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Empowering Innocence: A Doctrinal Exploration of Access to Justice for Child Sexual Abuse Victims under POCSO Act

Abstract:

This research article undertakes a comprehensive examination of the doctrinal aspects surrounding access to justice for child sexual abuse victims under the Protection of Children from Sexual Offences (POCSO) Act. In a societal context where child protection remains a paramount concern, this study delves into the efficacy of the legal framework, with a particular focus on empowering young survivors of sexual abuse. The research aims to contribute to the scholarly discourse by providing nuanced insights into the intersection of legal doctrines and the lived experiences of victims.

The literature review delineates the prevailing landscape of child sexual abuse, examining its repercussions on victims and scrutinizing the existing legal frameworks, both at the international and national levels. Emphasis is placed on evaluating the strengths and limitations of the POCSO Act, identifying gaps that necessitate further exploration.

Employing a robust methodology, this research engages in a meticulous examination of case studies and legal documents. The doctrinal analysis unveils patterns, challenges, and notable trends, shedding light on the intricacies of access to justice for child victims. Findings are contextualized within the broader framework of child protection, offering a critical lens through which to assess the effectiveness of the current legal provisions.

The implications of the study for the empowerment of child sexual abuse victims are expounded upon, paving the way for informed policy recommendations and legal reforms.

In conclusion, this research underscores the imperative of fortifying legal doctrines to better serve the needs of child sexual abuse victims. The article advocates for a holistic approach that not only addresses legal intricacies but also considers the socio-psychological aspects of victim empowerment. It beckons for a renewed commitment to the cause, urging policymakers, legal practitioners, and scholars to collaborate in fostering a protective environment for the most vulnerable members of society.

Introduction:

Almost 40% of India and 19% of the world's population are under the age of 18. Further, India is home to the largest population of young adults. Sadly, though, the number of people who experience sexual abuse is shocking. Lawmakers and law enforcers have obviously failed to stop child sexual abuse, despite the fact that it is one of the most heinous crimes in human history. Article 21 of the Constitution ensures the safety of all children, and India is a signatory to the Convention on the Rights of the Child.¹ Sexual victimisation and molestation of a child under the age of 18 for sexual arousal by an adult or older adolescent is child sexual abuse (CSA). According to the Supreme Court registrar, there are more than 1.5 lakh pending cases since the Union legislature and the state have not cooperated. We may have such a negative reaction to talking about child sexual abuse because it is such a complex and upsetting topic.² Indecent exposure of genitalia, female nipples, etc., grooming of children for sexual exploitation, and the production of pornographic material involving children are all examples of sexual abuse, as defined by the World Health Organization and cited by Wikipedia. While there are a number of legal protections in place to address sexual abuse, this problem is still growing at an alarming rate around the world. Unfortunately, few of the perpetrators of these crimes have been brought to justice, and nothing can undo the damage they have done to the victim's mental health. Although the majority of paedophiles' victims are female, both boys and girls are at risk. The percentage of female victims varies between 8 and 31% in 55 research spanning 24 nations, with male victims making up

¹ United Nations Convention on Rights of Children, 1989.

² Sanjana Srivastava, Indian Legal Analysis on Child Sexual Abuse: POCSO Act 2012, 19 *Supremo Amicus* 437 (2020).

between 3 and 17% of the total.³ The Ministry of Women and Children Development surveyed and interviewed 12,447 kids, and found that roughly 53% of them have been sexually abused, or are currently being abused, in some capacity.⁴ 30% of sexual abusers are the victims' dads, siblings, uncles, or cousins; 60% are other acquaintances such as friends, babysitters, or neighbours; and 10% are complete strangers. A small minority of criminals (10%) are known to the police. As a result, it is correct to say that close to 60% of sexual abuses are done by someone the victim knows.⁵ Because of the social stigma that surrounds these issues, it can be difficult to bring them into the light or even to take any action at all. Thus, fewer and fewer cases are being reported to the courts, and these youngsters continue to suffer from post-traumatic stress disorder and depression well into adulthood. All crimes and their associated punishments are spelled out in the Indian penal code, which has been revised on numerous occasions. Dealing with the issue of sexual abuse of children is challenging anywhere, but in India the shortcomings of both society and the government compound the difficulty of the task. It's a secret, and the kids who experience it first have to deal with the government's indifference and society's indifference before anyone hears about it. Abuse of a sexual nature against a kid is often ignored, even by the parents of the child involved. Cases are underestimated since many of them are not reported. More than 7,200 children are sexually assaulted annually, and 109 were sexually abused every day in 2018, according to studies.⁶ According to a 2002 report by the World Health Organization, sexual abuse affects an estimated 150 million girls and 73 million boys worldwide who are under the age of 18.⁷

The Protection of Children from Sexual Offences Act (POCSO) was enforced on November 14, 2012, with a specific focus on addressing crimes such as child sexual abuse and child pornography. Comprising 46 provisions, the Act broadened the scope of reporting offenses against children,

³ 'A Decade of POCSO: Developments, Challenges and Insights from Judicial Data' (*Vidhi Centre for Legal Policy*) <<https://vidhilegalpolicy.in/research/a-decade-of-pocso-developments-challenges-and-insights-from-judicial-data/>> accessed 25 October 2023.

⁴ Ministry of Women and Child Development.

⁵ 'A Decade of POCSO: Developments, Challenges and Insights from Judicial Data' (*Vidhi Centre for Legal Policy*) <<https://vidhilegalpolicy.in/research/a-decade-of-pocso-developments-challenges-and-insights-from-judicial-data/>> accessed 25 October 2023.

⁶ RRGs Amararatne and M Vidanapathirana, 'Child Sexual Abuse in Puttalam, Sri Lanka: A Medico-Legal Analysis' (2016) 4 34.

⁷ Kritika Gupta and Meenu Gupta, 'CHILD ABUSE: TERROR SUBSISTING IN THE ESSENCE OF MANKIND IN INDIA' [2019] CHILD ABUSE.

extending beyond what was covered by the Indian Penal Code (IPC).⁸ Notably, it expanded the criminal penalties for aggravated penetrative sexual assault to encompass abuses committed by individuals in positions of trust or authority, including public servants, police, armed forces, and personnel of educational or religious institutions.

The legislation outlined procedures for reporting cases, incorporating a provision for penalizing failure to report a case or lodging a false complaint. Additionally, it instituted protocols for recording a child's statement by law enforcement and the court, emphasizing a child-friendly approach. Special courts were also established as part of the Act.

POCSO Act delineates offenses related to sexual assault, sexual harassment, and pornography, with a primary focus on safeguarding the interests and well-being of children. The legislation introduces a child-friendly process for recording evidence, conducting investigations, and overseeing trials, along with the establishment of special courts to ensure expeditious handling of cases.⁹ The overarching goal of the act is to afford protection to the child throughout every stage of the judicial process.

The study is Doctrinal in nature. The relevant material is collected from primary and secondary sources. Information is gathered from the statutes and judicial decisions, scholarly books on POCSO, papers in academic journals of various disciplines; Government publications, Reports and policy papers, relevant websites and databases newspaper articles, newsletters and domestic violence manuals and guidelines are refereed. Original sources of law such as Acts passed by the legislature, case laws decided by the Supreme Court and High Court which are binding on lower courts and secondary sources like textbooks on law commentaries are the source of study.

The problem with the statement is that, when it comes to protecting minors from sexual assault, no other law comes close to matching the breadth and depth of the POCSO Act, 2012. The Act is strong and necessary in light of the alarming rise in the incidence of sexual offences against children, but its successful implementation faces several challenges. Hence this article discusses

⁸ Shailesh Kumar, 'Access to Justice and Sexual Violence against Children in India: An Empirical Study of the Reforms under the POCSO (Protection of Children from Sexual Offences) Act 2012' (phd, Birkbeck, University of London 2023) <<https://eprints.bbk.ac.uk/id/eprint/50678/>> accessed 27 October 2023.

⁹ Insights Editor, 'EDITORIAL ANALYSIS: 10 Years of POCSO' (*INSIGHTSIAS*, 19 November 2022) <<https://www.insightsonindia.com/2022/11/19/editorial-analysis-10-years-of-pocso/>> accessed 27 October 2023.

the issues that need to be revisited by the various stakeholders in order to provide comprehensive care and justice for children who have been sexually victimised.

This research paper aims to analyse the POCSO Act, 2012. It discusses the issues that need to be revisited by the various stakeholders in order to provide comprehensive care and justice for children who have been sexually victimised. Some of the primary problems highlighted in this study are the following: the POCSO Act, 2015 being interpreted in a narrow fashion, the legal status of consenting sexual encounters being unclear, the lack of sensitivity to the act, etc. In the final section of the study, the authors examine the policies put in place in various nations to ensure that the child victim receives adequate care and that the goals of justice are achieved.

When it comes to protecting minors from sexual assault, no other law comes close to matching the breadth and depth of the POCSO Act, 2012. The Act is strong and necessary in light of the alarming rise in the incidence of sexual offences against children, but its successful implementation faces several challenges. But there are issues that need to be revisited by the various stakeholders in order to provide comprehensive care and justice for children who have been sexually victimised.

The research is largely based on secondary and electronic sources of data, that is Internet and Articles.

Legislative Framework

When CSA cases arose prior to 2012, they were dealt with under the general provisions of The Indian Penal Code, 1860, including Section 376, which dealt with rape, Section 354, which dealt with acts designed to affront a woman's modesty, and Section 377, which dealt with unnatural offences.¹⁰ If the child is a boy, however, only Section 377 would be relevant. None of the laws addressed sexual abuse against children in ways besides penetration. Although though the Commission for the Protection of Children's Rights (CPCR) was established in 2005, the National Commission for the Protection of Child Rights (NCPCR) did not begin its work until 2007; both organisations have the same goal: safeguarding children.¹¹ Since it was founded, the laws, policies, and procedures entrenched in the Indian Constitution and the Convention on the Rights of the

¹⁰ Mark Dummett, *Breaking the Silence: Child Sexual Abuse in India* (Human Rights Watch 2013).

¹¹ *ibid.*

Child have been enforced.¹² Therefore, the Government of India felt compelled to pass a law particularly preserving the interest of children, titled “The Protection of Children from Sexual Offence, 2012,” in response to the rise in advocacy for child protection in media and other public forums. As was previously mentioned, the Indian Criminal Code of 1860 did not include a provision for sexual assault committed by a male perpetrator against a male victim. Under its definition of a ‘victim of sexual assault,’ the POSCO Act does not discriminate on the basis of gender and so includes male children.¹³ The measure has made it easier for authorities to report incidences of sexual assault against minors. Moreover, it has broadened the scope of what constitutes sexual assault to now encompass both penetrative and aggravated forms of the crime (sec 3 to sec 10 of POCSO Act, 2012). And the person in charge has been punished as well. The Act also includes the novel and consequential feature of mandatory reporting.¹⁴

The Act improves safeguards against sexual abuse and exploitation of children under the law. All minors under the age of eighteen are shielded from harm, and appropriate punishments are outlined. While the Indian Criminal Code (IPC) applies equally to both adults and minors, POCSO is designed to address only sexual assaults on children. The Special Courts are required to be set up by the Act, and it also outlines processes for reporting, investigating, and trying crimes committed by minors.¹⁵ In spite of the act’s authoritative tone, it has failed to achieve its goal after a decade of implementation. In addition, there has never been a greater rise in reported instances of CSA.¹⁶ In light of the current situation, some of the most significant obstacles and knowledge gaps that have prevented the act from being fully implemented are discussed below.

The POCSO Act adopts a gender-neutral approach, ensuring that it addresses offenses against children irrespective of the child's gender. This legislation operates under the principle of "guilty until proven innocent," departing from the conventional presumption of "innocent until proven guilty."¹⁷ To prevent misuse, the Act imposes penalties for false complaints and the dissemination of false information with malicious intent. Recording instances of abuse is mandatory, with the

¹² Muskan Malhotra & Prachi Sehgal, POCSO Act, 2012: A Tale of Delay in Justice, 1 Jus Corpus L.J. 257 (2021).

¹³ Wendy Zeldin, ‘Children’s Rights’.

¹⁴ Id.

¹⁵ Dr Savita Bhakhry, ‘Children in India and Their Rights’.

¹⁶ ‘221117_Final-POCSO-Draft_JALDI.Pdf’ <https://vidhilegalpolicy.in/wp-content/uploads/2022/11/221117_Final-POCSO-Draft_JALDI.pdf> accessed 26 June 2023.

¹⁷ Id.

police required to file a First Information Report (FIR) for all child abuse cases.¹⁸ The Act permits the recording of a child's statement at their residence or a location of their choosing, preferably by a female police officer not below the rank of sub-inspector.

The comprehensive scope of the Act encompasses various sexual offenses against children, encompassing sexual assault, harassment, and the use of minors for pornographic purposes. Punishments are prescribed for attempted crimes, aiding and abetting, or failing to report these offenses. The Act emphasizes the importance of reporting any suspected offenses, as failure to do so may lead to imprisonment and/or fines.

Special courts are mandated for expeditious trials, with each trial expected to conclude within a year. The Act ensures the minor's protection by preventing exposure to the accused during evidence recording and maintaining the confidentiality of their identity throughout the investigation and trial. Minors are spared from repeating their testimony in court, with the option to provide testimony via video stream. The defense poses questions through the judge, avoiding an aggressive manner. Court assistance is provided through interpreters, translators, special educators, or other experts.

The Act outlines criteria for awarding compensation, encompassing factors such as loss of educational and employment opportunities, disability, disease, or pregnancy resulting from the abuse.

Notably, the POCSO Act alters the landscape of consensual sex under the Indian Penal Code, raising the age of consent from 16 to 18. This implies that individuals, including children, can face prosecution for engaging in sexual acts with a minor, regardless of the minor's consent. Furthermore, spouses can be prosecuted for engaging in sexual acts with their partner under 18 years of age. The Act does not recognize consensual sexual acts among children or between a child and an adult.

Scheme Of the POCSO Act

¹⁸ 'POCSO Act, 2012: Consensual Sex as a Matter of Tug of War Between Developmental Need and Legal Obligation for the Adolescents in India - PMC' <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8313457/>> accessed 30 January 2024.

Penalties in this Act are designed to serve as a deterrent, with the goal of preventing such acts against children in the future. Penetrative Sexual Assault (Section 3)¹⁹, Aggravated Penetrative Sexual Assault (Section 5)²⁰, Sexual Assault (Section 7)²¹, and Sexual Harassment (Section 11)²² are all examples of sexual offences against minors that are punishable under Chapter 2. Reading over Section 3, it seems to follow a similar pattern to Section 375 of the IPC. The only distinction is POCSO's greater scope. A minor's permission is irrelevant, hence this provision treated both victims and perpetrators equally regardless of gender. This crime is punishable under Section 4,²³ which further divides the punishment into two parts depending on the age of the victim: if the victim is between the ages of 12 and 16, the accused faces a mandatory minimum of 20 years in prison that can be extended to life, and if the victim is between the ages of 16 and 18, the minimum punishment is 10 years in prison that can be extended to life, and the accused also faces a fine. Upon closer inspection, it became clear that the last part of the analysis was counter to Exception 2 of Section 375 IPC. In cases where a husband commits rape or penetrative sexual assault on his wife, and she is between the ages of 15 and 18, the husband is not criminally accountable. Nonetheless, he would be held responsible under Section 376 if another person committed the same act against his wife. *Independent Thought against Union of India*,²⁴ decided by the Hon'ble Supreme Court, partially read down Exception 2 of Section 375 of the IPC to align it with constitutional morality since it was in violation of Articles 14, 15, and 21²⁵ and created an apparent dichotomy following the POCSO Act. According to Section 42A,²⁶ in the event of a dispute between the terms of this legislation and the general law, POCSO, a pro-child and special statute, would have precedence. One of the unusual situations described in Section 5 is a victim who is younger than 12 years old and whose abuser is an adult in an authoritative position or a relative with whom the victim has a relationship of trust. Punishment for this crime includes a mandatory minimum of twenty years in jail, the possibility of life in prison or maybe the death penalty, and a fine.²⁷ To be considered sexual assault under Section 7, there must be physical contact, albeit there

¹⁹ Protection of Children from Sexual Offences Act, 2012, s 3

²⁰ Id. s 5.

²¹ Id. s 7.

²² Id. s 11.

²³ Id. s 4.

²⁴ *Independent Thought v Union of India* (2017) Writ Petition (Civil) No. 382/2013.

²⁵ Constitution of India, 1950, art.14, art.15, and art.21.

²⁶ Protection of Children from Sexual Offences Act, 2012, s 42A.

²⁷ Divyanshi Sharma, POCSO: A Stringent Legislation, 2 *Jus Corpus L.J.* 449 (2022).

need not be skin-to-skin contact, and the assault must be motivated by sexual desire. According to the Supreme Court's decision in *AGI v. Satish and Others*,²⁸ the goal of the POCSO Act is to prevent sexual abuse of minors. Nevertheless, if a narrow interpretation of the law is adopted, it could have unintended consequences and undermine the law's intended effect. When a minor is used for sexual enjoyment in any pornographic medium, it is a violation of POCSO Chapter 3. The penalties for commercial use, storage, and even failure to report to designated authority or destroy the same are laid out in Sections 14 and 15.²⁹ Chapter 5 of POCSO Regulations details the process for reporting incidents.³⁰ Evidently, POCSO is strict not just for perpetrators but also for those involved in the various stages of the legal process. Failure to report an offence when the offender knows or has reason to suspect that an offence has been or will be committed carries a maximum prison sentence of six months, a fine of up to two thousand dollars, or both. There is no time limit on filing a complaint so long as the details are clear and the complaint is backed by reasonable cause. POCSO, Section 22,³¹ also makes it illegal to file a fraudulent report or provide misleading information. Reporters are not allowed to reveal any information on the child, including his name, where he lives, any photos of him or his family, his school, and so on.³²

Major Encumbrances In The Implementation Of POCSO Act

Upon initial examination, the POCSO Act may appear to be an optimal legal framework for safeguarding children against sexual offenses. However, certain conceptual issues within the Act need consideration.

The Act eliminates the possibility of consent from individuals under the age of 18. Consequently, if a seventeen-year-old engages in a consensual relationship with a nineteen-year-old, the older partner could potentially face charges under the provisions of the POCSO Act. Furthermore, the Act lacks clarity regarding situations where two minors are involved in sexual activities. While both are technically deemed Children in Need of Care and Protection (CNCP) and Children in

²⁸ Attorney General For India v Satish (2021) Special Leave Petition (Criminal) Diary No(s). 2286/2021.

²⁹ Supra note 6, ss 14 and 15.

³⁰ Protection of Children from Sexual Offences, Rules 2020.

³¹ Supra note 6, s 22.

³² Supra note 14.

Conflict with Law (CCLs), in practice, law enforcement often categorizes girls as CNCs and boys as CCLs.³³

Another challenge for victims lies in establishing the age of the child. The POCSO Act does not specify which documents should be considered for determining the age of the child victim. Courts, in the absence of clear guidelines, have interpreted Rule 12 of the Juvenile Justice Rules to apply to child victims. This rule recognizes only a few documents, such as birth certificates, school certificates, or matriculation certificates, leading to the necessity of bone ossification tests for children with alternative documentation. However, this test only provides a rough estimate of the child's age at best. A provision within the POCSO Act is crucial to defining acceptable documents for proving a child's age and whether the benefit of the doubt should be extended to the child in cases where the ossification test cannot offer a precise assessment.

Similar to the rape laws under the IPC, the pronoun 'he' is used for the accused in the POCSO Act. This implies that only males can be held accountable for offenses under the relevant provisions of the Act. While the victim under the POCSO Act can be any child, regardless of gender, the accused remains restricted to males, creating an inexplicable gender bias. This protective shield for females, ostensibly based on assumptions that females do not engage in forceful sexual assault on children, perpetuates an unfounded stereotype.

These instances highlight the unexplained gender bias prevalent in India's laws concerning sexual intercourse. Additionally, the POCSO Act, focusing solely on age, creates a situation where a teenage girl below 18 experiencing coercive sexual assault may later have the male perpetrator charged under the IPC. However, the reverse is not true due to the biased definition, as a woman committing a similar offense can only be booked under the POCSO Act, resulting in comparatively lesser penalties than sexual assault under the IPC.

Unanticipated obstacles were found in the Act's implementation. It has a low rate of compliance and poor delivery in the economy. While cases registered under the POSCO Act, including horrific gang rape, continually grow, the conviction rate is only 4%, the acquittal rate is 6%, and the

³³ 'Milestone.Pdf' <<https://bba.org.in/wp-content/uploads/2020/Milestone.pdf>> accessed 26 June 2023.

pendency rate is approximately 90%, as described by the National Criminal Records Bureau.³⁴ Based on the most recent data from the NCRB, the number of incidents reported in 2018 under the Act to ensure the safety of minors was 39,827, up from 32,608.³⁵ National Crime Record Bureau statistics show that by 2018, an average of 109 children per day were sexually molested in India, a 22% increase from the previous year. According to a report published by the NCRB not too long ago, the POCSO recorded 337,338 new cases in 2017.³⁶ There were 21,605 reported rapes of children in 2018, with 21,401 involving female victims and 204 involving male victims. Although there were 2023 incidences of child abuse reported in Uttar Pradesh, 1457 were reported in Tamil Nadu, and 2832 were reported in Maharashtra.³⁷ The number of reported offences against minors is up dramatically, from 22,500 in 2008 to 141764 in 2018. (according to the 2008 and 2018 NCRB statistics). Child abuse affected 1,290,32 kids in 2017.³⁸ First, in order to expedite criminal processes, state governments should designate a Court of Sessions in cooperation with the Chief Justice of the High Court. The POSCO Act adds that the Court may also be referred to as a Special Court if it has been designated as a child court by the Commissions for the Protection of Child Rights or if a Special Courts has been established for comparable reasons under another act. Second, despite the fact that the constitution mandates that each district have its own POCSO court, the rules have generally been disregarded. The lack of specialised courts to hear cases of sexual abuse of children as a nationwide issue is a serious barrier. The Act's establishing of such courts was an important responsibility, and its implementation has been significantly slowed by the failure to resolve and report on pending matters brought before them. The State Government bureaucracy's apathetic attitude is evident in the fact that, until and unless the Supreme Court steps

³⁴ Radhika Dayal and others, 'Ethical and Definitional Considerations in Research on Child Sexual Violence in India' (2018) 18 BMC Public Health 1144.

³⁵ Kotturesha K M, Abdul Latif and Yathikumarswamy Gowda, 'Knowledge Regarding Protection of Children from Sexual Offence Act (POCSO-ACT): Significance in Nursing Education, Literature Review' (2023) 13 International Journal of Health Sciences and Research 178.

³⁶ *ibid.*

³⁷ Ashok Kumar Gambhir Hemant, 'Digest on Rape and Pocso Cases - EBC Webstore' <http://www.ebcwebstore.com/product/ashok-kumar-and-hemant-gambhir-digest-on-rape-and-pocso-cases-by-lrc-publication?products_id=99106968> accessed 27 October 2023.

³⁸ 'Literature Review – Preventing Child Abuse' <<https://childabuse.commons.gc.cuny.edu/literature-review/>> accessed 28 October 2023.

in, they make no effort to create a legal manual or carry out other procedural requirements for implementing it.³⁹

Fifth, the judges who are supposed to hear these cases are inept. The state government does not provide any more education opportunities, and the cases are not investigated. Hence, matters are not handled adequately and efficiently as required by the Act because employees view them as an additional responsibility. Underreporting of cases continues to be a major obstacle for the POCSO Act. One possible explanation is that the family is too burdened by their own feelings of guilt, wrath, frustration, and emotional upheaval to report the incident. An additional factor in the failure to report is the fear of being re-victimized in the face of medical examination or the criminal court system. Yet, the family may decide not to file a report out of concern for how it would reflect on their reputation in the community. Family members of affected children need to be educated, and the POCSO Act should include mandatory measures for counselling for the victim's parents. On the other hand, there are circumstances in which no one in the family may have known that such a thing had happened. A minor victim may be afraid of being disbelieved or unsure of what occurred to him or her. If the young person is responsible enough, they may decide not to tell anyone in order to shield their loved ones or avoid embarrassment. Getting a child the right kind of education from a young age can help them overcome this obstacle. In addition to keeping a sharp eye out for any unusual changes in their child's behaviour, parents should create an atmosphere where their youngster feels comfortable opening up about anything. POCSO Act Section 7 requires a medical evaluation of the victim after getting the necessary consent from the victim and family member. However, the position of the POCSO Act is uncertain and the legislation is regarded to be quiet on this topic if the adolescent refuses to attend medical examination but the family member is demanding on the medical examination. The necessity for clear laws about consent in these scenarios is pressing. However, in this case, it is preferable to obtain the approval of family members only if the survivor is a kid younger than 12 years old; for those between the ages of 12 and 18, it is preferable to obtain the consent of both the teenager and the family member. The lack of a female doctor to do the examination poses a further difficulty for the medical team in the event

³⁹ 'Indore: Childline Launches "Access to Justice" with Kailash Satyarthi Foundation' (*Free Press Journal*) <<https://www.freepressjournal.in/indore/indore-childline-launches-access-to-justice-with-kailash-satyarthi-foundation>> accessed 26 June 2023.

that the survivor is a girl child. According to Section 27(2) of the Act, if the victim is a female child, she must be examined by a female physician.⁴⁰ The law also requires the on-call government physician to assess the rape victim and the available physician to offer emergency medical care. It's unclear what to do from a legal standpoint if a female physician can't perform the exam. The act needs to be updated so that there is a clear provision for the same, and this doubt is eliminated.

The POCSO Act's applicability depends on the victim's age, which is why the age of the accused is the eighth factor to be considered. But, the POCSO Act's protections will not kick in unless the prosecution can prove that the victim is under the age of 18. Rule 12(3) of the Juvenile Justice (Care and Protection of Children), Regulations, 2007 establishes the procedure for determining a juvenile's age.⁴¹ The Supreme Court ruled in *Jarnail Singh v. The State of Haryana* ((2013) 7 SCC 263) that the procedure outlined in the aforementioned JJ Rules, 2007⁴² should also be used to establish a minor victim's age. The issue here is whether Special Courts convened under POCSO must adhere to the procedure outlined in Section 94 of the Judicial Branch Reform Act of 2015.⁴³ Since Section 94 of the JJ Act, 2015 doesn't use the word "court," it could be argued that a Special Court established by the POCSO Act isn't required to follow the age-determination procedure prescribed by the JJ Act, 2015, and that the matter is left to the discretion of the Special Court under Section 34(2) of the POCSO Act.⁴⁴ The process through which a child victim's age is established when no official records exist must be made public.

Conclusion And The Way Forward

As it's socially unacceptable to admit to abusing a child, many families choose to hide the truth instead. The rising crime rate of sexual assault on children must be stemmed, and the taboo surrounding this issue must be broken. Although the government has taken numerous measures to

⁴⁰ Jyotika Randhawa & Apoorva, '10 Years since the PocsO Act, Cases Continue to Be Delayed, but Courts Are Not Solely to Blame' (*Scroll.in*, 28 December 2022) <<https://scroll.in/article/1039775/10-years-since-the-pocso-act-cases-continue-to-be-delayed-but-courts-are-not-solely-to-blame>> accessed 27 October 2023.

⁴¹ 'Access to Justice for Child Victims of Sexual Violence in Institutional' <<https://www.taylorfrancis.com/chapters/edit/10.4324/9780429440793-8/access-justice-child-victims-sexual-violence-institutional-care-india-asha-bajpai>> accessed 27 October 2023.

⁴² 'Commentary on the Protection of Children from Sexual Offences Act, 2012 and Rules' <<https://store.lexisnexis.in/commentary-on-the-protection-of-children-from-sexual-offences-act>> accessed 27 October 2023.

⁴³ Gupta and Gupta (n 8).

⁴⁴ 'Analysing the Validity of a Minor's Consent in POCSO Cases' (*The Amikus Qriae*, 23 March 2022) <<https://theamikusrqiae.com/analysing-the-validity-of-a-minors-consent-in-pocso-cases/>> accessed 25 October 2023.

root out the problem, these efforts have been tainted by inefficient legal processes and widespread corruption. Although the POCSO Act mandates that trials be concluded within a year, in practise this is extremely unusual due to the slow pace of the justice delivery system. Instead of constantly rewriting the law, the government should concentrate on enforcing what's already there and making it as effective as possible. The new law explicitly states that the death sentence shall be imposed for the rape of a child under the age of twelve. Despite there being over 17,500 documented incidences of child rape in 2019, not a single offender has been sentenced to death. Justice takes years to come to survivors, and even in death penalty cases, offenders have a chance at an appeal. The POCSO Act is strong, but it has been poorly implemented due to widespread corruption. In order for the law to fulfil its promise of protecting minors from sexual assaults, efforts must be made to increase compliance and implementation of existing legislation. One of our society's greatest assets is its children, and they hold the key to the future of this country's development. Hence, it is the duty of the state to provide children with an adequate education and the tools they need to assert their rights. The state should enact and enforce stricter laws to prevent the sexual exploitation and cybercrime of children. Youngsters are unsophisticated and do not realise the long-term damage that might be done by their time spent online. Every parent has an obligation to talk to their kids about the pros and cons of internet use, as well as the potential risks and consequences. A frank conversation about sexuality between a child and their parents is important. Public organisations like schools should teach young people about sexuality rather than hiding this information. A child who is fully awake has no chance of falling prey to such evil.