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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

# **EXAMINING CHILD SEXUAL ABUSE LAWS IN INDIA: A STUDY OF POCSO**

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**ABSTRACT:** Children are the cornerstone of society, holding immense importance in the nation's development. They embody the future of a country, shaping its destiny. The welfare and protection of children are paramount for the progress of any nation. In India, child sexual abuse stands as a significant challenge. To address this issue, the Protection of Children from Sexual Offences Act (POCSO) was enacted, aiming to safeguard children's rights. The implementation of this Act marks a pivotal moment in ensuring children's well-being. This paper examines the prevalence of child sexual abuse and assesses the impact of the POCSO Act in tackling this issue. Additionally, it delves into the challenges and controversies surrounding the Act and evaluates its contribution to India's efforts in combating child sexual abuse.

**Keywords: Child, Child sexual abuse, POCSO Act, Offences, Punishment.**

## **INTRODUCTION**

Child sexual abuse is a pervasive global issue found across the world. Children, being immature, vulnerable, and reliant on others, are susceptible to various challenges such as health issues, disciplinary measures, academic pressures, and sexual exploitation. The progress of any nation hinges upon the well-being and development of its children, who represent the most fragile segment of society. The Government of India is prioritizing initiatives related to child care, welfare, and development, recognizing the crucial importance of educating and nurturing the future generation of India.

As of January 2, 2024, India's population reached 1.41 billion, with children comprising 35%+ of the total population. The Constitution of India incorporates various rights aimed at safeguarding the rights of all citizens, including children. Article 15 of the Constitution specifically addresses the protection

of children's rights, emphasizing the need for special attention to their welfare. It mandates the enactment of necessary laws and policies to ensure the protection and promotion of their interests and rights.

Child sexual abuse remains a largely overlooked and concealed issue in public discourse. Until the introduction of appropriate legislation, only cases of rape against children were acknowledged as offenses. Instances of child sexual assault, harassment, inappropriate behavior, and involvement in pornography were not legally recognized for prosecution.

### **SOME FACTS ABOUT CHILD ABUSE CASES IN INDIA**

1. Sexual abuse and trafficking is highly prevalent and are among the serious problem of India.
2. A study on adolescents in Kerala showed that 36 per cent of boys and 35 per cent of girls had experienced sexual abuse.
3. A study was conducted by the Government of India on 17220 children and adolescents. The study reported that every second child in the country was sexually abused.
4. Highest sexual abuse was reported in Assam (57.27%) followed by Delhi (41%), Andhra Pradesh (33.87%) and Bihar (33.27%).
5. Uttar Pradesh state has reported the highest number of sexual abuse cases.
6. 50 per cent of the abusers were known to the child. The incidents took place in a position of trust and responsibility.
7. The children between the age group of 5-12 faced higher level of abuse. Most of the cases are largely unreported.

### **AREA OF RESEARCH**

The area of research is confined to India as the study deals with the Protection of Children against Sexual Offences (POCSO) Act, 2012. The researcher has specifically analyzed the POCSO Act in detail.

### **SIGNIFICANCE OF THE RESEARCH**

The incidence of child sexual abuse is rapidly rising, with India ranking among the top five countries with the highest number of reported cases. Prior to the enactment of the POCSO Act, the criminal law in India was insufficient in addressing the sensitivity and gravity of this issue. The Law



Commission, in its 172nd report, conducted a comprehensive review of the legal framework concerning sexual offenses. It recommended various amendments to address the shortcomings in dealing with sexual offenses against children.

In 2012, the POCSO Act was passed with a view to protect the children from sexual exploitation. As, there was the need for the separate act. The present paper in this regard will deal with the POCSO in detail and the challenges and controversies related to it.

### **RESEARCH QUESTION**

The problem identification is a first step to solve and discuss any problem. The fundamental question in this research is related to whether the Criminal Law of India is adequate to deal with the cases of child sexual abuse after the implementation of this Act.

### **OBJECTIVES OF THE RESEARCH**

1. To study the impact of POCSO Act after its enactment and enforcement.
2. To assess the contribution of POCSO Act in solving the cases of child sexual abuse.

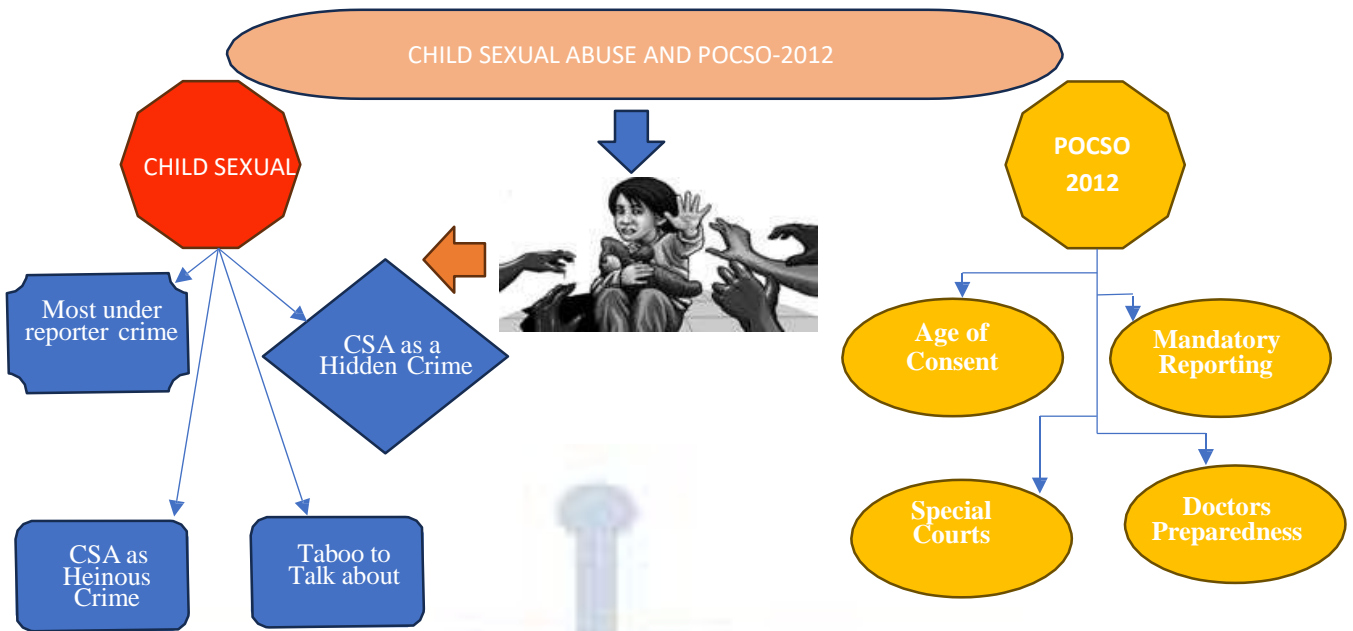
### **REVIEW OF LITERATURE**

The researcher has examined numerous national and international laws pertaining to criminal law, focusing particularly on provisions and cases involving child sexual abuse. In her study, the researcher scrutinized the Indian Penal Code, the POCSO Act, reports on child sexual abuse issued by UNICEF, and other national and international laws concerning this topic.

### **PROTECTION OF CHILDREN AGAINST SEXUAL OFFENCES (POCSO) ACT, 2012**

#### **1. POCSO 2012:**





### The 2012 POCSO Act's scope:

The POCSO Act, 2012 is not the only piece of legislation in India that addresses issues of child sexual abuse. POCSO stands for the defense of minors against sexual assaults. The provisions of the law of Criminal Procedure, 1973, Indian Penal Code, 1860, Juvenile Justice Act, 2015 and Information Technology Act, 2000 encompass the process and define the offenses; the POCSO Act cannot be considered a comprehensive criminal law in and of itself.

### Essential features of the POCSO Act- 2012:

Following are some of the key elements of the POCSO Act:

The victims' identity will remain private: The media method is outlined in Section 23 of the POCSO Act, and it imposes a duty to protect the victim's (child's) identity unless the Special Court has approved the disclosure.

According to clause (2) of this section, "no reports in any media shall disclose the identity of a child, including his name, address, photograph, family details, school, neighborhood and any other particulars which may lead to the disclosure of the identity of the child."

The law under Section 23 was reaffirmed by the Calcutta High Court in *Bijoy @ Guddu Das v. The State of West Bengal* (2017). It said that anyone who violates this rule, including a police officer, will be prosecuted.

- ***Gender-neutral provisions:*** Unlike IPC, the POCSO Act does not differentiate between victims and perpetrators based on gender. This no doubt overcomes one of the biggest problems of the Indian Penal Code. The definition of a child includes anyone below 18 years of age.
- ***Mandatory reporting of child abuse:*** Sexual assault cases typically take place in private, and perpetrators often try to conceal the events. According to Sections 19 to 22 of the POCSO Act, third parties have been required to report these instances to carry out the POCSO Act.

## **Child Pornography:**

The Ministry of Women and Child Development has made it plain what constitutes child pornography, including sexually explicit digital content involving children, to curtail this horrible crime. The POCSO Act, of 2012, established a definition for child pornography and included digital or computer-generated content to its purview.

- According to the law, child pornography is "any visual depiction of sexually explicit conduct involving a child, which includes a photograph, video, digital, or computer-generated image (that is) indistinguishable from an actual child."
- In addition, it would be considered child pornography if "an image created, adapted, or modified" to depict a kid was used. This would also apply to animated films, cartoons, etc.
- In addition, the Cabinet increased the penalties from the initial recommendation of Rs. 1,000 to Rs. 5,000 for possessing child pornographic material without removing it or reporting it. A person could receive a punishment of up to three years if they save such content for future distribution, except for when they use it as evidence in court.
- Child pornography will no longer be tolerated in any capacity.
- Some of these clauses were also included in the POCSO Amendment Act of 2019 but

were no longer in effect.

## **Gaps or Loopholes in the POCSO Act of 2012:**

Despite being a strong Act, various flaws have been found by the police and other parties involved in its execution.

### **The following list includes a few of the flaws:**

1. If the victim child declines to have a medical examination but the investigating officer and family members are ready to let the child have one, there are no provisions in the POCSO Act on how to proceed.
2. As per section 27 (2) of the POCSO Act, a lady doctor must conduct the medical examination of a female victim kid, no remedy is provided under the Act if there is no lady doctor on duty present at the government or private hospital to examine the victim girl child.
3. Since only men are designated as accused parties in cases under Section 3 of the POCSO Act, women are not covered by it. In accordance with the terms of section 3 of the Act, a woman who commits a sexual offense is not subject to prosecution.
4. The Act deems it unlawful for a teenager to have intercourse with another adolescent or with an adult. The POCSO Act makes no mention of permission from those under the age of 18, and it makes no mention of the likelihood that two minors will engage in any form of sexual conduct. As a result, it restricts the personal freedom of people under the age of 18 by making their consensual sexual activity illegal and making them targets of societal harassment.
5. Most nations have set their age of consent at 14 to 16 years old, according to the Bombay High Court's observation in the case of XYZ v. State of Maharashtra & Anr. In nations like Germany, Italy, Portugal, Hungary, etc., 14-year-olds are seen as old enough to consent to sex. In Wales and London, the legal age of consent is 16. The legal drinking age in Japan is 13. The legal age of consent is 16 in Bangladesh and 16 in Sri Lanka. As a result, the court determined that the age of consent for sex under the Protection of Children from Sexual Offences Act (POCSO Act) and the Indian Penal Code (IPC) should be reviewed because many of the cases that come before courts involve young girls who have engaged in consensual sex in romantic relationships and because of these cases, the courts are becoming overloaded.

6. This Act forbids child marriage and marriage consummation, however distinct personal laws of different communities in India permit these practices. The POCSO Act of 2012 does not provide any explanation in this regard.
7. The Act is more influenced by biological than mental age. Clinical psychologists claim that even though a young woman between the ages of 22 and 23 may have the mental ability of a four-year-old child, the POCSO Act does not provide her with any recourse or justice if she is the victim of one of the sexual offenses listed in the Act.
8. It is well known that the majority of cases go unreported due to feelings of shame, embarrassment, anger, and frustration; however, if the family members fail to report the case in accordance with section 21 (1) of the Act, which makes filing an FIR by the family members or the head of the office whose jurisdiction the offense occurred mandatory, they will face punishment. The victims' families typically don't want to report the incidents because of concern that they would be re-victimized during medical examinations, court appearances, or by society's lack of understanding.
9. Contrary to the common rule of "innocent until proven guilty," the accused are regarded as guilty under this Act until they are proven innocent. The Act is extremely punitive since it places the onus of proving innocence on the accused. The natural justice precepts are disregarded in this situation.
10. Section 22 (2) of the POCSO Act, 2012 states that children who make false reports or give misleading information will not be punished. The same clause of the POCSO Act, however, imposes penalties on those who file a fictitious complaint in an effort to humiliate, extort, threaten, or defame another person. Since children are not subject to these penalties, many persons abuse this exemption by using small children to file fictitious complaints and make false claims.
11. The POCSO Act is silent regarding the documentation needed to demonstrate the victim's or accused's age, which presents numerous problems for both parties. In this context, Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 is frequently used by courts. The birth certificate, academic transcript, or matriculation certificate of the kid may be used as identification under this rule.
  - 11.1. The child must undergo an ossification test to demonstrate age in the absence of these documents, even though a passport is a legal document. This test gives the accused person the benefit of the doubt by giving an approximate age estimate for the youngster.

There is no specific language in the Act that addresses which documents should be considered for confirming the child's age or if the benefit of the doubt should be given.

- 11.2. However, a division bench of the Supreme Court made up of Justices S. Ravindra Bhat and Aravind Kumar has noted that School Transfer Certificates cannot be used to determine a victim's age under the POCSO Act, 2012 and that whenever a dispute over a person's age arises in the context of that person being a victim under the POCSO Act, the courts must follow the procedures outlined in Section 94 of the Juvenile Justice Act (Care and Protection) Act.
12. Due to the strict terms of the Act, which prevent bail from being granted and require periodical trials, the under-trial offenders imprisoned in jail in POCSO Act cases must remain there for a lengthy amount of time, overcrowding the jails and frequently causing problems for the jail officials. Even if you are falsely accused in such circumstances, it can be exceedingly challenging to obtain bail.
13. A clause in the law states that "support persons" must be provided to the children of the victims, although this requirement is rarely followed, which frequently results in the accused being exonerated. According to Rule 4 (8) of the POCSO Rules, 2020, the Child Welfare Committee may provide a support person to assist the child during the course of the investigation and in coping with the trauma of the case, but it is typically seen that support persons are not provided to the victim, leading to acquittal in the majority of cases registered under this Act and psychological and mental pressure on the victim and her family throughout the entire investigation and judicial process. According to the Supreme Court of India, "support persons" were given to the victim in just 4% of the cases reported under the POCSO Act, 2012. As they stand by the victims throughout the judicial process, "support persons" should be made available to the victims to reduce the number of acquittals under this Act.
14. The victim is given compensation under Section 33(8). The amount of compensation to be given to the victim kid and who would receive the money on the child's behalf are not specified in the Act.
15. The behaviour is biased in Favor of the victim and transgresses natural justice by failing to behave in a way that is consistent with justice, equity, and morality.
16. The POCSO Act defines bare touch as sexual penetration. As an illustration, a father who pats his child on the back, cheek, or head to convey affection or bestow blessings may be sentenced to prison.

17. The legislature intended to have a deterrent effect by maintaining the provisions of severe punishments and penalties against the accused, but in practice, many cases result in acquittals, making it impossible to provide the victims with redress and justice.
18. If public employees or officers in positions of authority commit any offense of aggravated assault on a child victim under this Act, it is not stated in the Act how they will be tried.
19. Who oversees guaranteeing and requesting reports regarding whether the investigation of POCSO cases was handled strictly in accordance with the POCSO Act's provisions is not specified in the Act.
20. It is debatable whether the death penalty would dissuade criminals from committing similar offenses or if it would just motivate them to destroy evidence and kill victims to silence witnesses.
  21. Section 29 of the POCSO Act of 2012 states that if someone is charged with committing, aiding, or attempting to commit a crime, the Special Court must believe that person has committed or attempted to commit the crime unless the opposite can be proven. While wealthy accused parties can hire competent attorneys to represent them in court, a poor man will be unable to escape the POCSO Act's restrictions if he is implicated because he cannot afford to hire an effective attorney.
22. According to section 35 of the POCSO Act, 2012, the Special Court must complete the trial within a year of the date it took cognizance of the offence and must record the victim child's testimony within 30 days of the Special Court doing so. Despite this provision, however, the number of POCSO Act cases still pending continues to rise, and the Special Court has not yet completed any of the cases.
23. The Act makes no mention of how much the accused individual should be compensated if he or she is wrongfully accused.

The Protection of Children against Sexual Offences (POCSO) Act was implemented in 2012 with the primary aim of shielding children from sexual abuse and exploitation. Additionally, it mandates the establishment of special courts to handle cases related to child sexual abuse. The Act also outlines the adoption of child-friendly procedures for recording evidence, conducting investigations, and trial proceedings. As per the POCSO Act of 2012, a "child" is defined as an individual who has not yet reached the age of 18 years.

The POCSO Act prescribes the following sexual offences against children: - 1. penetrative sexual

assault, 2. trafficking of children for sexual abuse 3. aggravated penetrative sexual assault, 4. sexual assault, 5. using a child for pornographic purposes The term „aggravated“ is used if the sexually abused child is mentally ill or when the abuse is committed by a person against the child in a matter of trust. This Act is gender neutral legislation. The Act defines „child“ as any individual below the age of 18 years. It provides protection to every child from sexual abuse. The Act makes provisions for child friendly atmosphere through all stages of the judicial process. The Act gives paramount importance to the principle of “best interest of the child”. The provisions of this Act provide a mechanism for reporting, recording of evidence, investigation of the case and speedy trial of offences. The Act without revealing the identity of the child handles the case through designated special court. The special court in this regard determines the amount of compensation to be paid to the child to cover the child’s medical treatment, rehabilitation and counselling.

Some of the important provisions of POCSO Act are as follows –

1. After receiving a report of child abuse or any case related to this, the Police Officer in any circumstances must bring a case to the attention of Child Welfare Committee within 24 hours.
2. The Police Officers who are handling case must be in civil clothes while recording the child’s statement so that the child does not get rebuked
3. The statement of the child related to the crime must be recorded in the presence of the person whom he/she trusts.
4. For the collection of forensic evidence, the medical examination of the child should only be conducted by the lady doctor in presence of a person that the child trusts.
5. Under this Act, special courts have been set up to conduct speedy trials.
6. It is the duty of these court that they will not disclose the identity of the child and the child will not be exposed to the accused while recording the statement.
7. The child will not be asked to repeat his/her testimony again and again and he/she can give his/her testimony through video also.
8. It should be noted that the case should not get delay and are disposed of within a year from the date of being it reported.
9. If the child needs any assistance, an interpreter, translator, special educator or any other expert should be present in court.
10. The child of the family should be awarded compensation for the medical treatment and rehabilitation of the child.



### **3. Types of Crime against Children:**

The POCSO cases are organized according to the criminal activity that each one of them engaged in. The offenses are broken down into seventeen components, some of which include subparts. They are cited as being simple to track.

Sl.	Crime Head-Wise
1	Murder
1.1	Murder with Rape/POSCO
1.2	Other Murder
2	Abetment of Suicide of Child
3	Attempt to commit Murder
4	Infanticide
5	Foeticide
6	Exposure and Abandonment
7	Simple Hurt
8	Grievous hurt
9	Kidnapping and Abduction of Children
9.1	Kidnapping and Abduction
9.1.1	Missing Children Deemed as Kidnapped
9.1.2	Other Kidnapping & Abduction
9.2	Kidnapping and Abduction for the purpose of Begging
9.3	Kidnapping and Abduction in order to Murder
9.4	Kidnapping from Ransom
9.5	Kidnapping and Abduction of Minor Girls to compel her for
9.6	Procuration of Minor Girls
9.7	Importation of Girls from Foreign Country
9.8	Other Kidnapping & Abduction
10	Human Trafficking
11	Selling of minors for Prostitution
11.1	Boys
11.2	Girls
12	Buying of Minors for Prostitution
12.1.	Boys
12.2.	Girls
13	Rape
14	Attempt to commit Rape

15	Assault on woman with intent to Outrage her modesty
16	Insult to the Modesty of Women
17	Other IPC Crimes

### **PUNISHMENTS UNDER THE ACT**

1. For the penetrative sexual assault, section 4 of the Act provides for punishment not less than 7 years which may extent to 5 years imprisonment and a fine.
2. For aggravated penetrative sexual assault, Section 6 of the act lays down the punishment which should not less than 10 years; it may also extend to rigorous life imprisonment, and a fine.
3. Section 10 lays down the punishment for aggravated non-penetrative sexual assault done by a person of trust and authority.  
The punishment which should not be less than 5 years and it may also extend to 7 years, and a fine.
4. In the case of non-penetrative sexual assault committed with a sexual intent, Section 10 provides for punishment for not less than 3 years which may extend to 5 years and a fine.
5. In the case of sexual harassment, section 12 provides for punishment of three years and a fine.
6. In the case of using a minor for pornographic purposes, Section 14 (1) provides for the punishment of 5 years and a fine and in case of second conviction, the punishment would be 7 years and a fine.
7. In the case of attempt of offence, Section 18 of the act provides for 1 year punishment and fine.
8. In case of failure to report an offence, under section 21 of the Act the punishment is of six months and fine.

### **CHALLENGES AND CONTROVERSIES**

The issue of child sexual abuse presents multifaceted dimensions as it impacts children physically, mentally, socially, economically, psychologically, and legally. While the procedures outlined in the POCSO Act of 2012 are designed to be child-friendly, there are areas where its provisions are silent, thereby leading to challenges and controversies. Several specific issues warrant discussion, including:

1. **MEDICAL EXAMINATION** – According to Section 27(2), the POCSO Act mandates that in case of a female child, the medical examination should be done by a female doctor. While, Section 166A of Indian Penal Code mandates the on duty Government medical officer will examine the rape victim without fail. This problem arises when female doctor is not available.
2. **CONSENT REGARDING MEDICAL EXAMINATION** – The POCSO Act is silent and does not give direction in the case if the child refuses to undergo medical examination but the investigating officer is insisting for the medical examination. The provision related to this issue need to be cleared.

However, in the case of treatment, it needs to be initiated as soon as possible without getting into the matter of consent to protect the life of the child.

3. **CONSENTED SEXUAL INTIMACY** – In POCSO Act, sexual contact between two adolescents or between adolescent and adult are considered illegal under this Act. No exception has been granted in the Act. Under this Act, however it is proposed that any consensual sexual between consenting adolescents act should not be an offence. But, as per the latest amendment of Indian Penal Code, the age of consent for sex has been fixed to 18 years.

4. **CHILD MARRIAGE** – In India, child marriage is prohibited under secular law. But, it enjoys sanction under personal law. It creates a matter of complication under the POCSO act, 2012 because child marriage and consummation of child marriage are considered illegal.

5. **TREATMENT COST** – Under POCSO Act, the law has provided legal obligation on the medical establishment to provide free medical facilities to the child. In the absence of proper facilities or if the costly procedure is required, the child may be deprived from comprehensive treatment which he/she is entitled to get. It is a responsibility of the state to reimburse the cost.

6. **REPORTING ISSUE** – It is fact that most of the child abuse cases are not reported properly because of the fear of getting insult, embarrassed and ashamed in front of the whole society. For family members, reporting the cases of child abuse is highly personal and difficult decision. To avoid torture of fear, insult, taunting, they usually avoid which results in non-reporting of cases.

7. **TRAINING ISSUE** – A child is the most vulnerable part of society. They are highly sensitive and emotional part of the community. The medical trainers, doctors, practitioners, teachers, judicial, advocates and law enforcing agencies in the POCSO Act, 2012 are need to be trained urgently as far as the child friendly interrogation, medical checkup, counseling and regular follow up is concerned.

Apart from these, research, monitoring, child education, concept of teaching a child about good touch and bad touch, illiteracy of parents, lack of awareness are some another important challenges under this Act which are need to be addressed and resolved properly.

## **CONCLUSION**

The POCSO Act has undeniably played a significant role in addressing cases of child abuse in India. Enacted in 2012, the POCSO Act comprehensively recognizes almost every form of sexual abuse, making it an exemplary piece of legislation. However, despite its strengths, there remain several challenges yet to be addressed. It is imperative that children who have suffered sexual abuse receive psychological support and counseling in a compassionate and child-friendly manner. It is incumbent

upon every member of society to adopt a holistic approach towards combating child abuse in India, actively monitoring and intervening in cases of suspected abuse. Regrettably, cases of child sexual abuse are vastly under-reported in India, reaching epidemic proportions.

Healthcare professionals, particularly those attending to children, must prioritize creating a supportive and nurturing environment, minimizing distress for the child. The future of this country is in jeopardy as crimes against children rise. It is the duty of every organization to take the necessary precautions to ensure the protection and safety of children. When it comes to child rape, the crime of rape is serious in and of itself. It is one of the most disgusting treatments that any child could ever experience. At a young age, when they should be learning to develop and see the world from entirely new perspectives, children are taught to feel every facet of betrayal, mistrust, and hatred.

Therefore, there is a dire need for system efficiency and transparency, and police must apply their authority impartially. Common people and parents must be made acutely aware of their rights and how to exercise them. They must also be made aware that they can approach the police without fear since they do not need to be afraid. An effective training session for teachers and students is also required. The kid line should be posted throughout the facility and hospitals so that anybody may report any case of known or suspected child abuse.

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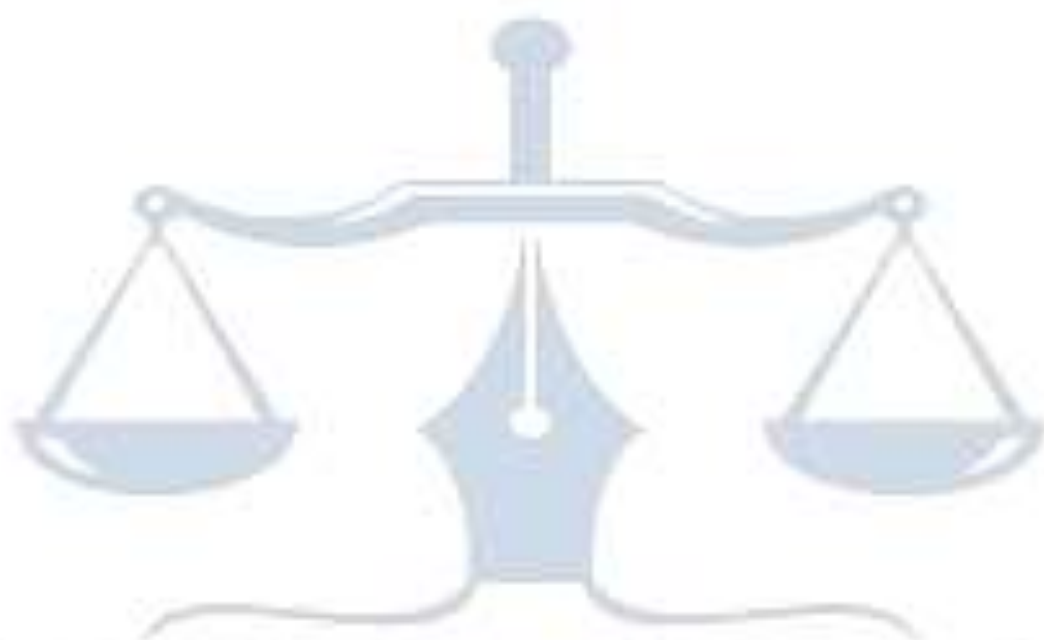
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