND DELIVERY OF JUSTICE:

One of the most important mechanisms of the POCSO Act is provide speedy justice to children who are victims of sexual assault. However, many serious institutional holds up and affect the legal safeguard of the respective minors. A pragmatic example of the timeline for child testimony and conclusion of the proceeding laid down in the Section 35 of the POCSO Act. Child testimony need to be taken under 30 days of cognizance by the Court, and the trial within

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a year. Therefore, these provisions are more often defied than complied because of overloaded nature of courts in India. A linked affair is the tendency of the lawyers to take suspension, or adjournments caused due to external component such as strikes in Court. In such situations, the children end up by summoning repeatedly by court of law, or the hearing can be slow down approximately up to six or seven months after the offence is reported. This decreases the chances of the victim to recall the whole facts of the incident precisely or in chronological order. Another major issue is Interim compensation. The interim compensation is the right of the victim to meet their immediate requirement. Although, it is obligatory for all to understand that interim compensation should not be restrictively interpreted to mean only his or his/her medical needs. It comprises each and every need of the child necessary for its rehabilitation.

Under Section 33(2) of the POCSO Act, the Special Public Prosecutor while recording the examination-in-chief, cross-examination or re-examination of the child, should first communicate the questions to the Special Court and then those questions should be put to the child. The Special Court may also allow frequent breaks in between the series of child should also be given breaks between the series of questions. The lawyer’s role for the child victim is also very critical. The role of the lawyer is to assist the prosecution. This will require proper collaboration between the Public Prosecutor and the child’s lawyer. Farther, in our antagonistic justice system, while the Public Prosecutor and defense lawyer have well-defined duty, there needs to be an assessment of how the lawyer for the child victim fits into this scheme.

VII. LANDMARK JUDGMENTS BY SC UNDER POCSO ACT,

2012:

Sakshi vs. Union of India⁴⁸:

There is an NGO called Sakshi which gives aid with legal, medical, residential, and many other kinds of help to women primarily to those who were victims of sexual abuse or harassment or any other offences. This case is a PIL filed by the NGO to reconsider the meaning of ‘rape’ under section 375 of Indian Penal Code where penetration is only considered to be

⁴⁸ Writ Petition No. 33 of 1997

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penile/vaginal penetration and not the other kinds like penile/oral, penile/anal, finger/vaginal. This was made with special mention of child sexual abuse which has become widespread. The petition also speaks about constitutional rights and international conventions in this regard. Writ Petition filed under Sakshi under article 32 through PIL. The defendants are Union of India, Ministry of Law and Justice and Commissioner of Police, New Delhi. The petition claimed for certain reliefs like to widen the view of the term rape, and issue of direction based on the facts and circumstances of the case. The case was filed in an effort to make the term ‘rape’ include all kinds of forcible and aggressive penetrations. It also indicates about violation of some constitutional rights and convention on rights of child adopted by United Nations General Assembly. The judgement regarding the child sex abuse or rape is that a screen or something of the kind is to be provided by the court and the victim must be given intermissions as and when needed. Also, questions of cross examination must be given to the judge. The rest of the matter must be taken by the parliament and a proper legislation must be passed in the regard⁴⁹.

Independence Thought vs. Union of India⁵⁰:

In this judgment, the Supreme Court considered the question of whether sexual intercourse between a man and his wife being a girl between 15 and 18 years of age would be rape. *Although Exception 2 to Section 375 of the Indian Penal Code, 1860 (IPC)* provided otherwise, the Supreme Court narrowed the scope of the exception and resolved the incongruity between the *Indian Penal Code, 1860 (IPC)* and *Protection of Children from Sexual Offences Act, 2012 (POSCO Act)* by raising the age of consent to 18 years for ‘marital’ sexual intercourse, in order to preserve and protect the human rights of a married girl child. The Court adopted a purposive approach and read *Exception 2 to Section 375, IPC down*. The Court noted that the Exception created an unnecessary and artificial distinction between married and unmarried girls, without any rational nexus to the objective of the Section and held it to be arbitrary and discriminatory under Articles 14 and 15 and violative of basic human dignity guaranteed under Article 21 of the Constitution. The Court also noted that the Exception was

⁴⁹ <https://lexpeeeps.in/sakshi-v-union-of-india/>

⁵⁰ 11 October 2017, writ petition(civil) no. 382 of 2013

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contradictory to the scheme developed by other pro-child legislations including POCSO, which, being special legislations, would prevail. While the Court noted a range of cases developing the relationship between the right to privacy and aspects of Article 21, it did not discuss in detail the applicability of the right to the present case. In his concurring judgment, Justice D. Gupta suggested that this was because the right to privacy was available to all women, and did not bear specific relation to married girl children between the ages of 15-18, who were the subject of the petition. Through this petition, the Independent Thought took a huge step by recognizing the rights of the girl child by pronouncing this historic and landmark judgment which gave the girl child to live in a better, free and safe environment. The court finally read down Exception 2 to Section 375 of IPC gave immunity to the husband from the charges of rape and do sexual intercourse with her wife with or without her consent being that the wife is above 15 years of age, but the court read down this exception and now it will illegal if a husband has sexual intercourse with her wife who is above 15 years of age. By reading down this judgment, the court secured many girl children live and placed women at equal footing to men⁵¹.

***Attorney General for India vs. Satish and another*⁵²:**

The main issue in the case relates to the interpretation of Section 7 of the POCSO Act. A three-judge bench of the Supreme Court consisting of *Justice Bela M. Trivedi, Justice U.U. Lalit and Justice S. Ravindra Bhatt* heard the case and disposed of the five appeals. The majority judgement was authored by *Justice Bela M. Trivedi* on behalf of herself and *Justice U.U Lalit and Justice Ravindra S. Bhatt* delivered his concurring opinion separately. The Supreme Court set aside the order passed by the Bombay High Court in the case of accused Satish and restored the order of the Special Court. The accused was convicted for the offences punishable under *Section 8 of the POCSO Act and Sections 342, 354 and 363 of the IPC*. The accused-Satish was directed to undergo rigorous imprisonment for three years and a fine of Rs.500/- and in default thereof to undergo simple imprisonment for one month for the offence under Section 8

⁵¹ <https://www.legalserviceindia.com/legal/article-6315-independent-thought-vs-union-of-india-2017-10-scc-800.html>

⁵² 18 November 2021, Cr. appeal no.1410 of 2021@ special leave petition (CRL)NO. 925 OF 2021

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of the POCSO Act. As the accused was sentenced for the major offence under Section 8 of the POCSO Act, no separate sentence was imposed upon him for the other offences under the IPC. The accused-Libnus was convicted for the offences under Sections 354-A (1)(i) and 448 of the IPC as and for the offences under Sections 8, 12 and 10 read with Section 9(m) of the POCSO Act. The court directed him to undergo rigorous imprisonment for five years for the offence under Section 10 of the POCSO Act and to pay a fine of Rs. 25,000 and in default thereof to suffer simple imprisonment for six months. No separate sentence was imposed upon him for the other offences under the IPC and the POCSO Act⁵³.

Alakh Alok Srivastava vs. Union of India and others⁵⁴:

Speedy trial and monitoring of the trials under the POCSO Act in a child friendly court with regard to the letter and spirit of the Act's provisions.

VIII. ANALYSIS:

“It is necessary to issue certain directions so that the legislative intent and the purpose are actually fructified at the ground level and it becomes possible to bridge the gap between the legislation remaining a mere parchment or blueprint of social change and its practice of implementation in true essence and spirit is achieved.” held the court. **The Apex court issued following directions to The High Court keeping in view the protection of children and the statutory scheme envisioned under POCSO Act;**

- *The High Courts shall be responsible for ensuring that cases filed under the POCSO Act are tried and disposed by Special Courts, and that the presiding officers of those courts are trained in child protection and psychological response.*
- *The special courts should be established if not previously done so and should be given the role of dealing with the cases under POCSO Act.*
- *The Special Courts should be given instructions to fast track the cases by not granting needless adjournments and following the procedure outlined in the POCSO Act, so that*

⁵³ <https://blog.iplayers.in/setting-aside-skin-to-skin-judgement-supreme-court-in-attorney-general-for-india-v-satish-and-another/>

⁵⁴ 1 May, 2018 writ petition (C) No.76 of 2018

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the trial can be completed in a timebound manner or within a certain time frame under the Act.

- *The Chief Justices of the High Courts have been asked to form a three-judge committee to oversee and supervise the POCSO Act trials. The High Court where three Judges are not available the Chief Justices of the said courts shall constitute one Judge Committee.*
- *A Special Task Force shall be constituted by the Director General of Police or a State officer of equivalent rank to ensure that the investigation is properly conducted and witnesses are produced on the dates fixed before the trial courts.*
- *Special Courts, keeping in view the provisions of the POCSO Act, to ensure that the spirit of the Act is upheld.*

In this landmark judgement of the Apex court, the court has given guidelines to the high courts to make sure that there should be speedy trials of cases under POCSO Act and that the courts should be child friendly so that they can give their evidence freely. This was done to preserve the object of the Act which is to protect the child from many aspects so that he/she does not feel a sense of discomfort or fear also so they are not reminded of the horrified experience and the trauma⁵⁵.

IX. CONCLUSION:

As every coin has its two side which might be good or bad for different majority but it must have to overcome the fear, hesitation of what the collective will ponder off, the legislation must be well fortified enough so that the majority can have faith in it easily. The United Kingdom is the safest place to be a child, while Pakistan is the least safe. That’s according to a new index that ranks 40 countries on how well they’re responding to the threat of sexual abuse and exploitation against children. According to the report called ‘*Out of the Shadows*’ by *The Economist Intelligence Unit and the World Childhood Foundation*, the 40 countries in the index represent 70 percent of the world’s children. The countries were ranked according to

⁵⁵ <https://www.lawyersclubindia.com/judiciary/alakh-alok-srivastava-vs-union-of-india-and-others-2018-guidelines-to-be-followed-by-special-courts-and-hc-while-trying-a-case-under-the-pocso-act-2012-laid-down-by-the-supreme-court-5648.asp>

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their environment in which child sexual violence occurs and is addressed, their legal framework to protect children, their government commitment and capacity to invest in appropriate responses as well as the engagement of industry, civil society and media in combating the issue. *“With approximately 200 million of the world’s children experiencing sexual violence each year, the need to document and benchmark the global effort to prevent child sexual violence has never been more important,” Sweden’s Princess Madeleine, co-founder of the World Childhood Foundation’s #EyesWideOpen campaign, said in a press release.*

With a score of *100 representing the best environment for children, the top ten countries on the index were all high-income: U.K. (82.7), Sweden (81.5), Canada (75.3), Australia (74.9), United States (73.7), Germany (73.1), South Korea (71.6), Italy (69.7), France (65.2) and Japan (63.8).* Brazil ranks next and is classified by the World Bank as upper-middle income⁵⁶. Although the UN report looks at all forms of trafficking, it says that sexual exploitation continues to be the most detected form of trafficking. In most regions, women are more commonly detected as victims of trafficking for sexual exploitation, but in Central America and the Caribbean, more girls are identified as the victims. However, the Out of the Shadows report points out that trafficking comprises only a small minority of child sexual abuse and exploitation cases. It also found that boys are being overlooked as victims.

Only 17 of the 40 countries are collecting prevalence data about boys, and only five collect data on boys regarding sexual exploitation specifically. *Additionally, 26 of the 40* countries have designated law enforcement agencies to fight child sexual exploitation, but only eight have a dedicated budget. This lack of resource allocation – as well as the increasingly online nature of exploitation – makes it harder to tackle both national and transnational offenses.

On draw to a close the legislators should amend all the necessary changes in the respective act of child protection from the sexual abuses and there is ultimate aim while winding up must be in creation of exhaustive procedural trail through which no accused can be escaped and it’s the

⁵⁶ www.undispatch.com

***Title: “Analytical Study of Procedure for Trial In Child Sexual Abuse”,
Authored By: Mr. Rudraksh Pandey (B.A.LL.B) & Co-Authored By: Mr.
Shaswat Soni (B.A.LL.B), Shambhunath Institute of Law, Prayagraj,
Email Ids: rudrapnde@gmail.com, rudrapandey103@gmail.com.***

duty of the state government to ensure the child’s justice and the further safety of the its eminent future where he/she live on his life without depression as well as suppression.

The present legislation for criminalizing sexual offences against children was a much-needed piece of legislation. The adjudication process for the same should be made more transparent and the role of police in such offences much more elicit and prompt, so that people sense a feeling of contention and credibility in the whole process from initiation to adjudication. The deterrent effect which this act renders is also must be sufficient, but to overcome and eradicate this issue from the grassroots level, the collective consciousness among the masses should be pure and must include the feelings of love and care.

