

## “Child Sexual Abuse: The Scope of POCSO Act and its Failure”

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*“Whilst child abuse may be committed behind closed doors, it shouldn’t be swept under the carpet”*

*-Constance Briscoe<sup>1</sup>*

### ABSTRACT

Sexual abuse of children remains a pervasive global issue with an impact that runs deep and lasts long. We took legislative measures such as enacting POCSO Act<sup>2</sup>, ensuring legal protection to vulnerable children, yet the implementation of that act itself faces obstacles – from systemic in nature to societal barriers. The author in the article has well discussed the basic provisions of POCSO and the extent as proposed but when contrasted against its on-field realities. Certain issues related to delays in disposing of cases, less preparedness in the case of magistrates, and procedural lags in investigation are highlighted by the article. This also includes issues of resource inefficiency, delayed charges filing, and problems in age determination processes. With case studies and an analysis, the article provides for the urgent need for improvement, training, and interagency collaboration to effectively combat sexual abuse of children and by addressing these challenges and fostering awareness, collaboration, and oversight, we as a nation can strive toward a safer environment for children and ensure that the POCSO act fulfils its mandate of protecting the rights and dignity of every child.

**Keywords:** Sexual Abuse, POCSO, Challenges, Awareness.

### 1. INTRODUCTION

Child sexual abuse cuts across the divides of geography, culture, and socioeconomic status, continues to haunt survivors long into adulthood, if not their life. To remedy this serious condition, laws that protect children in the face of sexual offences began to be applied, including enactment of the POCSO Act for protection of the most vulnerable sectors of society and our children themselves. One landmark legislation that paved the way toward a new regime was the POCSO Act enacted in 2012. Through its provisions, it was endeavored to grant comprehensive protection for children against several forms of sexual exploitation, ranging

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<sup>1</sup> Constance Briscoe is a former barrister and one of the first black-female recorders in UK.

<sup>2</sup> The Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012 (India).

from assault, harassment, to pornography. Thus, it introduced severe punishment upon offenders, formed special courts which were expected to deliver speedy judgment, and carried out child-friendly procedures in processes of investigation as well as in prosecution.

But on the ground, this is an area of challenge and failure for the POCSO Act, in spite of all the noble intentions and paper-thin strengths. It's plagued by systemic inefficiencies and social and cultural barriers, all the way to the pursuit of justice for child sexual abuse victims.

This article looks at the POCSO Act to understand the intended scope as well as the stark realities of its implementation. In summary, the article will summarize key provisions under the Act by discussing its objectives and mechanisms to protect children from sexual offenses.

The arduous challenges that have prevented the proper implementation of this Act range from loopholes in the legal aspects to societal views that perpetuate silence and impunity. All these challenges highlight the systemic failures and shortcomings of POCSO Act in dealing with the scourge of child sexual abuse. And we confront head-on these issues so as to enable us to pave the way for a well-informed discourse and meaningful reform which can better guard the rights and dignity of our children.

### **1.1. CHILD SEXUAL ABUSE AND THE NEED FOR LEGAL PROTECTION:**

Childhood is the time of innocence and exploration. It's a phase where your experience should nurture your growth. However, for countless children worldwide, this innocence is shattered by the insidious crime of child sexual abuse. As defined by the World Health Organization-"the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared", CSA transcends geographical, cultural, and socio-economic boundaries, leaving a path of devastation.

Prevalence studies paint a chilling picture of the scope of this issue. While reliable data on child sexual abuse is notoriously difficult to obtain due to underreporting and stigma, studies suggest that millions of children fall victim to sexual abuse each year<sup>3</sup>, with many more suffering in silence. These atrocities occur within the confines of homes, schools, communities, and institutions, perpetrated by individuals who often exploit trust and authority. The consequences of CSA are profound and far-reaching, leaving scars that may last a lifetime. Beyond the immediate physical and psychological trauma, survivors often grapple with long-term effects such as PTSD, depression, anxiety, substance abuse, and difficulties forming healthy relationships. The societal repercussions are equally grave, with research indicating a correlation between childhood sexual abuse and various social ills, including increased likelihood of perpetuating cycles of abuse and engaging in criminal behaviour.

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<sup>3</sup> Global prevalence of past-year violence against children: a systematic review and minimum estimates. Hillis S, Mercy J, Amobi A, Kress H. *Pediatrics* 2016; 137(3): e20154079.

### **1.1.1. UNICEF REPORT:**

The very first global and regional data on CSA, conducted by UNICEF and released on 10 October 2024, reveal alarming statistics regarding the prevalence of such crimes worldwide. According to the report, over 370 million females, or 1 in 8, had experienced rape/sexual assault before turning major. These estimates were released in anticipation of the International Day of the Girl and emphasize the pervasive nature of sexual violence against children, particularly adolescent girls, and its long-term implications.<sup>4</sup>

## **2. STUDY AND METHODOLOGY:**

This comprehensive study, carried out by UNICEF, was based on extensive data collection and analysis across multiple regions worldwide. The study utilized both global and regional data to form the first-ever estimates on childhood sexual violence, focusing on multiple forms of abuse, including physical, online, and verbal forms of sexual violence. The research drew on surveys, case studies, and statistical analysis to examine the extent of the violation, particularly among adolescent girls aged 14 to 17, where a significant spike in cases was observed. This age range was identified as a critical period, during which victims are particularly vulnerable to repeated instances of abuse.

The methodology of the study was an analysis of "contact" forms of sexual violence, such as rape and physical assault, as well as "non-contact" forms, which include online or verbal abuse. This approach will give a better view of the scale of sexual violence because it accounts for direct and indirect forms of victimization. The findings show how pervasive this violation is, which cuts across geographical, cultural, and economic borders, that the world cannot wait for much longer.<sup>5</sup>

## **3. GLOBAL AND REGIONAL RESULTS:**

The survey results show that when non-contact types of sexual violence are included, 650 million girls and women are affected, or 1 in 5. These results indicate the vast scale of violence and abuse committed against young women and girls. Sub-Saharan Africa emerges as the region with the highest proportion of victims, with 79 million girls and women affected (22%). Eastern and South-Eastern Asia follows closely with 75 million (8 per cent), while Central and Southern Asia report 73 million cases (9%). Europe and Northern America account for 68 million victims (14%), while Latin America and the Caribbean report 45 million (18%), Northern Africa and Western Asia show 29 million (15%), and Oceania reports the highest ratio, with 34% of girls affected, amounting to 6 million victims.<sup>6</sup>

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<sup>4</sup> UNICEF Releases Global Estimates on Sexual Violence Against Children," 10 October 2024, <https://www.unicef.org/reports/sexual-violence-global-estimates-2024>)

<sup>5</sup> UNICEF Releases Global Estimates on Sexual Violence Against Children," 10 October 2024, <https://www.unicef.org/reports/sexual-violence-global-estimates-2024>)

<sup>6</sup> UNICEF Releases Global Estimates on Sexual Violence Against Children," 10 October 2024, <https://www.unicef.org/reports/sexual-violence-global-estimates-2024>)

### 3.1. IMPACT ON FRAGILE SETTINGS:

The data reveals that children living in fragile settings, such as areas with weak institutions, UN peacekeeping operations, or regions experiencing political or security crises, face heightened risks of sexual violence. In these contexts, the prevalence of rape and sexual assault in childhood rises to slightly more than 1 in 4 girls. These alarming figures underscore the vulnerability of children in conflict zones, where gender-based violence, including rape, is frequently used as a weapon of war. Catherine Russell, Executive Director of UNICEF, stressed the urgency of addressing these issues, stating, "***Sexual violence against children is a stain on our moral conscience. It inflicts deep and lasting trauma, often by someone the child knows and trusts, in places where they should feel safe.***"<sup>7</sup>

POCSO was created in India to provide an effective legal framework to protect children from crimes such as- sexual assault, sexual harassment, and pornography<sup>8</sup>. This Act safeguards the child's interest at every stage of the judicial process. It considers any sexual behaviour with a child under the age of 18 years, as illegal<sup>9</sup>. Although laws exist to address CSA, many cases remain unreported due to the societal stigma surrounding abuse.<sup>10</sup> The system fails to address the needs of children who have faced sexual assault adequately<sup>11</sup>. Therefore, there is a pressing need for more robust legal protection and societal awareness to combat CSA effectively.

CSA as a grave issue, affects millions of children across the globe. It includes a range of sexually illicit acts such as fondling, enticement for engagement in sexual conduct, intercourse, pornography involving a child, and online child enticement by cyber-predators<sup>12</sup>. WHO defines CSA as any sexual activity involving a child who lacks the capacity to fully understand, give informed consent, or is not developmentally prepared to participate.<sup>13</sup>

In Indian context, a child is any individual under the age of eighteen years<sup>14</sup>. The 2011 census provided that the total population of children is 4441.5 lakhs.<sup>15</sup> Unfortunately, a significant percentage of these children need protection and care. In 2020, approximately 28.9% of children had experienced some crime, but only 65.6% of such accidents were ever reported.<sup>16</sup>

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<sup>7</sup> Available at: UNICEF Australia | Children's Charity That Delivers Hope (Last visited on May 1, 2024).

<sup>8</sup> Available at: <https://www.indiacode.nic.in/bitstream/123456789/9318/1/sexualoffencea2012-32.pdf> (Last visited on 29 April, 2024).

<sup>9</sup> Available at: <https://www.clearias.com/child-sexual-abuse/> (Last visited on 1 May, 2024).

<sup>10</sup> Available at: <https://www.clearias.com/child-sexual-abuse/> (Last visited on 1 May, 2024).

<sup>11</sup> Available at: <https://www.clearias.com/child-sexual-abuse/> (Last visited on 1 May, 2024).

<sup>12</sup> Available at: <https://www.clearias.com/child-sexual-abuse/> (Last visited on 29 April, 2024).

<sup>13</sup> Available at: <https://www.clearias.com/child-sexual-abuse/> (Last visited on 29 April, 2024).

<sup>14</sup> Available at: <https://www.clearias.com/child-sexual-abuse/> (Last visited on 30 April, 2024).

<sup>15</sup> Available at: <https://www.clearias.com/child-sexual-abuse/> (Last visited on 30 April, 2024).

<sup>16</sup> Available at: <https://www.clearias.com/child-sexual-abuse/> (Last visited on 30 April, 2024).

Since 2017, NCRB data has shown a 94.47% increase in sexual offenses against children. Figure 1 has shown that Uttar Pradesh leads in this category, with 8,136 cases out of the total 63,414 reported in 2022.<sup>17</sup>

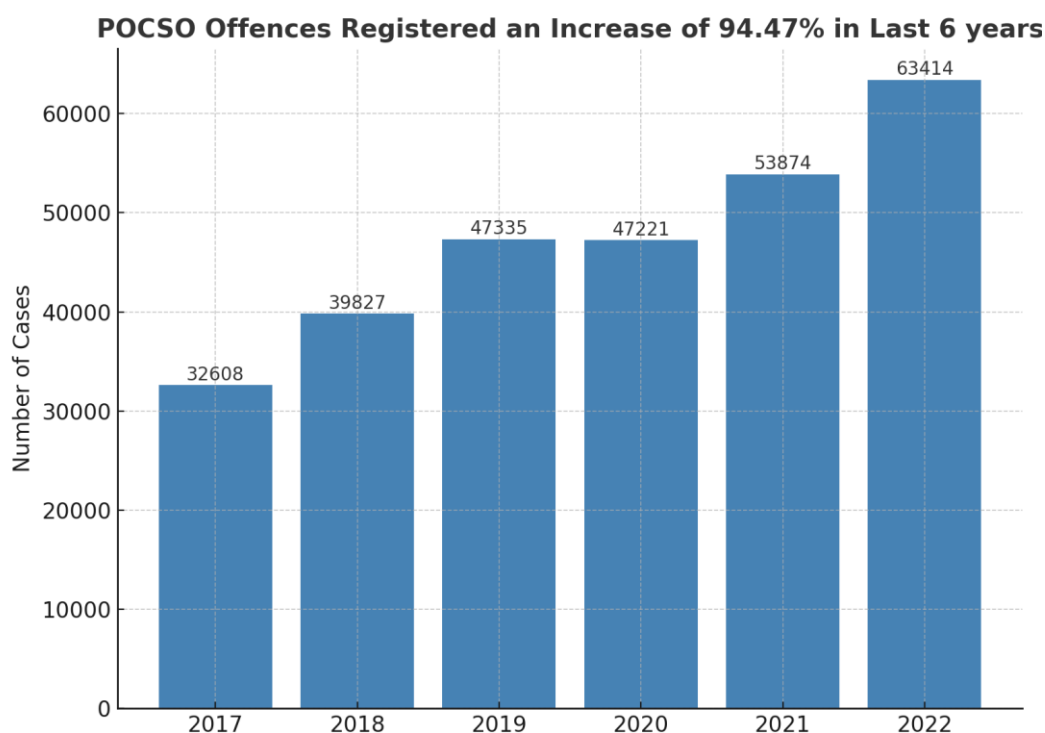


Figure 1

### 3.2. CHALLENGES IN IMPLEMENTING THE POCSO ACT:

The JALDI Initiative<sup>18</sup> at the Vidhi Centre for Legal Policy partnered with DE JURE<sup>19</sup> program at the World Bank to examine the judiciary's role in implementing the POCSO Act in India by conduction of a study back in 2022 -

<sup>17</sup> National Crime Records Bureau (NCRB), "Crime in India 2022: Statistics," Ministry of Home Affairs, Government of India, December 4, 2023.

<sup>18</sup> Justice, Access, and Lowering Delays in India.

<sup>19</sup> Data Evidence for Justice Reform.

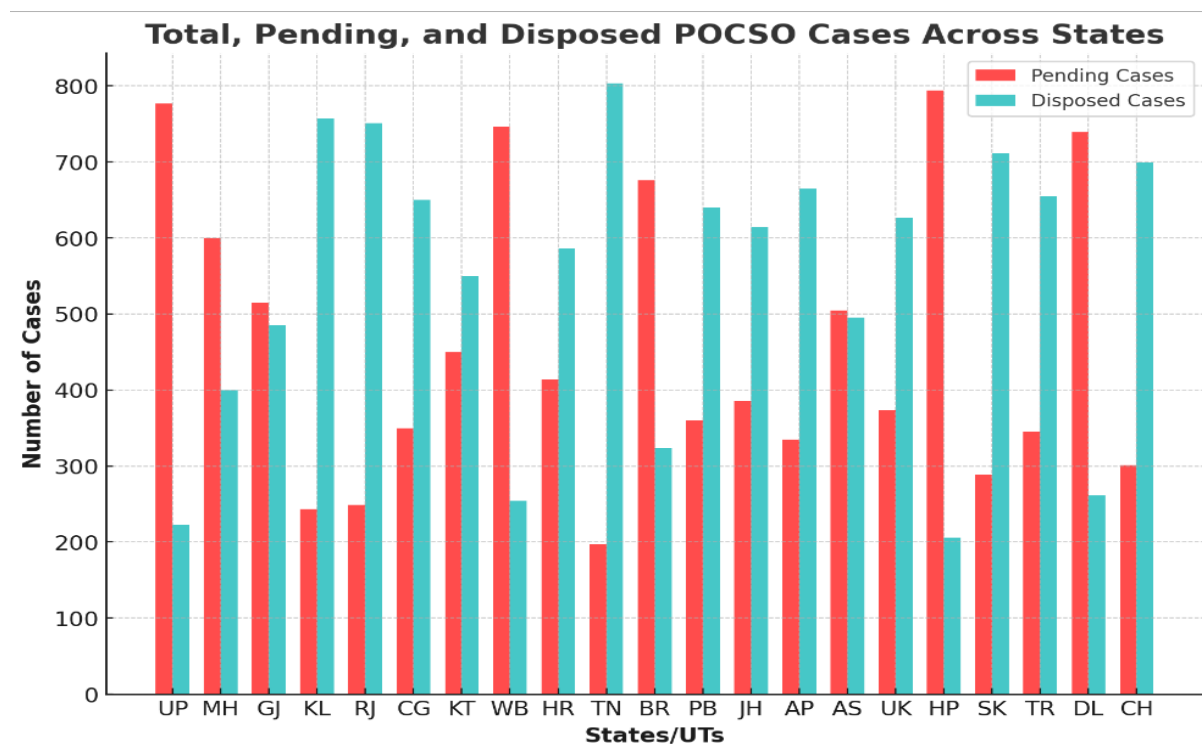


Figure 2

As per this study-Across most states, to dispose a POCSO case, it takes an average of 509.78 days (almost 1 year and 5 months), exceeding the one-year timeframe mandated by Section 35 of the Act. Figure 2 shows how this trend has varied from state to state by throwing light on the disposal patterns in such states. Notably, only Chandigarh and West Bengal manage to conclude convictions within this statutory period. Furthermore, courts tend to allocate more time to cases resulting in convictions compared to those resulting in acquittals.<sup>20</sup>

For each conviction in any POCSO case, there are three instances of acquittal, marking a notable disparity in outcomes across all states examined. Notably, in Andhra Pradesh, acquittals outnumber convictions by sevenfold, while in West Bengal, the ratio is five to one in favour of acquittals. Kerala stands out as the only state where the margin of acquittals from convictions is relatively narrow, with acquittals comprising 20.5% of total disposals and convictions making up 16.49%. The accompanying graph illustrates the proportions of acquittals, convictions, and transfers across various states.<sup>21</sup>

Sect. 28(1)<sup>22</sup> of the act provides that state governments, through consulting the CJ of the High Court, are mandated to designate a Sessions Court as a special court to handle offenses under

<sup>20</sup> Available at: <https://vidhilegalpolicy.in/research/a-decade-of-pocso-developments-challenges-and-insights-from-judicial-data/> (Last visited on 29 April, 2024).

<sup>21</sup> Available at: <https://vidhilegalpolicy.in/research/a-decade-of-pocso-developments-challenges-and-insights-from-judicial-data/> (Last visited on 29 April, 2024).

<sup>22</sup> The Protection of Children from Sexual Offences Act, 2012, § 28(1), No. 32, Acts of Parliament, 2012 (India).

the act, aiming to expedite trials.<sup>23</sup> However, Sec. 28(2)<sup>24</sup> stipulates that if a Sessions Court has already been designated as a children's court under the Commissions for Protection of Child Rights Act or any other law, it can also function as a special court under the act.<sup>25</sup> The significance of this provision lies in establishing specialized courts dedicated to POCSO offenses. Despite the statutory requirement for each district to have an exclusive POCSO court, these directives have been consistently disregarded. This neglect reflects the sad attitude of state government bureaucracies, evidenced by their failure to formulate manuals or fulfil other necessary formalities for the law's implementation without intervention from the Supreme Court. Similarly, the act has faced similar challenges, with JJ Boards and special courts for women only gaining recognition as Special courts in various districts after Supreme Court intervention, even three years after the act's implementation.<sup>26</sup>

Judges appointed to these specialized courts lack expertise in the subject matter, because they received no prior training from the state government in reference to such matters and often fail to thoroughly familiarize themselves with the laws pertaining to such cases. Consequently, they perceive cases of child sexual abuse (CSA) as an added burden, resulting in ineffective and inefficient handling, contrary to the intentions of the POCSO Act of 2012.<sup>27</sup> This deficiency was exemplified in a case heard by a special court in Thane, Maharashtra, on December 22, 2016, a 16-year-old girl, allegedly raped by her father, was issued a perjury notice.<sup>28</sup> Although she initially testified against her father, she became uncooperative during cross-examination, mirroring strategies commonly employed in rape trials involving adult women to undermine the victim's credibility by questioning her sexual history and character. Such actions contradict the child-friendly approach mandated by the POCSO Act, which prioritizes the "best interest of the child" throughout the judicial process.<sup>29</sup> Section 22(2)<sup>30</sup> of the act notably exempts children under the age of 18 from penalties for providing false information. However, in this instance, the special court incorrectly relied on outdated provisions of the POCSO bill, which referred false complaints from children above 16 to the Juvenile Justice Board. This clause was subsequently removed upon the bill's passage, rendering the judgment based on obsolete legislation. There is an urgent need to educate medical, judicial, and law enforcement agencies about the act to ensure comprehensive care and justice for these affected children, who represent the future of our nation. Awareness and training of all stakeholders are critical components in this endeavor.

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<sup>23</sup> The Protection of Children from Sexual Offences Act. 2012. Available at: <http://www.wcd.nic.in/childact/childprotection31072012.pdf> (Last visited on 1 May, 2024).

<sup>24</sup> The Protection of Children from Sexual Offences Act, 2012, § 28(2), No. 32, Acts of Parliament, 2012 (India).

<sup>25</sup> The Protection of Children from Sexual Offences Act. 2012. Available at: <http://www.wcd.nic.in/childact/childprotection31072012.pdf> (Last visited on 4 May, 2024).

<sup>26</sup> Available at: <http://www.indiagate.com/news/there-should-not-bail-in-pocso-case> (Last visited on 2 May, 2024).

<sup>27</sup> Available at: <http://www.indiagate.com/news/there-should-not-bail-in-pocso-case> (Last visited on 2 May, 2024).

<sup>28</sup> Available at: <http://www.hindustantimes.com/cities/thane-court-pulls-up-minor-girl-for-falsely-accusing-father-of-rape/story-RfVbf3M3ekTAEWSSelJaHK.html> (Last visited on 1 May, 2024).

<sup>29</sup> The Protection of Children from Sexual Offences Act. 2012. Available at: <http://www.wcd.nic.in/childact/childprotection31072012.pdf> (Last visited on 3 May, 2024).

<sup>30</sup> The Protection of Children from Sexual Offences Act, 2012, § 22(2), No. 32, Acts of Parliament, 2012 (India).

#### 4. SOME OTHER MAJOR ISSUES WITH THE POCSO ACT ARE PROVIDED AS UNDER:

- **Issue pertaining Investigation:**

Women representation in the Police Force: While POCSO stipulates that only a woman sub-inspector should record the statement of the affected child at their residence or chosen location, this requirement becomes challenging to fulfil due to the comparatively lower representation of women in the police force. Consequently, many police stations lack female staff, hindering compliance with this provision.

Investigative Shortcomings: Despite provisions allowing for the recording of statements through audio-video means, there have been instances of lapses pertaining to investigation and preservation of crime scenes.<sup>31</sup> For instance, in the case of *Shafhi Mohammad*<sup>32</sup>, the Supreme Court emphasized the duty of investigating officers to photograph and videograph crime scenes in heinous crimes for evidentiary purposes. However, the absence of adequate infrastructure to safeguard electronic evidence poses challenges to the admissibility of such evidence.

Lack of Examination by JM: Although POCSO mandates the recording of the prosecutrix's statement by a judicial magistrate (JM), these statements are often not subject to cross-examination during trial. Additionally, retracting statements by the prosecutrix typically goes unpunished, undermining the credibility of such statements in court proceedings.

- **Age Determination:**

While the JJ Act<sup>33</sup> guides the age determination process for juvenile delinquents, the POCSO Act lacks a similar provision for juvenile victims. In the case of *Jarnail Singh*<sup>34</sup>, the Supreme Court emphasized that this statutory provision should also apply to determining the age of child victims. However, without any legislative amendments or specific directives, investigating officers (IOs) continue to rely on school admission-withdrawal registers for age verification. In absence of hospitals or other reliable records, parents often struggle to establish the child's age in the courts.

Age estimation through medical evaluation is often imprecise, resulting in minors being erroneously classified as adults in many cases. Once a minor is incorrectly determined to be an adult, the likelihood of acquittal increases, particularly when considering factors such as consent or the absence of injuries to private parts.

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<sup>32</sup> *Shafhi Mohammad vs The State Of Himachal Pradesh*, SLP(CrI.) No. 2302 of 2017.

<sup>33</sup> *Juvenile Justice (Care and Protection of Children) Act, 2015*, No. 2, Acts of Parliament, 2015 (India).

<sup>34</sup> *Jarnail Singh vs State of Haryana*, 2013 (7) SCC 263.



- **Filing Charges Delayed:**

According to this act, the process of investigation of a POCSO matter under the act should be concluded within a month from either the date of the offence's commission or the date of its reporting.<sup>35</sup>

However, in reality, the investigation often extends beyond the stipulated one-month period due to various factors such as insufficient resources, delays in securing forensic evidence, or the intricacies of the case. Consequently, these delays can impede the prompt filing of charges and the initiation of trial proceedings, thereby potentially compromising the expediency and efficacy of justice.

- **Absence of Conditions to Prove Recent Intercourse:**

Courts presume the accused's guilt under the POCSO Act. Unlike the law of Evidence, which requires proof of recent intercourse and the victim's consent, the POCSO Act does not mandate such conditions for prosecution.

Nevertheless, despite establishing the victim's minor age, courts often fail to adopt this presumption during trial. Consequently, the anticipated rise in conviction rates is improbable under these circumstances.

#### **4.1. SOME CASES WHERE THE ACT FAILED:**

- **Unnao Rape Case:**

This case involved a minor girl who was raped by a Member of Legislative Assembly (MLA) in Unnao, Uttar Pradesh. Despite the POCSO Act's provision for speedy trials, the case dragged on for years due to various factors, including political interference and procedural delays<sup>36</sup>. This case highlighted the limitations of the POCSO Act in ensuring timely justice.

- **Kathua Rape Case:**

This case involved the cold-blooded rape and murder of a girl in Kathua, Jammu and Kashmir. The victim's family faced significant obstacles in their quest for justice, including threats and social ostracization.<sup>37</sup> This case underscored the challenges in implementing the POCSO Act, particularly in areas with deep-seated communal tensions.

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<sup>35</sup> Delay in POCSO Cases Puts Justice System to Shame: Karnataka High Court," *Deccan Herald*, (Mar. 8, 2023), available at: <https://www.deccanherald.com/india/karnataka/delay-in-pocso-cases-puts-justice-system-to-shame-karnataka-high-court-3190400>. (Last Visited on October 15, 2024).

<sup>36</sup> Available at: <https://www.civildaily.com/news/pocso-10-years-analysis/> (Last visited on 3 May, 2024).

<sup>37</sup> Available at: <https://www.civildaily.com/news/pocso-10-years-analysis/> (Last visited on 3 May, 2024).

- **Case Study from Punjab:**

In a study conducted in Punjab, it was discovered that in five registered cases, victims were devoid of counselling, interim compensations, verification of safe environments, and rehabilitation facilities as prescribed under sections 4<sup>38</sup> and 6<sup>39</sup> of the Act.<sup>40</sup>

## 5. SUGGESTIONS AND CONCLUSION:

While POCSO provides a comprehensive structural framework for providing protection to children from sexual offences, its effectiveness is often undermined by various social, cultural, and administrative barriers. These include stigma, victim-blaming, cultural taboos, fear of the legal process, and low conviction rates. As a result, many cases of child sexual abuse go unreported or unpunished, denying justice to the victims. Here are few suggestions for overcoming the discussed limitations of POCSO act:

- **INTERAGENCY COLLABORATION:** Effective coordination among various authorities such- police, children welfare committees, and medical professionals is necessary for a holistic approach to handling POCSO cases.
- **IMPLEMENTATION OVERSIGHT:** Establishing a robust system for monitoring and reviewing investigations is crucial. This ensures adherence to POCSO and safeguards the rights of victims throughout the process.
- **ALLOCATION OF ADEQUATE RESOURCES:** Adequate allocation of resources, including funding and personnel, is imperative for investigating agencies handling POCSO cases. This facilitates timely and efficient investigations.
- **TRAINING FOR INVESTIGATING OFFICERS:** Providing comprehensive training for investigating officers is essential. This training should encompass proper techniques for evidence collection and preservation, interviewing minor victims and witnesses, requires a nuanced understanding of the legal intricacies of the Act
- **ESTABLISHMENT OF SPECIALIZED COURTS:** Specialized courts must be set up dedicating to POCSO cases is imperative. Such courts can expedite proceedings, ensuring swift justice for victims and their families.
- **MEDICAL EXAMINATION:** Immediate medical examinations of child victims are critical to ascertain recent abuse. Conducting these examinations promptly after the abuse is essential.
- **IMPROVED PUBLIC AWARENESS:** There should be awareness about the POCSO Act, reporting child sexual abuse, and the rights of child victims. More cases are likely to be reported and improved investigation processes when people are informed.

The future can be much brighter if the limitations are addressed and improvement is continually sought. With this, it is hoped that a safer environment for all children will be ensured, and the

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<sup>38</sup> The Protection of Children from Sexual Offences Act, 2012, § 4, No. 32, Acts of Parliament, 2012 (India).

<sup>39</sup> The Protection of Children from Sexual Offences Act, 2012, § 6, No. 32, Acts of Parliament, 2012 (India).

<sup>40</sup> <https://theleaflet.in/pocso-on-the-ground-a-case-study-from-punjab/> (Last visited on 2 May, 2024).

POCSO Act will meet its purpose of protecting children from sexual offenses. It is a collective responsibility of all stakeholders-the government, law enforcement agencies, educational institutions, civil society, and most importantly, parents and caregivers.

*-Together, we can and must put an end to Child Sexual Abuse-*