

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012: STRONG PROVISIONS, WEAK IMPLEMENTATION?

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Abstract

In order to handle the obnoxious crimes of sexual nature against children through strict legal provisions, the Ministry of women and child development promoted the Introduction of the *Protection of Children from Sexual Offences Act, 2012*. "The act defines a child as any person below the age of 18 years and regards the best interests and welfare of the child as being of paramount importance at every stage, to ensure the healthy, physical, emotional, intellectual and social development of the child." It defines different forms of sexual abuse, penetrative and non-penetrative assault, as well as sexual harassment and pornography, and deems such sexual assault to be "aggravated" under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority vis-à-vis a child, like a family member, police officer, etc. People involved in child trafficking for sexual purposes are also punishable under the provision relating to abetment in the act.

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Introduction

India's children constitute 37% of the country's population and 20% of the world's child population. Sexual abuse of children has become a subject of great community concern and the focus of many legislative and professional initiatives.¹ Compared to adults, children find it much more difficult to disclose abuse. There is enough evidence to show that those who have faced abuse in their childhood continue to deal with its consequences well into their adulthood, shaping their relations with others and their image of self. Over the years, several attempts have been made to draw attention to child sexual abuse and break the conspiracy of silence surrounding it. The Protection of Children from Sexual Offences Act, 2012,² hereafter the POCSO Act, is a landmark law that resulted from years of civil society struggles and the Government of India's acknowledgement of the problem.

1. Historical Backdrop to the Enactment of the Legislation

The POCSO Act was a response to both domestic and international events. It is therefore important to examine the triggers to and the process of enacting the POCSO Act. Pursuant to a resolution of the

¹ The Crime in India report published annually by the National Crime Records Bureau, Ministry of Home Affairs, Government of India, shows that 5,368 cases of child rape (22% of 'crime against children') were registered in 2009; 5,484 cases (20.5% of 'crime against children') in 2010; and 7,112 cases (21.5% of 'crime against children') in 2011. The incidence of sexual offences against children continued to increase. Crime in India 2013 shows that 12,363 cases of child rape were registered. Crime in India 2014 shows that 8,904 and 13,766 cases were registered under the POCSO Act and child rape, respectively. Crime in India 2015 shows that 14,913 cases were registered under the POCSO Act and another 10,854 as cases of child rape. Crime in India 2016 shows that 36,022 cases were registered under the POCSO Act and other relevant IPC provisions.

² According to Section 46 of the Act, any difficulty arising in giving effect to the provisions of the Act can be removed by the Central Government within two years of the Act coming into force. The children are at risk of sexual exploitation by caregivers was highlighted by the Freddy Peats case, especially as it resulted in successful prosecution. *Freddy Albert Peats v. State of Goa*, 31st May 2003.

General Assembly,³ the Ministry of Women and Child Development, Government of India, initiated the process to draft a law for the prevention of offences against children.⁴ At a meeting called by the Ministry, NGOs led by RAHI, HAQ and Butterflies⁵ suggested that it was important to have a white paper on offences against children in India before jumping into designing the law. In response to this suggestion, the Ministry undertook an all-India level empirical study on child abuse in 2006.⁶ The process to enact the legislation that finally became the POCSO Act started in 2009 when the Ministry of Women and Child Development circulated the draft Offences against Children Bill among stakeholders. In January 2010, the National Commission for Protection of Child Rights (NCPCR) invited a few NGOs working for children, such as Tulin⁷ and HAQ,⁸ to discuss the Bill. At the meeting, the Bill was criticised mainly because of its attempt to cover a vast range of offences committed against children. All stakeholders acknowledged that legislation dealing with a wide gamut of offences may not be the best solution and that the subject of child sexual abuse required focused attention through a separate law. In June 2010, the recommendations were shared with the Ministry of Law & Justice. In

³ GA Resolution No. 57/90 of 2002.

⁴ The Secretary-General of the United Nations appointed an Independent Expert to conduct an in-depth global study on Violence Against Children. The study team visited several countries, including India, and the study was disseminated in 2006. It recommended "a national strategy, policy or plan of action on violence against children", and that "national laws should comply with international human rights".

⁵ A voluntary organisation that works with the most vulnerable groups of children, especially street and working children: www.butterflieschildrights.org.

⁶ Study on Child Abuse: INDIA 2007, Ministry of Women & Child Development, Government of India. This study was also meant to complement the UN Secretary General's Global Study on Violence against Children, 2006. The report, titled "Study on Child Abuse: India 2007", revealed stunning facts on the extent and magnitude of the problem, especially child sexual abuse,⁷⁹ such as 53.22% of children reported one or more forms of sexual abuse, 20.9% reported facing severe forms of sexual abuse Children on street, children at work and children in institutional care reported highest incidence of sexual assault, 50% abusers are persons known to children or in a position of trust or responsibility. The study also highlighted those sexual crimes against children seldom get reported.

⁷ Centre for the Prevention & Healing of Child Sexual Abuse.

⁸ Centre for Child Rights

July 2010, a draft Bill on Sexual Offences against Children was circulated by the Ministry of Law & Justice. Yet another draft Bill, the Protection of Children from Sexual Offences Bill 2010, was prepared by the Ministry of Women and Child Development. The Ministry of Women and Child Development requested the National Commission for Protection of Child Rights (NCPCR) to scrutinise the draft Bill. To get advice on the Bill, NCPCR set up a committee, which comprised lawyers⁹ and legal academics, under the chairmanship of Justice (Mr.) Ajit Shah, former Chief Justice of Delhi High Court. The Committee rejected the draft Bill and prepared an alternative draft, which was then submitted by the NCPCR to the ministry. Finally, the Ministry of Women & Child Development introduced the Protection of Children from Sexual Offences Bill 2011 in the Rajya Sabha. As the 2011 Bill went to the Parliamentary Standing Committee for review, deliberations on the Bill were held in different parts of the country. The Parliamentary Standing Committee, in its report, accepted some of the suggestions made by child rights groups, while rejecting some others. The POCSO Act¹⁰ and the Protection of Children from Sexual Offences Rules 2012 simultaneously came into force on 14 November 2012. Subsequent to the POCSO Act, another initiative of the Ministry of Health & Family Welfare resulted in the formulation of the Guidelines for Medical Examination of Child under the POCSO Act 2012. The Ministry of Women and Child Development also initiated and saw through the framing of the Model Guidelines under Section 39 of the POCSO Act 2012.

The POCSO Act has incorporated many elements of the 172nd Law Commission Report. The Law Commission recommended: Amendments to the Indian Penal Code (IPC), the Criminal Procedure Code (CrPC) and the Indian Evidence Act (IEA); Substitution of the word 'rape' with 'sexual assault', to make the offence 'gender neutral'; Widen the scope of 'rape' to include penetration by any other part of the body or object; Harsher punishment when the perpetrator is in a position of trust and/or authority such as the father, grandfather or brother. The POCSO Act has attempted to resolve all lacunas by inserting provisions stipulating the role of NGOs, support persons

⁹ Criminal law, women's rights, and child rights.

¹⁰ Gazette of India, Extraordinary, Part II, Section 3, dated 9 November 2012, published by the Ministry of Women and Child Development, Government of India.

and professionals within the criminal justice system in assisting the victim/s at the pre-trial and trial stage. The POCSO Act contains a provision that penalises the non-registration of FIR by the investigating agency.

Child rights groups continued to debate the provisions of the new law, their impact on children, and the state's response towards its implementation and came up with several concerns. It is this rigour that provoked the present study

2. Salient Features of The POCSO Act

Recognising the different kinds of sexual offences perpetrated upon a child, the Act has broadened the concept of sexual abuse of children to include sexual acts that involve physical contact, as well as those that do not. It treats as "aggravated" the sexual offences committed by specified persons, in a specified manner or in specified situations. Special Courts have been established to hear offences under the Act. It also provides for human resources to enable a child to communicate effectively and to support children in their journey through the criminal justice system. While most of the demands of child rights activists have been met, new provisions have been introduced, such as the raising of the age of consent to sexual activity and mandatory reporting. Working extensively and intensively with the POCSO Act is the only way of measuring its value and effectiveness. Salient Features of the POCSO Act are given below:

2.1 Children are defined as persons below the age of 18 years:

The Act is gender-neutral, i.e., it recognises that the victims and the perpetrators of the offence can be a male, female or third gender. It raises the age of sexual consent from 16 years to 18 years, by making all sexual activity with a minor a statutory sexual offence.

2.2 The POCSO Act broadens the understanding of rape:

The POCSO Act broadens the understanding of rape (penetrative sexual assault) from penile-vaginal penetration to penetration by specific body parts or of objects into specified parts of the child's body or making the child so penetrate. It also penalises the person who may not engage in the penetration but may cause the penetration of a child by another person or cause the child to penetrate another.

2.3 The Act recognises that sexual abuse may involve or may not involve bodily contact:

It categorises this offence as ‘sexual assault’ and ‘sexual harassment’. Under the Act, penetrative sexual assault and sexual assault becomes aggravated and is punished more severely when committed by specified persons such as a police officer, member of the armed forces or security forces; public servant; management or staff of place of custody or care and protection, hospital, educational or religious institution, upon a child therein etc. In a specified manner using deadly weapons, fire, heated or corrosive substance by one or more persons etc. in specified situations such as offence committed more than once or repeatedly on a child with a physical or mental disability or resulting in physical or mental disability on a child below 12 years of age, etc.

2.4 The Act lays down special procedures to be followed by the investigating agency when recording the child’s statement and by the Special Court during the child’s deposition:

- a. Reporting to the police about the commission of a sexual offence is mandatory under the Act for everyone, and the legislation includes a penal provision for non-reporting.
- b. The Act contains provisions to ensure that the identity of a child against whom a sexual offence is committed is not disclosed by media.
- c. It provides for the designation of Special Courts and appointment of Special Public Prosecutors to deal with offences listed under the Act.
- d. Children are to be provided other special support in the form of translators, interpreters, special educators, experts, support persons and NGOs during the pre-trial stage and trial stage.
- e. Children are entitled to legal representation by a lawyer of their choice or free legal aid.
- f. The Act also contains rehabilitative measures, such as compensation for the child and involvement of the Child Welfare Committee.

2.5 Classification and type of offences under the POCSO Act:

A. Penetrative Sexual Assault [Ss. 3 & 4]

Section 3: A person is said to commit “penetrative sexual assault” if--

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of the body of the child or makes the child do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child do so to such person or any other person.

Section 4 Punishment for penetrative sexual assault: (1) Whoever commits a penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

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

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

B. Aggravated Penetrative Sexual Assault [Ss. 5 & 6]

(a) Whoever, being a police officer, commits penetrative sexual assault on a child --

(i) within the limits of the police station or premises at which he is appointed; or

(ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known as or identified as, a police officer; or

(b) whoever being a member of the armed forces or security forces commits penetrative sexual assault on a child--

(i) within the limits of the area to which the person is deployed; or

(ii) in any areas under the command of the forces or armed forces; or

(iii) in the course of his duties or otherwise; or

(iv) where the said person is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits penetrative sexual assault on a child; or

(d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or another place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being an inmate of such jail, remand home, protection home, observation home, or another place of custody or care and protection; or

(e) whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution; or

(g) whoever commits gang penetrative sexual assault on a child.

Section 6: Punishment for aggravated penetrative sexual assault-- (1)

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

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

C. Sexual Assault [Ss. 7 & 8]

Whoever, with sexual intent, touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast

of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

Section 8: Punishment for sexual assault: Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.

D. Aggravated Sexual Assault [Ss. 9 & 10]

- (a) Whoever, being a police officer, commits sexual assault on a child--
 - (i) within the limits of the police station or premises where he is appointed; or
 - (ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or
 - (iii) in the course of his duties or otherwise; or
 - (iv) where he is known as, or identified as a police officer; or
- (b) whoever, being a member of the armed forces or security forces, commits sexual assault on a child--
 - (i) within the limits of the area to which the person is deployed; or
 - (ii) in any areas under the command of the security or armed forces; or
 - (iii) in the course of his duties or otherwise; or
 - (iv) where he is known or identified as a member of the security or armed forces; or
- (c) whoever being a public servant commits sexual assault on a child; or
- (d) whoever being on the management or on the staff of a jail, or remand home or protection home or observation home, or another place of custody or care and protection established by or under any law for the time being in force commits sexual assault on a child being an inmate of such jail or remand home or protection home or observation home or another place of custody or care and protection; or
- (e) whoever being on the management or staff of a hospital, whether Government or private, commits sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution or religious institution, commits sexual assault on a child in that institution; or

(g) whoever commits gang sexual assault on a child.

Section 10: Punishment for aggravated sexual assault: Whoever, commits an aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.

E. Sexual Harassment [Ss. 11 & 12]

A person is said to commit sexual harassment upon a child when such person with sexual intent, – (i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of the body with the intention that such word or sound shall be heard, or such gesture or object or part of the body shall be seen by the child; or (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or (iii) shows any object to a child in any form or media for pornographic purposes; or (iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or (v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or (vi) entices a child for pornographic purposes or gives gratification therefor.¹¹

Section 12: Punishment for sexual harassment: Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.¹²

¹¹ Explanation: Any question which involves “sexual intent” shall be a question of fact.

¹² Any man commits to assault or use of criminal force to a woman with intent to outrage her modesty or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment or fined or both. A) Sexual harassment - 1. physical contact and advances involving unwelcome and explicit sexual overtures 2. demand or request for sexual favours 3. showing pornography against the will of a woman 4. making sexually coloured remarks Punishment: imprisonment which may extend to three years or with fine or both. 1. does any obscene act in any public place,

F. Offences Relating to Child Pornography [Ss. 13, 14 & 15]

Use of child for pornographic purposes: Whoever, uses a child in any form of media (including programme or advertisement telecast by television channels or internet or any other electronic form or printed form, whether or not such programme or advertisement is intended for personal use or for distribution), for the purposes of sexual gratification, which includes – (a) representation of the sexual organs of a child; (b) usage of a child engaged in real or simulated sexual acts (with or without penetration); (c) the indecent or obscene representation of a child, shall be guilty of the offence of using a child for pornographic purposes.¹³

Section 14: Punishment for using a child for pornographic purposes:

(1) Whoever uses a child or children for pornographic purposes shall be punished with imprisonment for a term which shall not be less than five years and shall also be liable to fine and in the event of second or subsequent conviction with imprisonment for a term which shall not be less than seven years and also be liable to fine. (2) Whoever using a child or children for pornographic purposes under sub-section (1), commits an offence referred to in section 3 or section 5 or section 7 or section 9 by directly participating in such pornographic

or 2. sings, recites or utters any obscene song, ballad or words in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both. B) Using assault or criminal force on a woman with intent to disrobe her. Punishment: imprisonment for not less than three years which may extend up to seven years and fine C) Voyeurism (Any man watching or capturing the image of a woman engaging in a private act. Punishment: (On first conviction) Imprisonment for not less than one year which may extend to three years and fine. (Repeated offenders) Imprisonment not less than three years, this may extend to seven years and fine. D) Stalking (Any man following a woman and attempting to contact, or foster personal interaction despite a clear indication of disinterest by her or monitors the use by a woman of the internet, email, or any other form of electronic communication) Punishment: Imprisonment which may extend up to three years. (Repeated offenders) imprisonment may extend to five years and fine.

¹³ Subs. by Act 25 of 2019, s. 6, for "communal or sectarian violence" (w.e.f. 16-08-2019). Explanation: For the purposes of this section, the expression "use a child" shall include involving a child through any medium like print, electronic, computer or any other technology for preparation, production, offering, transmitting, publishing, facilitation, and distribution of the pornographic material.

acts, shall be punished for the said offences also under section 4, section 6, section 8 and section 10, respectively, in addition to the punishment provided in sub-section (1).

Section 15. Punishment for storage of pornographic material involving a child: (1) Any person, who stores or possesses pornographic material in any form involving a child, but fails to delete or destroy or report the same to the designated authority, as may be prescribed, with an intention to share or transmit child pornography, shall be liable to fine not less than five thousand rupees and in the event of a second or subsequent offence, with fine which shall not be less than ten thousand rupees. (2) Any person, who stores or possesses pornographic material in any form involving a child for transmitting or propagating or displaying or distributing in any manner at any time except for the purpose of reporting, as may be prescribed, or for use as evidence in court, shall be punished with imprisonment of either description which may extend to three years, or with fine, or with both. (3) Any person, who stores or possesses pornographic material in any form involving a child for the commercial purpose shall be punished on the first conviction with imprisonment of either description which shall not be less than three years which may extend to five years, or with fine, or with both and in the event of second or subsequent conviction, with imprisonment of either description which shall not be less than five years which may extend to seven years and shall also be liable to fine.

2.6 Sentencing:

The punishment/sentence depends upon the type of sexual offence committed. Certain sexual offences have a minimum and maximum term of imprisonment stipulated under the law, whereas others have only a maximum term stipulated. For example, the punishment for penetrative sexual assault, under Section 4, is imprisonment “for a term which shall not be less than seven years, but which may extend to imprisonment for life”. The punishment for sexual harassment, under Section 12, is imprisonment “for a term which may extend to three years”. It is for the Special Court to determine the term of imprisonment within this range but has no discretion to reduce the term below the minimum term of imprisonment stipulated under the law.

2.7 Fine:

Under Sections 4, 6, 8, 10, 12, 14 and 15 the offender is also liable to pay a fine. The Special Court has the powers of a Sessions Court, so there is no limit to the amount of fine it may order the offender to pay, and a portion or whole of the fine may be directed to be paid as compensation to the person who has suffered loss or injury due to the offence.

2.8 Omission constitutes an offence:

Section 42 makes it clear that for an act or omission that constitutes an offence under the POCSO Act as well as under Sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376B, 376C, 376D, 376E or 509 of IPC, the punishment awarded shall be that which is greater in degree.

2.9 Abetment of an offence under POCSO

Abetment of an offence is punishable under the POCSO Act [Sections 16 & 17]. It mentions the circumstances under which a person is said to abet an offence, as also its punishment-- "if the act abetted is committed in consequence of the abetment, shall be punished with the punishment provided for that offence."

2.10 Attempt to commit an offence under the POCSO

Attempt to commit an offence under the POCSO Act is "punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence or with fine or with both" [Section 18]. For "calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years" [Section 57 of IPC].

2.11 Other offences under the POCSO Act

Failure of all adults to report the commission of an offence under the Act or failure of the police to record such an offence.¹⁴ The punishment is more severe if such non-reportage is by a person in charge of a company or institution in a case alleging commission of the offence by "a subordinate under his control."¹⁵ Personnel of

¹⁴ Section 21 (1) of POCSO Act, 2012.

¹⁵ Section 21 (2) of POCSO Act, 2012.

media, hotel, lodge, hospital, clubs, studios or photographic facilities have been specifically obligated to inform the police about “any material or object which is sexually exploitative of the child (including pornographic, sexually related or making an obscene representation of a child or children) in any medium” that they come across.¹⁶ Failure to do so is an offence under the Act.¹⁷ Making a false complaint or providing false information regarding the commission of an offence under Sections 3, 5, 7 and 9 “solely with the intention to humiliate, extort or threaten or defame,” except when done by a child is also an offence.¹⁸ Reporting or commenting “on any child from any form of media or studio or photographic facilities” that may affect such child’s reputation or infringe upon such child’s privacy.¹⁹ Disclosing the identity of a child (name, address, photograph, family details, school, neighbourhood or any other particulars) by any media.²⁰

2.12 Cognizable and bailable offences under POCSO Act

While providing for a whole range of offences, the POCSO Act does not specify whether the offences are cognizable or not, or bailable or not. Section 19 of the POCSO Act and Rule 4 (2) (a) of the POCSO Rules imply that the sexual offences are cognizable as the police receiving information of commission of such offence is required to record and register a First Information Report (FIR), per the provisions of Section 154 of CrPC, and furnish a copy of it, free of cost, to the person making such report. To determine whether a sexual offence is bailable or non-bailable, it is necessary to see the First Schedule of CrPC.²¹

2.13 Special procedures and mechanisms for child victims recording of FIR or the statement of the child victim

The recording by the police of the FIR and the statement of the child under Section 161 of CrPC should be “as spoken by the child” and in

¹⁶ Section 20 of POCSO Act, 2012.

¹⁷ Section 21 (1) of POCSO Act, 2012.

¹⁸ Section 22 of POCSO Act, 2012.

¹⁹ Section 23 (1), (3), (4) of POCSO Act, 2012.

²⁰ Section 23 (2), (3), (4) of POCSO Act, 2012.

²¹ Classification of Offences Against Other Laws: Whenever the punishment is less than 3 years of imprisonment, the offence is bailable; Any term of imprisonment equal to or more than 3 years, the offence is non-bailable. All sexual offences under the POCSO Act are punishable with imprisonment up to 3 years or more and are, therefore, non-bailable.

the presence of the child's parents or a person in whom the child has trust or confidence.²² It is the duty of the police to read out the FIR to the child victim/informant as written down.²³ If the child does not understand the language in which the FIR is recorded, it is incumbent upon the police to seek the assistance of a translator or interpreter whose qualifications and experience is prescribed under the POCSO Rules, to help the child communicate.²⁴ If the child has a mental or physical disability, the police should "seek the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field" to enable such child to communicate.²⁵ Every informant has a right to get a copy of the FIR from the police free of cost as soon as it is registered.²⁶ The statement of the child shall be recorded by the police "at the residence of the child or at a place where he usually resided or at a place of his choice".²⁷ The statement of the child shall be "recorded as far as practicable by a woman police officer."²⁸ The police officer recording the statement of a child should not be below the rank of sub-inspector and should not be in uniform.²⁹ Where the police are to record the statement of the child, use of "audio-video electronic means", in addition to recording such statement in writing, is encouraged.³⁰ While recording the statement of the child, the police should ensure "that at no point of time the child comes in contact in any way with the accused."³¹

²² Section 26 (1) of the POCSO Act.

²³ Section 19 (2) (b) of the POCSO Act and Section 154 (1) of CrPC.

²⁴ Section 19 (4) of the POCSO Act and Rule 3 of the POCSO Rules.

²⁵ Section 26 (3) of the POCSO Act and Rule 3 of the POCSO Rules.

²⁶ Rule (4) (2) (a) of the POCSO Rules and Section 154 (2) of CrPC.

²⁷ Section 24 (1) of the POCSO Act.

²⁸ Section 24 (1) of the POCSO Act.

²⁹ Section 24 (2) of the POCSO Act.

³⁰ Section 26 (4) of the POCSO Act and 1st proviso to Section 161 (3) of CrPC. An FIR has to be signed by the informant [Section 154 (1) of CrPC], but statements given to the police in the course of police investigation are not to be signed by the maker of the statement (Section 162 (1) of CrPC).

³¹ Section 24 (3) of the POCSO Act.

2.14 Special courts for trying offences under the POCSO Act [Sections 28 and 34 of the POCSO Act]

The purpose of a Special Court is to provide “a speedy trial.”³² It assures children of specialised and trained human resources to handle cases relating to sexual offences committed against them as well as the appropriate infrastructure that is most necessary to satisfy the objective of the Act as reflected in its Preamble.³³ A Court of Sessions is to be designated as a Special Court³⁴ to try the offences under the POCSO Act³⁵ and offences under Section 67B of the Information Technology Act.³⁶ Where Children’s Courts have been notified under the Commissions for Protection of Child Rights Act, 2005, such courts shall be designated to function as Special Courts. Any other Special Court set up for a similar purpose under any other law can also be designated as a Special Court to try offences under the POCSO Act.³⁷ The police, within 24 hours, should inform the Special Court about the registration of FIR of a sexual offence under the POCSO Act.³⁸

2.15 Special public prosecutors [Section 32 of the POCSO Act]

For conducting the prosecution of a case registered under the POCSO Act, the State Government is required to appoint Special Public Prosecutors with a minimum of 7 years experience as an advocate. The Special Public Prosecutor conducts the case before the Special Court on behalf of the State. It is the State who prosecutes the alleged offender, and the child is a prosecution witness in the case.³⁹

³² Section 28 (1) of the POCSO Act.

³³ “And whereas it is imperative that the law operates in a manner that the best interest and well-being of the child are regarded as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child.”

³⁴ Section 28 (1) of the POCSO Act.

³⁵ Section 28 (1) of the POCSO Act.

³⁶ Section 28 (3) of the POCSO Act.

³⁷For example, the Children’s Court under the Goa Children’s Act, 2003, may also be designated as the Special Court to try offences under the POCSO Act committed within its jurisdiction. The Goa Children’s Court has jurisdiction “to try all offences against children whether such offence is specified under this Act or not.”

³⁸ Section 19 (6) of the POCSO Act.

³⁹ Hence, the case is titled, State (through CDE police station) v. ABC (accused).

2.16 Right of the child to receive legal representation [Section 40 of the POCSO Act]

A child's family or guardian is entitled to engage the services of a lawyer "of their choice", but if unable to do so due to financial constraints, the District Legal Services Authority shall provide a lawyer. A child is entitled to free and competent legal services under the Legal Services Authorities Act, 1987. Such lawyer, whether privately engaged or provided by the District Legal Services Authority, shall act under the instructions of and assist the Special Public Prosecutor, and is empowered to submit written arguments at the conclusion of the trial with the permission of the Special Court.⁴⁰

2.17 Speedy trial under special courts (Section 35 of the POCSO Act)

The Special Court is required to complete the recording of evidence of the child within 30 days of the Court taking cognizance of the offence. Any extension of this period must be recorded by the Special Court in writing, with reasons.⁴¹ The Special Court is required, as far as possible, to complete the trial within one year from the date of taking cognizance of the offence.⁴² When the offence is alleged to have been committed by a child, the case is to be dealt with under juvenile legislation.⁴³ It is imperative that the Juvenile Justice Board accords the child victim the same safeguards as accorded by the Special Court.⁴⁴

⁴⁰ It is important to note that "public prosecutor" includes a person acting under the directions of a Public Prosecutor [Section 2 (u) of CrPC]. The child's lawyer should always keep herself / himself well-apprised of the case, because if the Special Public Prosecutor is not available on a particular day, the Special Court may call upon the child's lawyer to perform the duties and obligations of the Public Prosecutor.

⁴¹ Section 35 (1) of the POCSO Act.

⁴² Section 35 (2) of the POCSO Act.

⁴³ Section 34 (1) of the POCSO Act.

⁴⁴ Under the Juvenile Justice (Care and Protection of Children) Act 2015 [the JJ Act], which came into force on 15 January 2016, trial of a child between 16 and 18 years who has committed a "heinous offence" may be waived by the Juvenile Justice Board for trial before the Children's Court as an adult. Rights of Child Victims Right to receive assistance and support of various experts at the pre-trial and trial stage Under the JJ Act and the Integrated Child Protection Scheme (ICPS) of the Central Government, District Child Protection Units (DCPUs) are to be set up in every district. DCPUs are supposed to maintain a list of interpreters, translators and special educators

2.18 The assistance to be provided to the child victims at the pre-trial and trial stage includes

Translator and interpreter for children who speak their regional language or mother tongue or a local dialect, which is not the language of that State and/or understood by the police or the Special Court,⁴⁵ and for children with disabilities, such as sign language interpreters.⁴⁶ A special educator for children with special needs (mental or physical disability)⁴⁷ that include “challenges with learning and communication, emotional and behavioural disorders, physical disabilities, and developmental disorders”⁴⁸ Person familiar with the manner of communication of the child means a parent or family member of a child, or a member of child’s shared household, or any person in whom the child has confidence and trust, “who is familiar with the child’s unique manner of communication, and whose presence may be required for more effective communication with the child.”⁴⁹ Mental health experts provide psychotherapy and help reduce the trauma or any other vulnerability of the victim child so as to facilitate communication.⁵⁰ A support person may be assigned by a Child Welfare Committee to assist the child through the process of investigation and trial.⁵¹ In addition to the Rules, Section 39 of the POCSO Act requires the State Government to prepare “guidelines for use of non-governmental organisations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child.” This provision of the POCSO Act implies that professionals and others working in the field

with their contact details, and make such list available to the Special Juvenile Police Units constituted in every district under the JJ Act to deal with crimes relating to children, local police, Magistrates or Special Courts [Rule 3 (1) of the POCSO Rules]. Such services are an entitlement and are to be offered free of cost [Rule 3 (6) of the POCSO Rules]. If such measures cannot be made available by the DCPUs, they may be sought through the Special Court free of charge.

⁴⁵ Section 38 (1) of the POCSO Act

⁴⁶ Rule 3 (5) of the POCSO Rules.

⁴⁷ Section 38 (2) of the POCSO Act.

⁴⁸ Rule 2 (d) of the POCSO Rules.

⁴⁹ Rule 2 (d) of the POCSO Rules.

⁵⁰ Rule 2 (c) of the POCSO Rules.

⁵¹ Rule 4 (7) of the POCSO Rules.

of children and/or related fields, other than those specifically mentioned under the POCSO Act, also have a role to assist and support the child victim.

2.19 Protecting the child's privacy and confidentiality

The POCSO Act makes it incumbent upon the following persons and authorities to ensure the protection of privacy and confidentiality of a child victim of a sexual offence, and to ensure non-disclosure of the child's identity: Police Officer;⁵² Special Court;⁵³ Any media.⁵⁴ Non-disclosure of the identity of the child includes revealing the name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to the disclosure of the identity of the child.⁵⁵ The Special Courts may permit disclosure of the identity of the child, only if it feels that such disclosure is in the interest of the child, and the reasons for this must be recorded in writing.⁵⁶ The Act prohibits any person from reporting or commenting on a child without having complete and authentic information, which may undermine the reputation of the child or infringe upon the child's privacy.⁵⁷ Failure of the publisher or owner or employee of media or a studio or photographic facility to protect the privacy, dignity and confidentiality of child victims is a punishable offence.⁵⁸

2.20 Medical examination,⁵⁹ care and treatment of victims of sexual violence

Medical examination of a child against whom a sexual offence under the POCSO Act has been committed should be conducted, irrespective of whether an FIR or complaint has been registered.⁶⁰ The examination should be conducted in accordance with Section 164A of

⁵² Section 24 (5) of the POCSO Act.

⁵³ Section 33 (7) of the POCSO Act.

⁵⁴ Section 23 (2) of the POCSO Act.

⁵⁵ Section 23 (2) of the POCSO Act.

⁵⁶ Section 33 (7) of the POCSO Act.

⁵⁷ Section 23 (1) of the POCSO Act.

⁵⁸ Section 23 (4) of the POCSO Act.

⁵⁹ The non-negotiables regarding medical examination and treatment are stipulated under the POCSO Act and Rules, the CrPC, and the Guidelines & Protocols – Medico-legal care for survivors / victims of Sexual Violence issued in 2014 by the Ministry of Health and Family Welfare, henceforth referred to as the Guidelines & Protocols.

⁶⁰ Section 27 (1) of the POCSO Act.

CrPC, titled Medical examination of the victim of rape⁶¹ and without any delay--it should be conducted within 24 hours of the police receiving information about the commission of such offence.⁶² Police should make arrangements to get the child victim admitted to the nearest hospital, within 24 hours of the FIR, if they are satisfied that such child requires medical treatment, after recording the reason in writing for such admission.⁶³ A female police officer should escort the victim to the hospital for medical examination. "Police should not be present during any part of the examination."⁶⁴ The child victim should be encouraged to seek the help of a psychologist/psychiatrist. It is necessary to ensure that a psychiatrist is available to the child in the hospital itself as First-Line support.⁶⁵ In the case of a girl child, a woman doctor should conduct the medical examination.⁶⁶ The medical examination should be conducted in the presence of a parent or a person in whom the child has confidence or trust.⁶⁷ If such person

⁶¹ Section 27 (1) of the POCSO Act.

⁶² Section 164A (1) of CrPC.

⁶³ Section 19 (5) of the POCSO Act.

⁶⁴ Chapter titled Medical Examination and Reporting for Sexual Violence, the Guidelines & Protocols.

⁶⁵ Introduction and Chapter titled Psycho-Social Care for Survivors / Victims, the Guidelines & Protocols. Medical examination in case of rape or sexual offence under the Act should be conducted "by a registered medical practitioner employed in a hospital run by the government or a local authority hospital, and in absence of such a practitioner, by any other registered medical practitioner" (Section 164A (1) of CrPC). Medical treatment to victims of sexual offence should be immediately provided by hospitals run by state authorities or privately managed [Section 357C of CrPC]. Non-treatment of victims of sexual offences by a hospital is an offence punishable under Section 166B of IPC.

⁶⁶ Section 27 (2) of the POCSO Act. The consent of the victim or of a person competent to give consent on her / his behalf must be taken before the medical examination [Section 164A of CrPC]. In the absence of parent / guardian, a child above 12 years may give consent for medical examination¹³. In case of a child below 12 years, the parent / guardian / person taking care of the child is required to give consent on behalf of the child [Chapter titled Guidelines for Responding to Children, the Guidelines & Protocols]. A child or the parent / guardian / person in whom the child has confidence or trust has the right to refuse medicolegal examination or collection of evidence or both, but such refusal should not result in denial of medical treatment.

⁶⁷ Section 27 (3) of the POCSO Act.

is not available, "the medical examination shall be conducted in the presence of a woman nominated by the head of the medical institution".⁶⁸ No child victim should be refused emergency medical care by a medical practitioner or hospital or medical facility, nor should they demand any legal or magisterial requisition or documentation as a prerequisite for rendering such care.⁶⁹

2.21 Assistance and services of a support person

The POCSO Act recognises that a child and her / his family require assistance while navigating the criminal justice system. Such assistance mechanism introduced by the Act is the "support person". Section 19 (6) of the POCSO Act requires the police to report to the Child Welfare Committee, within a period of 24 hours of knowledge of the commission of a sexual offence under the POCSO Act. Rule 4 (3) of the POCSO Rules requires the following child victims to be produced before the Child Welfare Committee: a child against whom a sexual offence has been committed or attempted or is likely to be committed by a person living in the same or shared household with the child; a child living in a childcare institution and without parental support; or a child without any home or parental support. It is the duty of the Child Welfare Committee to ensure protection to the child. For such purpose, the Committee should assess whether the child needs to be removed from the custody of her/his family or shared household or childcare institution where the sexual offence occurred. The Committee should conclude such assessment within three days of the child being produced before them.⁷⁰ The Child Welfare Committee may also provide the assistance of a support person to a child victim under the POCSO Act "to render assistance to the child through the process of investigation and trial."⁷¹ The support person may be an individual or an organisation working in the field of child rights. The child's need for a support person, the consent of the child and child's parents/guardian/person in whom the child has the confidence to such appointment, and the capacity of the person selected to provide the necessary assistance, are the essential prerequisites for assigning and/or selecting a support person. The child and her/ his parents or guardian or the person in whom the child has confidence has the right

⁶⁸ Section 27 (4) of the POCSO Act.

⁶⁹ Rule 5 (3) of the POCSO Rules.

⁷⁰ Rule 4 (4) of the POCSO Rules.

⁷¹ Rule 4 (7) of the POCSO Rules.

to seek from the Child Welfare Committee, termination of the services of the support person without giving any reasons for the same. It is the responsibility of the support person to maintain confidentiality regarding information pertaining to the child; to keep the child and her/his parent/guardian/person in whom the child has confidence updated regarding the proceedings and developments in the case; to inform the child about the role she/he will be required to play in the judicial process; to inform the relevant authorities (police, Special Court, Special Public Prosecutor) about the child's concerns and need for safety, if any; and to provide referral services for counselling, medical treatment, shelter and other needs of the child.⁷² A child and her/his parent/guardian/person in whom the child has confidence has the right to independently seek support/assistance of any person or NGO. In that case, there will be no need for the Child Welfare Committee to assign a support person.⁷³

2.22 Right to rehabilitation

The Special Court may "direct payment of compensation as may be prescribed to the child for any physical or mental trauma caused to her/him for immediate rehabilitation of such child."⁷⁴ Compensation⁷⁵ is payable to the child by the State Government, and not by the accused as in the case of fine. The awarding of compensation and the amount to be so paid is to be determined by the Special Court. The factors for computing the amount of compensation include: type of abuse; gravity of the offence and the severity of the mental or physical harm or injury suffered by the child; the expenditure incurred or likely to be incurred on medical treatment for physical and/or mental health; loss of educational opportunity as a consequence of the offence, including absence from school due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason; the relationship of the child to the offender if any; financial condition of the child against whom the offence has been committed so as to determine his need for rehabilitation; etc.

⁷² Rule 4 (8) of the POCSO Rules.

⁷³ "Provided that nothing in these rules shall prevent the child and his parents or guardian or other person in whom the child has trust and confidence from seeking the assistance of any person or organisation for proceedings under the Act"

⁷⁴ Section 33 (8) of the POCSO Act.

⁷⁵ Rule 7 of the POCSO Rules.

Compensation may be provided at any stage after the registration of FIR, irrespective of whether "the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified."⁷⁶ The interim compensation paid to the child is to be adjusted against the final compensation awarded by the Special Court if the court decides to award any final compensation.⁷⁷ The needs and interests of the child should determine the amount of compensation payable. Once the amount of compensation is determined by the Special Court, it shall pass an order "for the award of compensation to the victim."⁷⁸ The order should mention the amount of compensation to be paid by the State Government to the child. For disbursement of the compensation, every State Government is required to prepare/create a Victim Compensation Fund or other Scheme or Fund for making payments towards compensation for rehabilitation.⁷⁹ Compensation awarded by the Special Court must be released to the victim within 30 days of the Special Court's order.⁸⁰

2.23 Mandatory reporting

The POCSO Act promotes mandatory reporting, that is, if someone is aware of a sexual offence committed against a child and does not report it to the police, he or she will have committed an offence under the POCSO Act. Mandatory reporting has its pros and cons. The good thing is that since a child may not be in a position to register an FIR against the alleged offender, it makes adults accountable for children's welfare. It allows a child victim to access services, such as medical treatment or mental health intervention. But there are problems too. Due to fear of registration of FIR, the child or child's support structure may not seek help, such as medical treatment, because of which greater harm may be caused to such child. Interests of a particular child are not considered as every child is forced into the criminal justice system. Also, certain provisions of the POCSO Act do not justify mandatory reporting. The POCSO Act has increased the age of consent to sexual activity from 16 years to 18 years. This makes sexual activity committed with a child above 16 years an offence, even if such activity is consensual. It is important to note that domestic laws in

⁷⁶ Rule 7 (2) of the POCSO Rules.

⁷⁷ Rule 7 (1) of the POCSO Rules.

⁷⁸ Rule 7 (3) of the POCSO Rules.

⁷⁹ Rule 7 (4) of the POCSO Rules.

⁸⁰ Rule 7 (5) of the POCSO Rules.

several countries apply the provisions of mandatory reporting only to designated professionals (doctors, teachers, caretakers), or in certain circumstances (when a child is below a stipulated age, residing in a childcare institution), or when reporting is to a designated authority (not being the police).

3. POCSO: A Critical Analysis

Increase in Reportage of Sexual Offences against children Data from Crime in India shows how reporting of cases of child sexual abuse has been rising even before the POCSO Act and the provision of mandatory reporting. 2,113 FIRs of child rape were registered in 2001; 2,532 were registered in 2002; 2,949 in 2003; 3,542 in 2003; 4,026 in 2005; 4,721 in 2006; 5,045 in 2007; 5,446 in 2008; 5,368 in 2009; 5,484 in 2010; 7,112 in 2011; and 8,541 in 2012. This was a jump of 400% over 12 years. There was another sharp increase after the POCSO Act in 2013, 12,363 FIRs of child rape were registered; in 2014, 13,766 FIRs of child rape were registered and 4,895 in 2015, 10,854 FIRs of child rape were registered; in 2016, 19,765 FIRs were registered under.⁸¹

What is the reason for the increase in reporting to the police after the POCSO Act? Is such an increase due to the provision of mandatory reporting? A study conducted by *The Hindu* newspaper in Delhi attributes such an increase to the raising of the age of consensual sexual activity. The study showed that in 2013 out of the 460 cases that were fully tried, 189 cases (40%) related to consensual sexual activity. Out of these 189 cases, 174 cases (92%) were those of elopement, and in 107 of such cases (64%), the female 'complainant' deposed that she was in love with the accused. Out of 583 cases examined, in 123 cases (21%) the female 'complainant' could not be found or did not testify or turn hostile.⁸² No doubt there is an increase in the number of reporting CSA cases, but we want simultaneously to curb the CSA. POCSO Act definitely helps to reduce the number of child abuse cases.

The Justice Verma Committee Report, in one of its conclusions on child sexual abuse, holds that "there is an urgent need to audit the

⁸¹ In an Information provided by the Press Information Bureau, Government of India on 08-February-2018 states that 1,04,976 cases registered under POCSO Act during the year 2014-16.

⁸² The findings of the study were published in *The Hindu* edition of 31 July 2014 and 1 August 2014, under young love often reported as rape in our 'cruel society' and Rape cases: Scripted FIRs fail court test, respectively.

performance of all institutions of governance and law and order". We need to consolidate our efforts and focus our energies on existing laws rather than looking to amend more laws and making still further newer laws, alien to our culture, society, habits, lifestyles and harsh realities of the common man. Insofar as child sex abuse is concerned, POCSO is a wholesome law. The government must create the machinery to implement it and educate its officers besides all stakeholders on what it contains. The state must not waste time exploring alternatives when the answers exist in a law made by Parliament for these special offences against children, the most vulnerable section of society.

In *Alakh Alok Srivastava v. Union of India*,⁸³ a three-judge bench headed by Chief Justice of India Deepak Mishra, Justice D. Y. Chandrachud and Justice A.M. Khanwilkar issued directions to the States for the speedy disposal of cases under POCSO Act:

- a. The High Courts shall ensure that cases registered under the POCSO Act are tried and disposed of by the Special Courts.
- b. No unnecessary adjournments should be allowed, and the trial must be completed in a time-bound manner or within a specific time frame provided under the Act.
- c. To be established Special Courts, if the same has not been done already.
- d. The Chief Justices of the High Courts were ordered to constitute a committee of three Judges to regulate and monitor the progress of the trials under the POCSO Act. If three Judges are not available, the Chief Justices of the respective High Courts shall constitute one Judge Committee.
- e. The Director-General of Police or the officer of equivalent rank shall constitute a Special Task Force which shall ensure that the investigation is done properly, and witnesses are produced on the dates fixed before the trial courts.
- f. Adequate steps to be taken to ensure the child-friendly atmosphere in the Special Courts.

⁸³ *Alakh Alok Srivastava v. Union of India* 2018 (7) SCALE 88.

4. Findings

The findings of the study are given below:

A. Persons other than family members/relatives too have acted in a most responsible manner when a child has disclosed the commission of a sexual offence.

B. Registration of FIRs regarding sexual offences committed against children was rising even before the POCSO Act. This could be due to increasing awareness of the issue among the public and enforcement agencies.

C. The sharp increase in registration of crimes of sexual offences against children may be attributed to factors other than mandatory reporting, such as a sexual activity that was earlier not criminalised under the law; support provided to the child and family when journeying through the criminal justice system; and acknowledgement of the significance of child protection.

D. Judgments of the Special Courts have been disparate in cases where children have registered FIRs or deposed against their father. In some cases, the father was convicted despite the child turning hostile, whereas in other cases, the father was acquitted of the child turning hostile. In a few cases, where the FIR was registered by the CWC, the father was convicted on the child's evidence. In other few cases, registration of FIR may be attributed to mandatory reporting that have not resulted in successful prosecution due to the child's absence or turning hostile.

E. Psychosocial support to enable children's emotional healing is crucial, which in turn may overcome their apprehensions of 'reporting'. Their voices suggest that the legal obligation of 'reporting' can best be met when 'reporting' becomes a 'social norm', and their fears, especially of social stigma, are addressed.

F. The inability of the justice delivery system to respond to this dilemma and apprehension is one side of the coin. The other side is the subjecting of the child to further trauma during the different stages of a legal proceeding, particularly when the support infrastructure is not established, nor human resources appointed.

5. Recommendations

i. Victims should have access to voluntary help-seeking, without the support structure or service provider(s) fearing punishment due to the mandatory reporting provision.

ii. The state and its machinery should be pro-active in creating an environment where the child/ child's family is encouraged to register an FIR- establish the infrastructure, appoint human resources, and follow the child-friendly procedures as envisaged under the POCSO Act; assure the child of relief and rehabilitation by providing timely compensation; and other such measures.

iii. The state must make "a concerted all-round effort to raise public awareness, point out the ill effects and gradually bring about social transformation."

iv. While recording the evidence, the following things should be kept in mind: a. The question should be put by the judges: In the case of *Sakshi v. Union of India*,⁸⁴ the Court held that the incident should not be asked directly by the defence council but by the court itself. b. Frequent breaks: the judge should not give breaks at the crucial points such as at the time of cross-examination or when examination-in-chief is in the process so that accused, or any such person is unable to demoralise or brainwash the mind of the child or tutor the child. c. Allowing a family member as a guardian, friend or relative to be present in Court: the judge should ensure that the support person does not manipulate the statement of a child by their gestures etc. and also the support person must be informed in advance that such person's role is only to ensure the feeling of a sense of confidence in the child. It is not to manipulate the statement of the child. d. Recording the evidence of the child may be completed on the very first day, as it will be easier for the child to recall the incident and thereby protecting the children from re-victimization.⁸⁵ e. It was suggested that it would be best if the evidence is recorded through the use of videoconference or through utilizing single-visibility-mirror or curtain.⁸⁶ f. Moreover, if the evidence is recorded in Court, then there should be a separate entrance provided to the child so that accused cannot contact the child anywhere on the Court premises. g. It must be ensured while recording the evidence on camera that, only one

⁸⁴ *Sakshi v. Union of India*, (2004) 5 SCC 518.

⁸⁵ Section 35 of the Act provides for expeditious hearing, wherein within 30 days evidence should be recorded and within one year, the trial should be preferably completed.

⁸⁶ The Section 36 of the Act provides that Child should not be exposed in any way to the accused.

counsel is present avoiding a crowd consisting of juniors etc.⁸⁷ h. Before the recording of evidence, if possible, appoint Guardian ad litem, who can be a member from NGO, Bar, or a Professional, who will remain present with the child throughout and assist the child.⁸⁸ i. To provide a comfortable environment at the time of recording evidence e.g., providing separate room, recording evidence in Chamber; allowing the victim to testify from any other place than the witness box, the judge should be at the same eye-level with the child.

Conclusion

One of the important factors that lead towards vulnerability is the relationship of the victim with the offender. In most cases, the offender is known to the victim which makes a child more vulnerable and suppresses from reporting the heinous crime of child sexual abuse. Sexual abuse scars the psyche of the affected child for the entire life. In search of a child-friendly system of filing a complaint about child abuse, the National Commission for Protection of Child Rights (NCPCR) came with the POCSO E-Box scheme. A major initiative by NCPCR to help children to report such crimes directly to the commission. It is an easy and direct medium that allow children to file a complaint in case of sexual assault under the POCSO Act, 2012. Under this scheme, NCPCR has also launched POCSO E-Box mobile application.

Justice Lokur said “It has been nine years since the enactment of the POCSO Act despite there being a greater number of cases of child abuse than murder. We spend more time discussing murders” and wondered “is the murder of an adult more important than child sexual abuse. He also emphasised the need for bringing changes in evidence law, methods of investigation and strengthening of the forensics department of the government to keep pace with the changes in the nature of child sexual abuse crimes. POCSO Act is no doubt a good legislation and certainly a welcoming step to stop child

⁸⁷ Section 37 of the Act lays down that the Special Court shall try cases in camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence.

⁸⁸ Section 38 provides for the assistance of expert or interpreter or facilitator; whenever child is unable to explain the incident, judges can take the help of these experts. It was suggested the Court must facilitate the child to help the victim explain their statement what had happened.

sexual abuse but there must be a few changes for its better implementation.⁸⁹

In *Kishanlal v. State of Haryana*⁹⁰ where Court held that a socially sensitized Judge is a better statutory armour against gender outrage than long clauses of a complex section with all protection written into it and in the case of *State of Punjab v. Gurmeet Singh*,⁹¹ Court held that "It is the sensitivity of a Judge, which prevents the justice from being a casualty." It was said that the law can only strengthen the hands of the judge and the society at large, but whether the same is achieved in the form of a sensitized system or not depend on internalization.

⁸⁹ When in a tribal area, where child marriage is permissible as a custom, what will be the implication of applicability of the POSCO Act? Whenever a husband forces himself upon his wife, it will amount to an offence under Section 42A of amended POSCO Act. This is because, it provides that whenever any statute is in derogation or conflict with any other statutory provision (here justifying a "voidable" child marriage), the POSCO Act will prevail.

⁹⁰ *Kishanlal v. State of Haryana* AIR (1980) SC 1252.

⁹¹ *State of Punjab v. Gurmeet Singh* 1996 (2) SCC 384.