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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

ISSUES RELATED TO POCSO ACT 2012

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ABSTRACT

As the world is regressing speedily, sexual abuse and minor rapes against human is increasing too. The scope of sexual abuses in the present scenario is not only limited and prevented to adult irrespective of their age or gender but it has extended to minor child who are under the age of 18 years.

Despite the reality that sexual abuses and rapes against children is considered as a crime under the IPC so far the laws were inadequate in perceiving and rebuffing other sexual crimes, as a result POCSO (Protection of Children from Sexual Offences) Act was enacted in 2012.

It is gender impartial but still there have been some drawbacks which have been unseen for relatively some time which is why the new amendments of POCSO are essential. The Ordinance revised S.376 of IPC and altered S.42 of the POCSO Act. In addition, this research have tried to examine the origin and change in event after the execution of the POCSO Act.

This study also tried to examine the scope and impact of the POCSO Act on Indian Society. valuable suggestions for rectifying the same. The administrative pitfalls, drawbacks in Judiciary and delivery of Justice also critically analyzed. For this we require to study whether the criminal laws of India is sufficient to manage the cases of sexual offence and rapes against minors even after a self-governing Act such as POCSO Act, 2012. The implication of the findings and discussions for future research, as well as, recommendations for uniform efficacious execution strategies and analyze certain disputed provisions of the aforementioned laws, shape the central part of this study.

Key Words: Sexual Offence, Rape, Minors, POCSO Act

CHAPTER 1

INTRODUCTION

The POCSO Act is a comprehensive legislation enacted in India in 2012 with the primary aim of protecting children from sexual abuse and exploitation. It also lays down procedures for reporting, recording, and investigating such offenses, as well as provisions for the rehabilitation and support of victims. Overall, the POCSO Act serves as a crucial legal framework for safeguarding the rights and well-being of children in India.

The basic objective of the POCSO Act is to safeguard children from sexual abuse and exploitation. It provides a legal mechanism to address various forms of sexual offenses against children and ensures their physical, emotional, and psychological well-being. The POCSO Act offers a comprehensive legal framework specifically tailored to address the unique vulnerabilities and needs of child victims of sexual offenses. It defines various offenses, establishes procedures for reporting, recording, investigation, and trial, and lays down provisions for the rehabilitation and support of victims.

One of the key aspects of the POCSO Act is the incorporation of child-friendly mechanisms at every stage of the legal process. From reporting the offense to giving testimony in court, the Act aims to minimize trauma and re-traumatization for child victims by providing supportive and sensitive procedures. The establishment of special courts under the POCSO Act ensures expedited trials and specialized handling of cases related to child sexual offenses. These courts are equipped with trained personnel who are sensitive to the needs of child victims, thereby facilitating swift justice delivery.¹

By criminalizing various forms of sexual offenses against children and imposing stringent penalties on offenders, the POCSO Act serves as a deterrent against such crimes. It sends a strong message that child sexual abuse will not be tolerated and perpetrators will be held accountable for their actions. The enactment of the POCSO Act has led to increased awareness about child sexual abuse and the legal rights of children.

It has encouraged conversations about the importance of child protection and has prompted initiatives to educate children, parents, educators, and communities about identifying, preventing, and reporting abuse.²

Before 2012, only sexual offence against minors was perceived by the laws and it criminalize sexual assaults, sexual harassments, rapes and pornography including children below 18 years of age. “The forensic science laboratory plays a crucial role in cases involving Child Sexual Abuse under the POCSO Act. This law prioritizes the child's well-being throughout the legal proceedings by incorporating child-friendly methods for reporting, evidence recording, investigation, and swift trial through specialized courts. It also ensures that medical examinations are conducted in the presence of a trusted adult, with female children examined by female doctors. Overall, the act is designed to offer maximum protection to the child, ensuring that justice is served through proper legal procedures.”³

With the enactment of POCSO Act, other type of harassments was also comprised. Most significantly, the POCSO Act was created gender neutral and specially prepared to safeguard children right and make sure the judiciary would be child favour. After the POCSO was sanctioned, sexual crimes against minors were included in three sections of the IPC: Rape in S.376, outraging modesty of women in S. 354 and unnatural sexual activities in S. 377.

There have been cases where individuals, either out of personal vendetta or for other malicious reasons, have filed false allegations of child sexual abuse under the POCSO Act. These false accusations can ruin the reputation and lives of innocent individuals accused of such heinous crimes. Some individuals have been known to misuse the POCSO Act as a tool for extortion or blackmail. They may threaten to file false cases under the Act unless the accused agrees to their demands, such as financial compensation or other favors. In contentious custody battles or disputes, one party may falsely accuse

the other of child sexual abuse under the POCSO Act in order to gain leverage in court proceedings or to tarnish the reputation of the other party.

Different forms of Child Sexual Abuses

Child sexual abuse in India, like in many other countries, can take various forms, often occurring in both subtle and overt ways. Here are some common forms⁴:

Physical Abuses: This involves any form of physical contact with a child for sexual gratification, including fondling, genital touching, penetration, and other forms of sexual assault.

Non-Contact Abuse: This includes acts that don't involve physical contact but are sexually abusive in nature, such as exposing genitals, showing pornographic material, or voyeurism.

Child Marriage: Forced or underage marriage, though not always recognized as sexual abuse, often involves sexual exploitation and manipulation of minors, primarily girls.

Child Trafficking: Children are trafficked for various purposes, including sexual exploitation. They may be sold into prostitution or forced into sexual servitude.

Online Sexual Abuses: With the rise of internet access, online sexual abuse is becoming increasingly prevalent. This includes grooming, sextortion, and the production, distribution, or consumption of child pornography.

Child Pornography: The production, distribution, or possession of child pornography involves exploiting children for sexual purposes and is a severe form of abuse.

Commercial Sexual Exploitation: Children may be forced into prostitution, pornography, or other forms of commercial sexual exploitation for financial gain.

Incest: Sexual abuse by a family member, such as a parent, sibling, or relative, is another prevalent form of child sexual abuse.

Sexual Harassments: This includes any unwanted sexual behavior, comments, or advances towards a child, whether in person or online.

Exploitation by Authority Figures: Children can be sexually abused by authority figures such as teachers, religious leaders, or community leaders who exploit their position of power.

Sexual Abuse in Institutional Settings: Children living in institutional settings like orphanages, boarding schools, or juvenile detention centers may be vulnerable to sexual abuse by staff or other residents.⁵

Role of POCSO Act

The POCSO Act, enacted in India in 2012, plays a crucial role in addressing and preventing child sexual abuse. Here are some key aspects of the POCSO Act and its role in combating child sexual abuse:

The POCSO Act mandates the establishment of special courts to expedite the trial of cases related to child sexual abuse. These courts aim to ensure swift justice and protect the privacy and dignity of child victims during legal proceedings. The act emphasizes child-friendly procedures for recording statements and conducting trials to minimize the trauma experienced by child victims. It allows for the use of video recording and other supportive measures to create a safe and comfortable environment for children during legal proceedings.

The POCSO Act makes it mandatory for certain professionals, such as doctors, teachers, and social workers, to report cases of child sexual abuse to the authorities. Failure to report such cases is punishable under the act, encouraging timely intervention and support for victims.

The act prescribes stringent penalties for offenders, including imprisonment and fines. It also includes provisions for the compensation and rehabilitation of victims to help them recover from the trauma of abuse.

RESEARCH PROBLEM

The Protection of Children from Sexual Offenses (POCSO) Act of 2012 has been instrumental in addressing child sexual abuse, but it faces several challenges that hinder its effectiveness. The problem statement regarding issues related to the POCSO Act can be summarized as follows:

There are difficulties in accurately determining the age of both juvenile offenders and victims, which affects the application of relevant legal provisions. Inconsistent methods of age assessment and discrepancies in documentary evidence further complicate the issue. Law enforcement agencies, judiciary personnel, healthcare professionals, and other stakeholders often lack sufficient training and sensitization on child sexual abuse issues and the provisions of the POCSO Act. This results in inadequate response, victim-blaming attitudes, and secondary victimization of survivors.

The Act's provisions regarding presumptions of guilt based on documentary evidence, such as birth certificates or school records, raise concerns about the presumption of innocence and the burden of proof. This can lead to unfair treatment of the accused and miscarriage of justice. Many cases of child sexual abuse go unreported due to fear of stigma, retaliation, and societal attitudes towards survivors. Victims and their families often face social ostracization, making it difficult to seek help and access support services.

LITERATURE REVIEW

Prithvi and Manish (2019)⁶ One of the primary criticisms revolves around the presumption of guilt imposed on the accused under the POCSO Act. Critics argue that this presumption contradicts the principles of justice, as it does not align with the conditions required by the Indian Evidence Act. This can lead to unfair treatment of the accused and may result in miscarriages of justice. Delays in the filing of charges and the

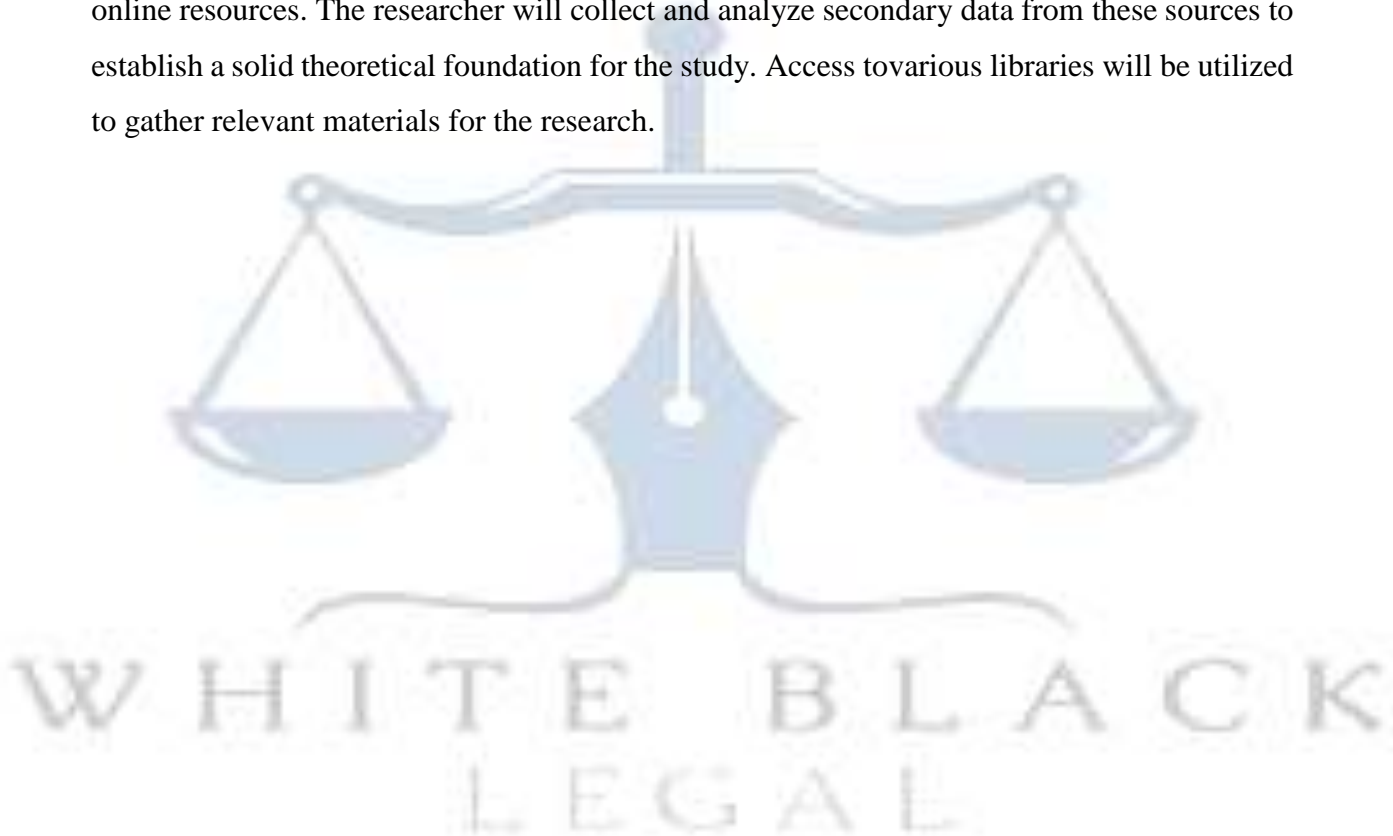
prolonged duration of investigations are significant concerns. These delays often exceed the mandated one-month period, leading to prolonged legal proceedings and backlog of cases. Resource constraints and difficulties in obtaining forensic evidence contribute to these delays, hindering the timely delivery of justice to victims.

Bajpai Asha (2017)⁷ POCSO Act of 2012 represents a crucial legal framework aimed at safeguarding children from sexual abuse and exploitation. Despite its significance, the implementation of the POCSO Act has encountered various challenges, leading to concerns regarding its effectiveness in achieving its objectives. One significant issue revolves around delays in the filing of charges, often resulting from prolonged investigations that extend beyond the mandated one-month period. Resource constraints and difficulties in obtaining forensic evidence contribute to these delays, impeding the swift delivery of justice to victims.

Lodha and Avinash (2017)⁸ illustrated that the notable concern is the need for adequate resources, both financial and personnel, to support investigating agencies. Insufficient resources hinder timely and efficient investigations, further exacerbating delays in the legal process. In addition, there is a pressing need for comprehensive training programs for investigating officers. Such training should cover various aspects, including evidence collection, interviewing child victims and witnesses, and understanding the legal complexities of the POCSO Act. To address these challenges and enhance the effectiveness of the POCSO Act, several measures can be considered. These include the establishment of dedicated special courts for POCSO cases to expedite legal proceedings, as well as fostering collaboration among relevant agencies to ensure the immediate provision of essential support to victims..

RESEARCH METHODOLOGY

The research methodology employed in this study will be primarily based on doctrinal research in the legal field. Doctrinal research involves organizing, categorizing, and analyzing legal structures, frameworks, and case laws to identify new insights through extensive review of legal literature, without conducting any field work. Various sources, both published and unpublished, will be utilized to gather such data. These include books, statutes, case law, journals, newspapers, official government reports, and other relevant materials, including online resources. The researcher will collect and analyze secondary data from these sources to establish a solid theoretical foundation for the study. Access to various libraries will be utilized to gather relevant materials for the research.



CHAPTER 2

THE EFFICACY OF THE POCSO ACT: A LEGAL FRAMEWORK

The legal framework addressing child sexual abuse in India primarily revolves around the , which was enacted to provide robust protection to children from sexual offences. Here's an overview of the legal framework addressing child sexual abuse in India:

The POCSO Act is the primary legislation addressing child sexual abuse in India. The Act also includes provisions for the establishment of special courts, mandatory reporting of offences, and measures for the protection and support of child victims.

The POCSO Act aims to prevent and deter sexual offences against children by establishing stringent legal provisions and penalties for offenders. By creating a strong legal deterrent, the Act seeks to discourage perpetrators from committing sexual crimes against children. The Act is designed to ensure the protection and safety of children who are victims of sexual abuse. It includes provisions for the immediate and long-term support, rehabilitation, and care of child victims, as well as measures to safeguard their privacy and dignity during legal proceedings. The Act mandates the prompt reporting of sexual offences against children and provides for the establishment of special procedures and mechanisms to ensure swift investigation and prosecution of such cases. This helps in ensuring timely justice for child victims and holding perpetrators accountable for their actions

Need of the POCSO Act, 2012

The POCSO, 2012 was enacted in India to address the pressing issue of child sexual abuse and exploitation. Here are some reasons why the act was necessary:

Protecting Children: The primary objective of the POCSO Act is to safeguard children from sexual offenses. Children are vulnerable members of society, and they need special legal protection against sexual abuse, exploitation, and harassment.

Legal Framework: Before the enactment of the POCSO Act, there were gaps in the legal framework regarding child sexual abuse. The act provides a comprehensive legal framework to define different forms of sexual abuse against children and prescribe stringent punishments for offenders.

Definition of Offenses: The act clearly defines various forms of sexual offenses against children, including sexual assault, sexual harassment, and child pornography. This clarity helps in effectively addressing and prosecuting such crimes.

Child-Friendly Procedures: The POCSO Act incorporates child-friendly procedures for reporting, recording, and trial of offenses. It aims to minimize the trauma experienced by child victims during investigation and trial proceedings.

Special Courts: The act mandates the establishment of special courts for the speedy trial of cases related to child sexual abuse. These courts are dedicated to handling POCSO cases, ensuring timely justice for victims.

Protection of Identity: The act prohibits the disclosure of the identity of child victims, thereby protecting their privacy and preventing social stigma.

Mandatory Reporting: The act imposes a duty on certain categories of people, such as teachers, doctors, and child welfare officers, to report instances of child sexual abuse. This provision helps in identifying cases early and providing timely intervention.

Prevention and Rehabilitation: The act emphasizes not only on punishment but also on the rehabilitation and support of child victims. It outlines measures for the rehabilitation and social reintegration of victims, ensuring their well-being beyond legal proceedings.

Overall, the POCSO Act, 2012 was necessary to provide a robust legal framework for addressing the issue of child sexual abuse and ensuring the protection and welfare of children in India.

2.2 CONSTITUTIONAL PROVISIONS

The Indian Constitution guarantees certain fundamental rights to all citizens, including the right to life, dignity, and personal liberty. The POCSO Act aligns with these constitutional principles by providing legal protections to children and ensuring their right to live free from sexual abuse and exploitation, thereby upholding their dignity and personal liberty.

The Constitution prohibits discrimination on various grounds, including age. The POCSO Act ensures that all children, regardless of their gender, caste, religion, or socio-economic background, are entitled to equal protection under the law against sexual offenses. It emphasizes the importance of treating all child victims with sensitivity and without prejudice during legal proceedings.

The POCSO Act is designed to ensure that child victims of sexual offenses have access to justice and are provided with a fair and child-friendly trial process. It incorporates mechanisms such as special courts, child-friendly procedures for recording statements, and provisions for legal assistance and support services to uphold the principles of justice enshrined in the Constitution.

The Indian Constitution includes Directive Principles of State Policy, which lay down guidelines for the state to promote the welfare of its citizens, including children. The POCSO Act reflects these principles by emphasizing the importance of rehabilitation and support services for child victims of sexual abuse, in line with the state's duty to protect the rights and interests of children.

Trail Under POCSO Act

POCSO Act is a legal framework in India that aims to protect children from sexual abuse and exploitation. Under this act, a trial for offenses related to sexual abuse against children would follow a specific procedure:

Filing of Complaint: The first step typically involves filing a complaint with the police regarding the alleged offense. The complaint can be filed by the victim, their parents or guardians, or any other person aware of the offense.

Registration of FIR: Once a complaint is filed, the police register a First Information Report (FIR) and initiate an investigation into the matter.

Investigation: During the investigation, the police gather evidence, record statements of witnesses and the victim, collect medical evidence if necessary, and gather any other relevant information.

Charge Sheet: After completing the investigation, the police submit a charge sheet to the court, detailing the evidence gathered and the charges against the accused.

Trial: The trial begins with the court framing charges against the accused based on the evidence presented in the charge sheet. The trial is conducted in accordance with the procedures laid down in the Code of Criminal Procedure (CrPC) and the POCSO Act.

Examination of Witnesses: During the trial, witnesses, including the victim, are examined and cross-examined by the prosecution and defense lawyers respectively.

Verdict: After the completion of the trial, the court pronounces its verdict based on the evidence and arguments presented before it. If the accused is found guilty, they are convicted and sentenced according to the provisions of the POCSO Act.

It's essential to note that the POCSO Act emphasizes the need for a child-friendly environment during the trial to ensure the well-being and comfort of the victim. Special provisions are made for the recording of the victim's statement and for conducting the trial in a manner that is sensitive to the needs of the child.

DEVELOPMENTS IN THE POCSO ACT

The Criminal Law (Amendment) Act, 2013 introduced several significant amendments to various Indian laws, including the POCSO Act. Some key developments related to the POCSO Act under the Criminal Law (Amendment) Act, 2013, include:

Expanded Definition of Sexual Offenses: The amendment broadened the definition of sexual offenses against children under the POCSO Act, encompassing a wider range of acts such as penetrative sexual assault, sexual harassment, and using children for pornographic purposes.

Enhanced Penalties: The amendments introduced stricter penalties for offenders convicted under the POCSO Act. This included increased minimum sentences and fines for various sexual offenses against children, with the aim of deterring such crimes and ensuring justice for victims.

Gender-Neutral Language: The amendments also made the language of the POCSO Act gender-neutral, recognizing that both boys and girls can be victims of sexual abuse. This change aimed to ensure equal protection under the law for all children, irrespective of gender.

Provisions for Child Pornography: The amendments specifically addressed the issue of child pornography by incorporating provisions to penalize the production, distribution, and possession of pornographic material involving children. This was a crucial step in combating the online sexual exploitation of children.⁹

Mandatory Reporting Obligations: The amendments introduced mandatory reporting obligations for certain individuals, such as teachers, healthcare professionals, and members of the public, who come across instances of child sexual abuse. Failure to report such offenses could result in penalties under the law.

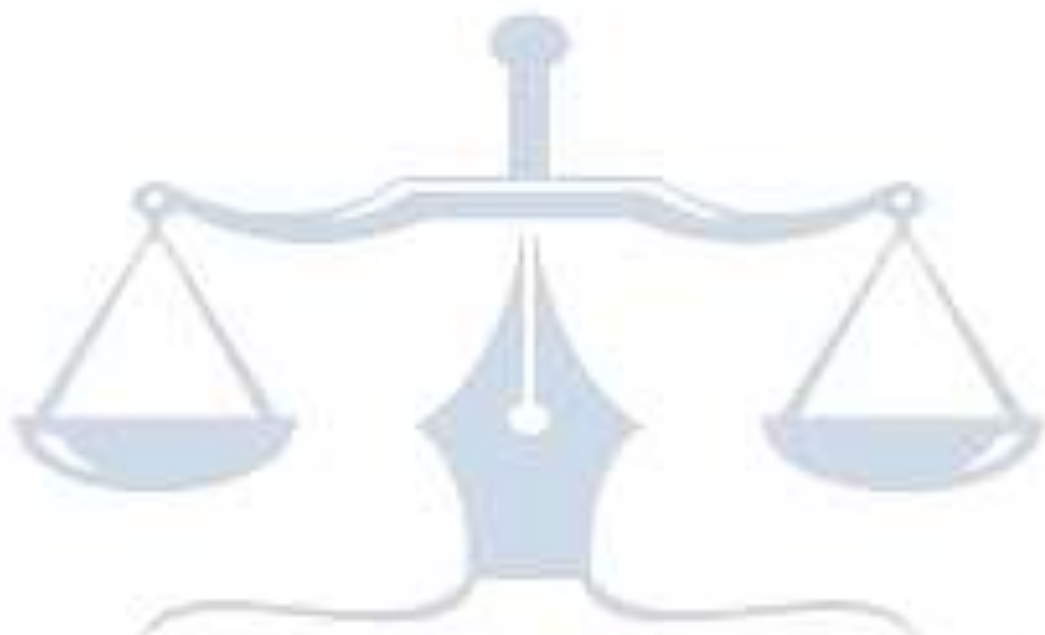
Special Courts and Procedures: The amendments emphasized the establishment of special courts and child-friendly procedures for the trial of cases under the POCSO Act.

These specialized courts are equipped with trained personnel and facilities to ensure a sensitive and supportive environment for child victims during legal proceedings.

Long term strategies to decrease Sexual Assaults

Some kinds of restorative justice system have been added in the criminal justice system of various nations such as US, Canada and New Zealand. As per NLUJ's report on Restorative Justice and Child Abuse in India, "Restorative justice is about repairing the harm done to relationships. It is about encouraging accountability of offenders through reconciliation practices, to reduce recidivism. It is about resolving conflict between the offender and victim by enabling dialogue between them in a safe environment".

Always survivors, particularly children take years to process sexual abuses endured by them. "Legal proceedings and tiresome trials don't always address the psychological needs and emotional recovery of survivors. It works at different levels by applying victim-centric approaches, offender-centric approaches and dialogue based approaches. Offender focused programmes include Circles of Accountability and Support where social community workers or volunteers help former sex-offenders reintegrate into society. Victim focused programmes include measures to reduce shame and stigma, provide rehabilitation, restitution and educate and empower victims."¹⁰ Open discussions introduced in schools and starting conversations is a small step in the direction of working towards a safer, more inclusive society. Rethinking our idea of retributive justice and its efficacy is the need of the hour.



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CHAPTER 3

ISSUES AND CHALLENGES OF POCSO ACT

POCSO Act represents a significant legislative step towards safeguarding children from sexual abuse and exploitation. However, despite its noble intentions, the effective implementation of the POCSO Act faces several challenges and complexities. In this introduction, we will explore some of the key issues and challenges associated with the POCSO Act.

The prevalence of child sexual abuse remains a pervasive and deeply concerning issue in India. Despite legal provisions, many cases of child sexual abuse still go unreported or are inadequately addressed due to various societal and cultural factors, including stigma, fear of retaliation, and lack of awareness about legal remedies.

The successful prosecution of offenders under the POCSO Act often encounters hurdles in the legal system. Challenges such as delays in the judicial process, inadequate infrastructure and resources, and the complex nature of gathering evidence in cases involving child victims can impede the timely delivery of justice.

Ensuring the sensitive and child-friendly handling of cases under the POCSO Act is crucial but often difficult to achieve. The traumatizing nature of sexual abuse can significantly impact child victims, requiring specialized support services, trained personnel, and appropriate legal procedures tailored to their needs.

In addition, there are challenges related to the enforcement of protective measures and rehabilitation of child victims. Despite provisions for the establishment of special courts, child welfare committees, and dedicated support services under the POCSO Act, ensuring their effective functioning and accessibility to all children in need remains a persistent challenge.

DELAY IN LODGING FIR

POCSO stands for the Protection of Children from Sexual Offences Act. If there's a delay in lodging a First Information Report (FIR) under POCSO, it can complicate the legal process. However, there can be various reasons for such delays. For instance, the victim might have been hesitant to report due to fear, shame, or intimidation. Additionally, lack of awareness about legal procedures or social stigma might also contribute to delays. Nonetheless, it's crucial for authorities to investigate any allegations promptly to ensure justice and protection for the victim. Delay doesn't necessarily invalidate the claim, but it can impact the strength of the case and the availability of evidence.

Issues Related to Age determination

There have been issues and controversies surrounding the age determination process under the POCSO Act. Some of these issues include:

Lack of proper documentation: In many cases, particularly in rural areas or among marginalized communities, children may not have birth certificates or other official documents to prove their age. This can lead to difficulties in accurately determining their age for legal purposes.

Reliability of medical tests: Age determination in cases of sexual offenses against children often involves medical tests such as ossification tests, dental examination, and radiological tests. However, the accuracy and reliability of these tests have been questioned by experts, leading to concerns about incorrect age determinations.

Discrepancies between medical and school records: In some cases, there may be discrepancies between the age recorded in medical tests and the age recorded in school records or other official documents. This can create confusion and raise doubts about the accuracy of age determination.

Challenges in assessing maturity: The POCSO Act defines a child as any person below the age of 18 years. However, assessing the maturity level of a child, particularly

adolescents, can be subjective and may vary from case to case. This can affect the interpretation of the law and the severity of punishment for offenders.

Legal challenges: Age determination issues in POCSO cases can also lead to legal challenges, with defense lawyers often questioning the validity of age determination methods and arguing for leniency based on discrepancies or uncertainties in age determination.

Addressing these issues requires a multi-faceted approach, including improving access to documentation, enhancing the reliability of age determination methods, providing training to medical professionals and legal practitioners, and ensuring that the rights of child victims are protected throughout the legal process.

Low Representation of Women in the Police Force

The low representation of women in the police force is indeed a multifaceted issue with several underlying factors contributing to it. While it's crucial to address this disparity, it's also important to recognize the significant impact it has on various aspects of law enforcement and community relations.

One of the primary reasons for the underrepresentation of women in the police force is the persistence of gender stereotypes and biases. Law enforcement has historically been viewed as a male-dominated profession, which can discourage women from pursuing careers in policing. Additionally, there may be cultural or societal expectations that discourage women from entering law enforcement roles.¹¹

Another factor is the existence of systemic barriers within police departments, including outdated recruitment practices, limited opportunities for advancement, and workplace cultures that may be unwelcoming or hostile to women. These barriers can create significant challenges for women who are interested in joining or advancing within the police force.

Lapses in the Investigation:

POCSO Act can occur for various reasons, and addressing these issues is critical for ensuring justice for survivors and holding perpetrators accountable. One common challenge is the lack of specialized training for law enforcement officers tasked with investigating POCSO cases. These cases often require a nuanced understanding of child psychology, trauma-informed interviewing techniques, and forensic procedures specific to child sexual abuse. Without adequate training, investigators may inadvertently re-traumatize survivors during interviews or mishandle evidence, leading to compromised investigations and lower conviction rates.

Moreover, societal attitudes and cultural norms around child sexual abuse can further complicate investigations. Stigma, victim-blaming, and reluctance to report abuse can discourage survivors and their families from coming forward, making it more challenging for investigators to gather evidence and build strong cases.

Another issue is the lack of coordination and communication between different agencies involved in responding to POCSO cases, including law enforcement, child protection services, medical professionals, and legal authorities. Without effective collaboration, crucial information may be overlooked, and survivors may fall through the cracks of the system.

To address these lapses in POCSO investigations, comprehensive reforms are needed at multiple levels:

Resource Allocation: Governments and law enforcement agencies should allocate adequate resources, including funding, staffing, and forensic equipment, to support effective and timely investigations of POCSO cases.

Public Awareness and Education: Efforts to raise awareness about child sexual abuse, reduce stigma, and promote reporting are essential for encouraging survivors to come forward and facilitating thorough investigations.

Legal Reforms: Legal reforms may be necessary to strengthen the legal framework for prosecuting POCSO cases, including provisions for protecting survivors, enhancing penalties for perpetrators, and streamlining legal procedures to expedite justice

No Conditions to Prove Recent Intercourse:

In cases under the POCSO Act, proving recent intercourse can be challenging due to various factors, including the nature of the offense, the age of the victim, and the lack of physical evidence in some cases. The inability to establish recent intercourse can pose significant challenges in prosecuting perpetrators and obtaining convictions. Here are some reasons why proving recent intercourse can be problematic in POCSO cases:

Delayed Reporting: In many cases of child sexual abuse, victims may delay reporting the abuse due to fear, shame, or confusion. As a result, there may be a significant gap between the time of the offense and when it is reported to law enforcement authorities, making it difficult to establish recent intercourse.

Lack of Physical Evidence: Unlike cases involving adult victims where physical evidence such as DNA may be present, cases involving child victims may lack such evidence due to various reasons, including delayed reporting, lack of forensic examination, or the absence of physical injury.

Non-Penetrative Offenses: Not all offenses under the POCSO Act involve penetrative sexual acts. Many offenses, such as sexual assault, sexual harassment, and using children for pornography, may not leave physical evidence of recent intercourse, making it challenging to prove the offense based solely on physical evidence.

Reliance on Victim Testimony: In cases where physical evidence is lacking, prosecutors may rely heavily on the testimony of the victim to establish the occurrence of recent intercourse. However, the credibility of the victim's testimony may be questioned by the defense, particularly if there are inconsistencies or discrepancies in the victim's statements.

Recommendations to strengthen POCSO act

To strengthen the POCSO Act and enhance its effectiveness in safeguarding children from sexual abuse and exploitation, several recommendations can be considered:

Increased Awareness and Education: Implement comprehensive awareness campaigns to educate children, parents, caregivers, and the community about the provisions of the POCSO Act, child rights, and reporting mechanisms.

Training for Law Enforcement Officials: Provide specialized training to law enforcement officials, including police officers, prosecutors, and judges, on handling cases of child sexual abuse sensitively, effectively, and in accordance with the provisions of the POCSO Act.

Specialized Courts and Fast-Track Procedures: Establish dedicated POCSO courts with trained judges and prosecutors to ensure speedy trials and timely justice for child victims. Implement fast-track procedures to expedite the adjudication of POCSO cases.

Enhanced Support Services: Strengthen support services for child victims, including counseling, legal aid, medical assistance, and rehabilitation programs, to address their physical, emotional, and psychological needs.

Strict Enforcement and Monitoring: Ensure strict enforcement of the POCSO Act and regular monitoring of its implementation at all levels, including through the establishment of oversight mechanisms and periodic review of its effectiveness.

Harsher Penalties for Offenders: Consider amendments to the POCSO Act to impose stricter penalties, including mandatory minimum sentences, for perpetrators of child sexual abuse and exploitation, to serve as a deterrent and ensure justice for victims.

CHAPTER 4

JUDICIAL PERSPECTIVES ON POCSO

The judiciary serves as a cornerstone in interpreting and enforcing the provisions of the POCSO Act, ensuring that justice is served and that the rights of child victims are upheld. In this context, it is imperative to explore the multifaceted role of the judiciary in addressing child sexual offences under the POCSO Act. From interpreting legal provisions to adjudicating cases, the judiciary plays a pivotal role in shaping the legal landscape surrounding child protection and combating sexual crimes against minors. This paper delves into the various dimensions of the judiciary's role in enforcing the POCSO Act, highlighting its significance in providing justice, protection, and support to child victims of sexual abuse.

Alakh Alok Srivastava v. Union of India and Others ¹²

The case of Alakh Alok Srivastava v. Union of India and Others pertains to the issue of child sexual abuse and the implementation of the POCSO Act in India. Alakh Alok Srivastava, a lawyer and social activist, filed a Public Interest Litigation (PIL) in the Supreme Court of India seeking various measures to address the rising incidents of child sexual abuse in the country.

The PIL highlighted several key issues, including the need for stricter implementation of the POCSO Act, faster disposal of cases related to child sexual abuse, and the establishment of special courts to handle such cases. It also emphasized the importance of raising awareness about child rights and providing adequate support services for victims of abuse.

The Supreme Court, upon hearing the petition, may issue directives to the central and state governments to take necessary steps to address the concerns raised in the PIL. Such directives may include guidelines for the effective implementation of the POCSO Act,

measures to expedite the trial process, and provisions for the rehabilitation and support of victims.

Hari Dev Acharya @ Pranavanand and Ors v. State ¹³

The case revolves around a significant legal issue related to the interpretation of Section 11 of the POCSO Act, 2012. In this case, Hari Dev Acharya and Pranavanand filed a petition challenging the constitutional validity of Section 11 of the POCSO Act.

Section 11 of the POCSO Act deals with the issue of 'presumption of guilt' and states that in prosecutions under the Act, where sexual abuse has been committed against a child, the Special Court shall presume that the accused is guilty unless proven otherwise. The petitioners argued that this provision violates the fundamental right to a fair trial enshrined in Article 21 of the Constitution of India.

The case likely involved a thorough examination of the constitutional validity of Section 11 of the POCSO Act, taking into consideration legal precedents, constitutional principles, and international conventions related to child rights and protection.

The outcome of the case would have significant implications for the interpretation and application of the POCSO Act in cases of child sexual abuse. It could potentially lead to amendments in the Act or judicial guidelines to ensure that the rights of both the accused and the victim are protected while addressing the serious issue of child sexual offenses.

State of Karnataka v. Shivanna¹⁴

The case dealt with the issue of delay in disposal of criminal cases, particularly in cases of sexual offenses against children.

The case stemmed from a petition filed by the State of Karnataka against a High Court order granting bail to the accused, Shivanna, who was charged under the POCSO Act, 2012, for allegedly sexually assaulting a minor girl. The High Court had granted bail on the grounds of delay in the trial proceedings.

The Supreme Court, while considering the appeal, emphasized the importance of expeditious disposal of cases involving sexual offenses against children, particularly under the POCSO Act. It observed that delay in trial proceedings can lead to various consequences, including trauma to the victim, loss of evidence, and undermining the deterrent effect of the law.

In its judgment, the Supreme Court reiterated the duty of the judiciary to ensure speedy justice in such cases and directed the trial courts to prioritize the disposal of cases under the POCSO Act. It also emphasized the need for cooperation from all stakeholders, including the police, prosecution, and defense, to expedite the trial process.

The case underscores the judiciary's commitment to ensuring timely justice, especially in cases involving crimes against children, and serves as a reminder of the importance of expeditious disposal of such cases to uphold the rights and interests of the victims.

Gaya Prasad Pal @ Mukesh v. State ¹⁵

In this case, the Supreme Court of India examined whether the act of forcibly inserting fingers into the private parts of a minor girl constitutes "penetrative sexual assault" as defined under Section 3 of the POCSO Act. The accused, Gaya Prasad Pal alias Mukesh, was charged under various sections of the POCSO Act for allegedly committing this offense against a minor girl.

The Supreme Court's judgment in this case is significant as it clarifies the scope of "penetrative sexual assault" under the POCSO Act. The Court likely analyzed the language of the Act, relevant legal precedents, and legislative intent to determine whether the act described in the case falls within the definition of penetrative sexual assault.

The outcome of the case would have provided guidance on how the courts should interpret and apply the provisions of the POCSO Act in cases involving sexual offenses against children. It would have also contributed to the jurisprudence surrounding child

protection laws in India. This case involves the interpretation of the POCSO Act, 2012, particularly regarding the definition of "penetrative sexual assault" under the Act.

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The court determined that the accused committed the crime of kidnapping the victim, leading to charges being brought against them. Justice Sharma denied the request for leniency, observing that despite being in a relationship with a minor, the accused knowingly engaged in physical intimacy, disregarding their responsibilities. Highlighting the societal repercussions of such actions, the court referenced the increasing occurrences of minors being kidnapped for sexual exploitation under the pretext of marriage. It called for a societal accountability approach within the criminal justice system, stressing the importance of safeguarding societal interests. The court emphasized the detrimental impact on societal progress when girls are compelled to abandon education due to such incidents. Ultimately, it upheld the conviction, underscoring the collective duty to foster a secure environment where girls can pursue education.

CHAPTER 5

CONCLUSION

The POCSO Act provides a comprehensive legal framework for addressing various forms of sexual abuse and exploitation against children. By defining offenses, prescribing stringent punishments, and establishing special procedures for investigation and trial, it offers a robust mechanism for combating such crimes.

Central to the Act is a child-centric approach, prioritizing the welfare and protection of children. It recognizes the vulnerability of children to sexual offenses and aims to provide them with effective legal recourse, support services, and rehabilitation measures to mitigate the trauma and impact of abuse.

Beyond punitive measures, the Act emphasizes preventive strategies, including awareness campaigns, sensitization programs, and measures to promote reporting and intervention in cases of child sexual abuse. By fostering a culture of vigilance and accountability, it seeks to deter potential offenders and create safer environments for children.

The Act incorporates various legal safeguards to ensure fair and expeditious adjudication of cases, such as special courts, child-friendly procedures, and provisions for anonymity and privacy of victims. These safeguards help minimize secondary victimization and facilitate the swift dispensation of justice.

India's enactment of the POCSO Act aligns with its international obligations under conventions such as the UNCRC and reflects its commitment to upholding children's rights and protection from all forms of exploitation and abuse.

In conclusion, several issues related to the implementation and interpretation of the POCSO Act of 2012 have been highlighted in the legal discourse. Ambiguity in Definitions: The Act lacks precise definitions for key terms such as "sexual intent," "any other act," "touching," and "physical contact," leading to interpretational challenges and legal ambiguities.