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CHILD RAPES IN INDIA AND IMPLEMENTATION OF POCSO ACT, 2012: A FORENSIC PERSPECTIVE

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Abstract

Legal definitions for child sexual abuse and exploitation offenses need to establish specific characteristics and must recognize abusive behaviours as truly serious violations of criminal law. Sexual assault occurs when someone who is male or female or a child experiences unwanted sexual actions through coercion against their consent. Indian laws protect children by prohibiting sexual assault and harassment and pornography consumption as actions that constitute child sexual abuse.

Rapes together with sexual assaults constitute severe crimes that lead to physical injuries and psychological damage as well as potentially fatal consequences. Children between 18 years old experience common sexual activities such as vaginal fingering, anal fingering, vaginal and/or anal penetration, exhibitionism, voyeurism and exposure to pornography. Child Sexual Assault incidents have seen a significant increase in metropolitan areas despite current legislation alongside education and awareness programs. The offenders in most abuse cases belong to either the family network of the victim or they share a close relationship with the victim. Our research seeks to determine the statistical frequency at which child sexual abuse occurs.

The total population of children in India constitutes 37% of the national figure and 20% among international children. Child sexual abuse has become a major issue in communities which serves as the central subject of numerous professional and legislative activities. The violation of personal rights stands as a major offense when children become its victims. The multiple criminal actions within this category include child molestation alongside sexual exploitation and participating in any sexual conduct that an underaged child cannot legally authorize. The Protection of Children from Sexual Offences (POCSO) Act of 2012 functions to prevent harsh sexual crimes against individuals who have not reached the age of majority. Indian legislature passed laws that confront CSA directly by creating protective child rights rules which also define harsh penal consequences for offenders. The substantial legislation protects children against sexual harassment and assault and pornography offenses. Examiners must evaluate how effectively this legislation protects children. This study article evaluates how POCSO Act functions in practice by reviewing its enforcement limits and suggests corrections to strengthen safeguards and welfare for children.

The fundamental aim of this study entails examining India's five-year crime statistics related sexual abuse among children, with special reference to the state of Uttar Pradesh, while investigating the various factors that influence delayed reporting procedures. Further, the article aims to study how deferred medico-legal examinations may affect forensic DNA proof. The analysis focuses on reviewing multiple documented cases showcasing the significance of extensive blood stain, semen profile, fecal matter, saliva and clothing testing for acute child sexual assault investigations. Evidence materials play a vital role in professional investigations because they help confirm facts and they validate witness statements and statements made under oath. The exact application of forensic methods helps establish a link between verbal testimonies and factual evidence to improve justice outcomes within disturbing cases.

Keywords: *Child Sexual Abuse, DNA Analysis, Forensic Evidence, POCSO Act.*

INTRODUCTION

The implementation of the Protection of Children from Sexual Offences (POCSO) Act in 2012 was a critical legislative framework that was intended to address the pervasive issue of child sexual abuse in India. Before the POCSO Act went into effect, the Indian Penal Code (IPC) listed and defined sexual crimes. But there wasn't a specific law that said what the difference was between sexual crimes against adults and sexual crimes against children until the POCSO Act was passed. This law says that everyone under the age of 18 is a child and protects all kids in this age range from sexual assault, harassment, and

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pornography. Before this law went into effect, India didn't have a law that specifically protected minors against sexual exploitation, even though it had ratified the United Nations Convention on the Rights of the Child on December 11, 1992. This convention urged state parties to take the necessary efforts to keep kids from being forced or persuaded to conduct illicit sexual things. The POCSO Act's passage through the legislature was also slow and not very urgent. The bill was written in 2005, but it wasn't brought up in the Rajya Sabha until March 23, 2011. The Lok Sabha easily passed the identical law on the penultimate day of Parliament's budget session, with no discussion. People simply objected because they were afraid about how it may be used improperly.
This legislation offers extensive protections for safeguarding minors from a range of sexual offences, encompassing rigorous mechanisms for investigating, prosecuting, and rehabilitating victims.
A variety of sexual victimisation of children, including sexual harassment, economic exploitation, assault, penetrative and non-penetrative sexual acts, and exposure to pornography, are together referred to as childhood sexual abuse (CSA).
The Protection of Children from Sexual Offences (POCSO) Act is gender-neutral and seeks to punish sexual offences against minors. In accordance with this statute, a child is defined
as any individual who is less than 18 years of age. The POCSO Act was amended in 2019 to include "aggravated" kinds of assault, such as *i)aggravated sexual assault, ii)aggravated penetrative sexual assault, and iii)possessing pornographic material.* In addition to addressing physical sexual offences, the legislation also targets cybercrimes that involve children. These include things like having Child Sexual Abuse Material, bullying, stalking, or exposing minors to pornography, all of which may be considered to be violations of the provisions of the Information Technology Act of 2000.
The immediate effects of CSA include bad effects on both physical and social health. However, long-term difficulties can also happen if there isn't a supportive atmosphere for healing. Child sexual abuse may happen in many places, such at home, at school, at creche, and in the community. A meta-analysis indicates that the prevalence of Child Sexual Abuse (CSA) varies from 8% to 31% in females and from 3% to 17% in men. (Jürgen Barth, 2013) The National Crime Records Bureau's (NCRB) 2019 annual report says that there were 148,185 crimes against kids, and around 35.3% of these were covered under the POCSO Act. (Bureau, Crime in India 2019, 2020)
The main purpose of the legislation is to protect children's rights, make it easier for children to be tried quickly in special courts, and provide procedures that are easy for children to use to gather evidence and investigate crimes. Also, anyone who knows about sexual assault and comes into touch with a juvenile victim must report it straight once. If you don't do this, you might get six months in jail.

TRANSITION FROM THE INDIAN PENAL CODE TO POCSO ACT, 2012

Historically, children were frequently seen as small adults, with no regard for their special needs. However, the notion of giving specific safeguards for children first emerged in France in the 1840s. In France, legislation was enacted beginning in 1841 to protect children in the job and ensure their access to an education. It wasn't until after World War I that there was a universal acknowledgment of the need for special rights for children.
On February 28, 1924, during its fifth general assembly, the International Save the Children Union formally adopted the Declaration of the Rights of the Child. This proclamation was later brought to the League of Nations, which adopted the "Geneva Declaration" on September 26, 1924. This proclamation emphasised humanity's shared obligation to protect the well-being of children.
Prior to the POCSO Act's implementation in 2012, the Goa Children's Act of 2003 and its implementing Rules of 2004 served as India's primary pieces of law protecting children's rights. Child sexual abuse was classified as an offence under Sections 375, 354, and 377 of the Indian Penal Code of 1860. However, these measures did not provide appropriate protection for male youngsters from sexual assault or address modesty concerns. Furthermore, important phrases like as "modesty" and "unnatural offence" were not explicitly defined in the Code.
Before the POCSO Act was passed, the only explicit law addressing child abuse was the Goa Children's Act of 2003. Child sexual abuse was prosecuted under the following articles of the Indian Penal Code:

- Section 375: Rape.
- Section 354: Outraging a woman's modesty.
- Section 377: Unnatural Offences.

However, the IPC had significant shortcomings that impeded its efficacy in safeguarding children. These included:

- Section 375 did not protect male victims or those exposed to sexual activities other than traditional peno-vaginal intercourse.
- Although Section 354 was a compoundable offence, it did not have a legislative definition of the term "modesty," and the punishment was not very severe. It also failed to protect the modesty of masculine youngsters.
- Section 377 did not define "unnatural offences" and only applied to victims who were penetrated by their attacker's sexual act, rendering it ineffective for dealing with child sexual abuse.

PROMINENT CASES BEFORE THE ENACTMENT OF POCSO ACT, 2012

The present substantive legislation was determined to be severely inadequate in handling incidents of child sexual abuse. The legal framework was inadequate in accounting for the numerous types of sexual offences perpetrated against minors, since it lacked clarity and precision. In cases involving penetrative sexual abuse of a female, Sections 375 and 376(2) of the IPC were frequently cited, whilst Section 377 was employed when the victim was male. In cases where no penetration occurred, sexual offences against females were recorded under Sections 354 and 509 of the IPC, but there was no analogous provision for boys.

In *Tukaram and Another versus State Of Maharashtra*[3], popularly known as the Mathura rape case, which took place on March 26, 1972, was a prominent example of custodial rape in India. Mathura, an adolescent tribal girl, was reportedly raped by two officers on the premises of the Desai Ganj Police Station in Maharashtra's Chandrapur district. The Supreme Court's decision to acquit the defendants sparked massive public outrage and protests. These demonstrations finally led to modifications to Indian rape laws, including the Criminal Law (Second Amendment) Act of 1983 (46 of 1983). Moreover in *Thakkar M. Bharwada Bhoginbhai Hirjibhai versus State Of Gujarat*,[4] the accused, a middle-aged father, raped two young friends of his daughter who had gone to see her at his home. The trial court found the accused guilty of rape, breaching modesty, and unlawful imprisonment. The High Court maintained the verdict and reduced the charge from rape to attempt to rape. The Supreme Court confirmed the lower court's decision, ruling that slight differences in evidence were not important. The court clarified that corroboration for rape convictions is not required. This judgement was used to gain a conviction when there were no other witnesses to back up the victim's evidence.

In the *Sakshi verdict*[5], the Supreme Court recognised the potential anxiety that the accused's presence may cause and devised certain protocols to enable youngsters to testify in a secure setting. The court acknowledged that the mere sight of the accused might provoke significant anxiety or shock in the victim or witnesses, limiting their capacity to offer detailed information and perhaps leading to a miscarriage of justice. As a result, procedures such as screens or similar arrangements were proposed to prevent victims and witnesses from seeing the accused. Furthermore, the court observed that cross-examination in rape and child abuse trials sometimes sought to insult or confound the victims, perhaps silencing them out of shame or humiliation. To rectify this, the court proposed that questions for cross-examination be submitted in writing to the presiding officer, who might then ask them in a less uncomfortable way.

Furthermore, the Supreme Court agreed with the petitioner's request to hold trials in child sexual assault cases in camera. This strategy was regarded advantageous since it would allow victims to feel more at ease and react to questions more freely, improving the quality of their evidence. Victims would be less hesitant or embarrassed to deliver frank testimony in a private setting than in an open court context, where they could feel frightened by public scrutiny.

The *Gurmit Singh judgement*[6] of 1996, which was discussed during the representation of the child victim, was a case in which a trial court disbelieved the testimony of a gang rape victim under the age of 16, resulting in the accused's acquittal. The Supreme Court emphasised the need of handling such matters with compassion. It emphasised that courts should consider the overall plausibility of a case and not be influenced by slight anomalies in the victim's narrative that are insufficient to undercut an otherwise solid prosecution case. If the victim's testimony looks credible, it should be accepted without the need for corroborating evidence in material elements.

[3] Tukaram and Another versus State Of Maharashtra, 1979 AIR 185
[4] Thakkar M. Bharwada Bhoginbhai Hirjibhai versus State Of Gujarat, 1983 (3) SCC 217,
[5] Sakshi versus Union Of India, Writ Petition (crl.) 33 of 1997
[6] State of Punjab versus Gurmit Singh & Ors, 1996 SCC (2) 384

Regarding the prosecutrix's cross-examination, the Supreme Court stated that the court should not sit back and observe as the victim is questioned by the defence. It emphasised the need for the court to actively manage the evidence recording process. While the defence should have adequate chance to question the veracity of the victim's evidence, the court must ensure that cross-examination is not used to harass or humiliate the victim. Recognising the traumatic experience that rape victims go through, the court emphasised that repeated questioning in an unfamiliar setting can make the victim feel ashamed, nervous, or confused, potentially resulting in misinterpretations of her responses as discrepancies or contradictions in her evidence.

UNDERSTANDING CHILD SEXUAL ABUSE

Bhuvaneswari and Deb (2016) discovered that sexual abuse of children is typically a persistent problem that endures over time. Perpetrators can sustain further harm to children by failing to disclose their offences, perpetuating the victimisation of specific children or others, thereby intensifying the gravity of the offence. (Bhuvaneswari, 2016) McElvaney (2015) emphasised that the reluctance or postponement of victims to reveal their experiences of child sexual abuse constitutes a substantial barrier to intervention. Comprehending the factors that contribute to children's reluctance to report such incidents is of paramount importance for child protection endeavours and influences the approaches taken by legal and therapeutic practitioners in tackling this concern. (McElvaney, 2015)

Child sexual abuse is a global issue that has been extensively researched. Scholars argue that healthcare practitioners that specialise in CSA are critical in detecting and protecting children. (Ali, 2019) At times, a child's genuine complaint against a powerful figure is carelessly published, typically ignoring the accuser's lack of backup. This sort of reporting reduces the incident's believability. (Rubin, 1996) Additionally, researchers acknowledge that attackers are frequently recognised by the victims. (Atiqul Haque, 2020) (Maity, 2022)

The MWCD Child Abuse Report, 2007, revealed disturbing numbers, stating that one in every two children in India had been sexually assaulted. Furthermore, the survey stated that India has the sad distinction of having the largest number of sexually abused children worldwide, with a kid under 16 being raped every 155 minutes, a child under 10 every 13 hours, and one out of every ten children being sexually assaulted at a point of time. (Renu, 2019) According to the findings of Deb and Walsh (2012), a notable proportion of minors (18%) residing in Agartala city, Tripura, India, were victims of sexual violence. It was discovered that instances of physical and psychological violence were more prevalent among males, while sexual violence was more frequently experienced by girls. Irrespective of the nature of the violence encountered, there was a notable disparity in social adjustment scores between school children who had been exposed to violence and those who had not. (Deb, 2012)

In their study, Subramaniyan et al. (2017) emphasised the significance of providing equivalent protection for males and daughters in order to establish a more secure setting for children. The research unveiled a significantly diminished propensity among sexually abused boys in India to report incidents or seek assistance, potentially attributable to the impact of patriarchal conventions. Although patriarchy is frequently linked to the subjugation of girls and women, its repercussions on all children who experience sexual abuse, irrespective of gender, are frequently disregarded. Male offspring, who are frequently stigmatised as inherently superior as a result of societal norms, might be subjected to unjustifiable pressures to recover from the detrimental consequences of sexual abuse during childhood without receiving suitable intervention. (Subramaniyan, 2017)

According to Singh, Parsekar, and Nair (2014), child sexual abuse (CSA) is a worldwide concern that carries significant enduring ramifications. (Singh, 2014) In a study conducted in Kenya, Rotu (2009) similarly identified peers as the principal perpetrators of violence, with the residence being designated as the most hazardous setting. (Ruto, 2009) According to Wurtele and Kenny (2010), an enhanced understanding of CSA by parents empowers them to create more secure surroundings for their children, thereby mitigating the likelihood of sexual exploitation. (Wurtele, 2010)

According to Kenny et al. (2008), it is possible for infants to acquire self-protection abilities as early as three years of age. The authors placed considerable emphasis on the importance of parental and family involvement in the training process, highlighting the fact that children retain the information they gain through recurrent exposure. (Kenny, 2008)

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CHILD SEXUAL ABUSE IN INDIA – AN STATISTICAL OVERVIEW

According to world population estimates, there were 22,172 rapes in India for per 100,000 people in 2020.
According to the National Crime Records Bureau (NCRB), there was a 4.5% increase in crimes against juveniles in 2019 when compared to 2018. In 2019, the NCRB reported that there were a total of 148,185 crimes against minors in the country. Under the POCSO Act, 2012, 31.2% of crimes against minors were reported. Maharashtra filed the most cases under the POSCO Act, 2012 between 2017 and 2019. In more than half of these instances, children were lured online to meet individuals who subsequently engaged in sexual relationships under the guise of marriage or perpetrated sexual assault.

Sexual exploitation is a global concern of immense importance. juvenile sexual assault is a substantial concern in India, where the juvenile population is estimated to be approximately 430 million, as per the 2011 Census. Among the numerous contributing factors to this issue are poverty, a lack of education, and limited access to essential amenities that would otherwise improve the quality of life. The Protection of Children from Sexual Offences Act, 2012 was the subject of 36,022 reported cases, or 34.4% of the total number of cases, according to the most recent data from the National Crime Records Bureau (2016). These cases included child rape incidents. Uttar Pradesh, Maharashtra, and Madhya Pradesh recorded the highest numbers of crimes against minors, with 15.3%, 13.6%, and 13.1% of all incidents, respectively.
The NCRB 2016 data underscores the urgent necessity of research initiatives that aim to inform the public about the pervasive nature of these reprehensible offences in our society. In 2016, a total of 36,022 incidents of child sexual abuse, including rape, were documented in India under the POCSO Act. Uttar Pradesh had one of the highest crime rates among the states, with a total of 4,954 reported rape cases. Maharashtra and Madhya Pradesh followed suit. (Bureau, Crime in India 2016, 2017)
Maharashtra is adhered to by Uttar Pradesh with 6,978 cases, Madhya Pradesh with 5,348, Karnataka with 4,339 cases, and Gujarat with 4,228, in that order. In Maharashtra, the number of incidents of abuse of kids has been rising up. There were 2,398 cases in 2017, 2,944 cases in 2018, and 3,161 cases in 2019. The Criminal Law (Amendment) Act, 2013, made it illegal for those under 18 years old to be in a relationship with someone who is 16 years old or younger. The most susceptible people are between 16 and 18 years old, followed by 12 to 16 years old, 6 to 12 years old, and even those under 6 years old. (Bureau, Crime in India 2019, Statistics Volume I, 2019)

The Criminal Law (Amendment) Act, 2013, raised the age of consent for sex in India from 16 to 18 years. This implies that any sexual activity with a girl under 18 years old, even if she agrees to it, will be considered statutory rape. (Jiloha, 2013)
A research on mistreatment in a school environment was conducted in Kerala, India. The study involved 6,682 school-aged teenagers from Thrissur, Kerala, used a self-report cross-sectional methodology. The findings revealed that a higher proportion of males compared to girls reported occurrences of maltreatment. The precise one-year prevalence rates for different forms of abuse were as follows: 83.4% of girls and 75.7% of boys experienced physical abuse; 29.5% of girls and 6.2% of boys reported sexual abuse; and 89.5% of girls and 6.2% of boys indicated mental abuse. The study discovered many characteristics that significantly elevate the risk of abuse: male gender, low socioeconomic level, habitual substance use by family members, and simultaneous scholastic difficulties. (Kumar, 2017)
There exists a persistent deficiency of research and data about child sexual abuse, although the alarmingly high prevalence of the crime in India. Moreover, the existing preventative measures established to safeguard kids are insufficient. The incidence of child sexual assault in India and elsewhere is markedly affected by a lack of awareness or a tendency to silence youngsters. It is imperative to explore supplementary protective measures promptly to shield youngsters from such reprehensible actions. A plethora of academic studies has highlighted that a significant proportion of those guilty of child sexual abuse avoid imprisonment due to inadequate evidence. Currently, India has enacted the POCSO Act 2012, a specific legislation targeting juveniles.
While making a decision in June 2018, the Honourable Madras High Court said, "Any consensual sex after the age of sixteen or bodily contact or alleged acts could be excluded from the strict provisions of the POCSO Act and sexual assault could be tried under more liberal provisions which can be introduced into the act, separating sexual assault and teenage relationships." (Rajan, 2019) This decision has

recommended that the minimum age of consent for sexual intercourse be reinstated at 16 years. Consequently, it would decriminalise consensual sex for adolescents between the ages of 16 and 18.

Law Commission of India on Child Sexual Abuse

The chapter on Offences against Women and Children in the 156th Report of the Law Commission, titled "The Indian Penal Code (Volume I)," has a section explicitly on child sexual abuse. However, the recommendations in the study were found insufficient in addressing the issues, particularly those raised in the Sakshi case in their presentation before the Supreme Court. Counsel for Sakshi stated that the Law Commission's 156th Report failed to fully address the particular concerns addressed in the writ case. As a result, there is an urgent need to extensively analyse and examine these concerns to ensure that they are properly considered and resolved.

The Law Commission of India released its 172nd Report in March 2000, titled, "Review of Rape Laws", after consulting with various organisations and taking into account the Sakshi verdict, Interventions for Support, Healing, and Awareness (IFSHA), All India Democratic Women's Association (AIDWA), and the National Commission for Women. The study recommended changes to the Indian Penal Code (IPC), the Criminal Procedure Code (CrPC), and the Indian Evidence Act (IEA). It proposed replacing the term "rape" with "sexual assault" to make the offence gender neutral. Furthermore, it was proposed that the offence be widened to include not just penile penetration but also penetration by any other part of the body (such as a finger or toe) or by any object. The Law Commission listed numerous reasons for its proposals, including the rising incidences of forced sexual assaults on young boys and the awareness that sexual offences include not just penile penetration but also penetration by any other bodily part or instrument. Furthermore, the Commission suggested that perpetrators, particularly dads, grandfathers, brothers, or those in positions of power, face heavier sanctions since they frequently conduct sexual assault within the family or against vulnerable and trusting young people. Furthermore, the Commission proposed revisions to the Criminal Procedure Code, with an emphasis on unique procedures for recording a child's testimony by police, performing medical evaluations of child victims, and facilitating a child's deposition in court. (India, 2002)

The POCSO Act incorporates several features of the 172nd Law Commission Report, which proposed changes to the Indian Penal Code 1860, the Criminal Procedure Code 1973 and the Indian Evidence Act 1872 It advocated changing the term 'rape' to 'sexual assault' to maintain gender neutrality and widening the definition of 'rape' to include penetration by any part of the body or object. It also proposed applying heavier sanctions when the perpetrator is in a position of trust or authority, such as a parent, grandfather or brother.

IMPLEMENTATION AND IMPACT OF POCSO ACT, 2012

The POCSO Act's preamble underlines its enactment in accordance with Article 15(3) of the Constitution, emphasising the critical significance of protecting children's best interests. Section 2(d) defines a child as an individual under the age of eighteen. This dedication to prioritising children's welfare is reflected not only in domestic law, but also in the commitments taken on by the Government of India when it ratified the Convention on the Rights of the Child.

In the case of *Satish Ragde versus State of Maharashtra*[7], the Nagpur Bench of the Bombay High Court decided that caressing a child's breasts without "skin-to-skin contact" was considered molestation under the POCSO Act, 2021. This interpretation was offered by Justice Pushpa Ganediwal. Following the High Court's controversial judgement, the Attorney General of India, the National Commission for Women, and the State of Maharashtra filed appeals. A bench consisting of Justices Uday Umesh Lalit, S Ravindra Bhat, and Bela M Trivedi heard these appeals in the case of *Attorney General for India versus Satish and Another*[8].

The primary issue raised in this case was the interpretation of Section 7 of the POCSO Act of 2012, which seeks to provide a reasonable and equitable settlement for instances falling within its ambit. The present ruling emphasises that Section 7 includes both direct and indirect physical touch, rejecting the High Court's claim that it wrongly downplays and even supports a variety of objectionable behaviours. Such an approach violates a child's dignity and autonomy by allowing unwelcome intrusions. The Supreme Court overturned the Bombay High Court's verdict, noting that the case called for the use of the "mischief rule" of legislative construction. It emphasised the significance of courts regularly interpreting laws in order to prevent damage and provide appropriate remedies. The Supreme Court's

[7] Satish Ragde versus State of Maharashtra, Criminal Appeal No. 161 of 2020
[8] Attorney General for India versus Satish and Another, Criminal Appeal No. 1410 of 2021

opinion emphasised that the High Court's interpretation not only impedes the execution of the legislation, but also distorts its intended purpose.

In the 2018 case of *Alakh Alok Srivastava versus Union of India and Others*[9], the Supreme Court of India issued rules for Special Courts dealing with matters under the 2012 Protection of Children from Sexual Offences (POCSO) Act. These instructions attempted to guarantee that trials were finished within one year of taking cognizance of the offence, as required by Section 35 of the POCSO Act. One of the directions was for the High Courts to ensure that judges in Special Courts dealing with POCSO matters be schooled in child protection and psychological responses. Furthermore, if not already in place, Special Courts were to be established solely to handle issues under the POCSO Act. The instructions emphasised the need for Special Courts to expedite cases by avoiding needless adjournments and carefully following the processes established in the POCSO Act. Chief Justices of the High Courts were directed to organise three-judge committees to oversee and monitor the status of POCSO cases. In circumstances when three judges were unavailable, the Chief Justices would organise a Judge Committee to provide supervision. Furthermore, Special Task Forces were to be constituted by the Director-General of Police or comparable state authorities to guarantee adequate investigation and timely presenting of witnesses in court. Finally, the High Courts were advised to create a child-friendly environment in Special Courts in accordance with the POCSO Act's provisions, in order to respect the legislation's spirit.

In the recent case of (Satish Ragde versus State of Maharashtra, 2021) (Satish Ragde versus State of Maharashtra, 2021) (Satish Ragde versus State of Maharashtra, 2021) (Satish Ragde versus State of Maharashtra, 2021) *Saxena versus Union of India*[10], the Supreme Court of India clarified the liability of publishers or owners of media, studios, or photography facilities for their employees' actions or omissions under Section 23 of the Protection of Children from Sexual Offences (POCSO) Act. The court developed a set of instructions for this provision, explaining several procedures to protect victims' identities and privacy rights. These limitations include limits on releasing the victim's identity in any form of media, even indirectly, in order to prevent public identification. Furthermore, in situations involving deceased or mentally handicapped victims, their identities shall not be divulged unless the competent authority, often the Sessions Judge, determines that it is justified. Furthermore, FIR for certain offences under IPC and POCSO should not be made public, and victims submitting appeals under the CrPC are not required to reveal their identities. Documents detailing the victim's name should be kept securely sealed, and any disclosures should be closely controlled by the investigative agency or court. Furthermore, petitions to expose the identities of deceased victims or those with unsound minds should be referred to the Sessions Judge while the government establishes guidelines for such disclosures. Under the POCSO Act, adolescent victims' identities may only be divulged if the Special Court determines it is in their best interests. Finally, all states and union territories are instructed to build 'One-Stop Centres' in each district within a certain timeframe after the court's decision.

CRITICAL ANALYSIS OF THE ACT

The POCSO Act serves as a socially beneficial legislation aimed at delivering justice to children. However, it has sparked various debates, highlighting the need for ongoing research to enhance existing knowledge, information, and evidence to better guide the pursuit of justice for children. Unlike conventional terminology, the POCSO Act of 2012 refrains from explicitly using the term 'rape' and adopts a broader definition of penetrative sexual assault under Section 3. This expanded definition encompasses oral sex and the insertion of any object into the anus, mouth, or vagina, in addition to penile penetration.

In the case of *State versus Pankaj Choudhary*[11], which happened before to the enactment of the POCSO Act, the accused could only be charged with "outraging the modesty of a woman" for digitally entering (with fingers) the anus and vagina of a 5-year-old kid. The prosecution failed to prove rape because the High Court determined that digital penetration was not an offence under the Indian Penal Code. However, the POCSO Act's definition of penetrative assault has been broadened to provide further protection for minors. Furthermore, POCSO criminalises a variety of behaviours as sexual assaults, even if they do not include penetration (as explained in Section 7).

Furthermore, the POCSO Act establishes harsher penalties for "aggravated" penetrative and non-penetrative sexual assaults (Section 5 and Section 9) that occur under specified situations or by specific perpetrators and have a major impact on the victim. This includes sexual attacks committed by those in

[9] Alakh Alok Srivastava versus Union of India and Others, Writ Petition (C) No.76 of 2018
[10] Nipun Saxena versus Union of India, Writ Petition (CIVIL) No. 565 of 2012
[11] State versus Pankaj Choudhary, CRL. A. 813/2011

positions of authority or control over a child, those who live in the same family as the kid, or in scenarios like gang rape, causing serious physical injury, or threatening with weapons or caustic chemicals. Other conditions include assaults during communal or sectarian violence, against children under the age of 12 or those who are physically or mentally disabled, causing a child to become pregnant, knowingly assaulting a pregnant child, infecting the child with HIV, repeat assaults, or accompanied by public humiliation.

The POCSO Act provides a broad definition that covers a wide range of probable events. The Act is forward-thinking by including incidents of child harassment via sexting or sexual cyberbullying in its definition of sexual harassment, which includes actions such as repeatedly or constantly following, watching, or contacting a child directly, electronically, or through other means (Section 11(iv)). However, the Act does not clarify how "repeatedly" or "constantly" pursuing or contacting a kid with sexual purpose is defined, leaving it subject to interpretation and contestation. Notably, the Act distinguishes itself by punishing the abetment or attempt to conduct any of the offences enumerated in the preceding sections as per Section 16. Furthermore, Section 29 is an extraordinary clause in the Act, it creates a presumption of guilt for the accused unless proven innocent, which is deemed odd.

The establishment of Special Courts under Section 35 intends to make trial proceedings more sensitive by allowing the victim's evidence to be given in camera, via video connection, or behind curtains or screens. This measure is intended to minimise trauma while simultaneously protecting the child's identity. The Special Court plays an important role in defining how the law and evidence are interpreted. The implementation of the Act necessitates extensive coordination across numerous criminal justice, governmental, and non-governmental organisations, as well as large resources.

Mandatory Reporting of POCSO Cases

Section 19 of the POCSO Act (2012) explicitly states that any anybody, including a child, who suspects or knows of an offence under this act shall report it to either the Special Juvenile Police Unit or the local police. Failure to comply may lead to a fine, imprisonment for a maximum of six months, or both. This clause poses difficulties for a considerable number of professionals. The inherent concerns surrounding the notion of mandatory reporting will be scrutinised in this section.[12]

According to a Human Rights Watch Report (2013), only a small percentage of child sexual abuse instances are reported to authorities. The persistent uncertainty surrounding mandatory reporting stems from the apprehension that children and their family members will not be treated with compassion should they disclose the situation. A great number of individuals who support victims endure traumatic events that further compound their distress. Intimidating police interviews, excruciating and intrusive medical examinations, and pressure from the perpetrators to drop charges are examples of such ordeals. The infant may also experience distress during court proceedings due to the protracted duration and the anxiety-inducing nature of cross-examinations. (Dummett, 2013)

Jagadeesh, Deosthali, and Rege (2016) argue that the principal objective of mandatory reporting is to administer punishment to offenders and deter criminal activity, rather than explicitly attending to the concerns or preferences of survivors. The authors' examination of the factors that contribute to survivors' reluctance to report crimes revealed the following concerns: the fear of losing sanctuary, apprehensions regarding potential retaliation from the perpetrator, anxiety regarding the discovery of the assault by others, and fear of losing community support. (Jagadeesh, 2016) Malathesh and Das (n.d.) state that in all cases of sexual assault, a medical legal case is required under the POCSO Act; however, parental opposition to this requirement is common. (Malathesh, 2017) The procedure for reporting in accordance with this act is not specified in detail. According to Seth (2015), it is critical for physicians to possess

[12] POCSO ACT, Section 19. Reporting of offences.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of1974)any person(including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to,— (a) the Special Juvenile Police Unit; or (b) the local police. (2) Every report given under sub-section (1) shall be— (a) ascribed an entry number and recorded in writing; (b) be read over to the informant; (c) shall be entered in a book to be kept by the Police Unit. (3) Where the report under sub-section (1) is given by a child, the same shall be recorded under sub-section (2) in a simple language so that the child understands contents being recorded. (4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same. (5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection including admitting the child into shelter home or to the nearest hospital within twenty-four hours of the report, as may be prescribed. (6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard. (7) No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub-section (1).

knowledge regarding the Protection of Children from Sexual Offences (POCSO) Act, 2012, a recent law that requires the disclosure of instances of child sexual abuse. Neglecting to adhere to this stipulation may lead to the imposition of penalties. (Seth, 2015)

A critical component of the POCSO Act 2012, mandatory reporting was initially supported on the grounds of previous research. All individuals were subsequently obligated to disclose incidents of child sexual abuse (CSA). Recent research, on the other hand, suggests that mandatory reporting may result in adverse outcomes, especially for victims and their families who have fallen victim to CSA. Notwithstanding its inclusion in the POCSO Act, professionals (e.g., physicians, psychiatrists, and educators) who neglect to report are subject to penalties. However, this creates a dilemma because children frequently reveal CSA to their parents or other reliable adults under the assumption that it will remain private. This expectation of confidentiality and trust is repeatedly disregarded by the mandatory reporting clause, as evidenced by the aforementioned studies.

While the POCSO Act is powerful in many ways, law enforcement agencies and other stakeholders involved in its administration have pointed out shortcomings.

The execution of the POCSO Act has exposed various flaws and ambiguities, providing issues for law enforcement and impacted parties alike. For starters, the Act makes no provision for what to do if a victim kid refuses a medical examination, notwithstanding the investigator's and family members' readiness. Furthermore, Section 27(2) requires a lady doctor to conduct the medical examination of a female victim kid, but provides no recourse if no lady doctor is available at the hospital. Notably, Section 3 of the Act only includes men as accused parties, leaving women out. Furthermore, the Act criminalises consensual sexual conduct among teens under the age of 18 without addressing the question of age of consent, which is inconsistent with international norms and may result in social harassment of juveniles. The Act also fails to resolve disparities between personal laws allowing child marriage and marital consummation. Furthermore, it disregards victims' mental ages and imposes punitive measures on accused persons before demonstrating guilt, which violates natural justice principles. Furthermore, while minors who make fraudulent reports are not penalised, adults who file phoney complaints face sanctions, raising the possibility of exploitation of this exemption. These flaws highlight the necessity for a thorough review and reform of the POCSO Act to provide effective child protection and justice while adhering to fairness and due process norms. The Act lacks clarity on the documents necessary to determine the victim's or accused's age, leading in conflicts and dependence on divergent regulations. Furthermore, severe bail and periodic trial procedures lead to the extended detention of untried offenders, worsening jail congestion and administrative concerns. Furthermore, while the Act requires the provision of support personnel for child victims, this obligation is frequently ignored, resulting in acquittals and psychological stress on victims and their families. Furthermore, the Act's compensation provisions are vague, creating questions about the amount and receiver of compensation. Concerns have also been expressed about the Act's pro-victim bias, which might jeopardise natural justice principles. Furthermore, the Act's wide definition of sexual intercourse may result in excessive punishment in innocuous instances. The Act's implementation frequently leads in acquittals despite its intention to discourage perpetrators with heavy penalties, limiting victims' access to justice. Furthermore, there are procedural flaws in the trial of public officials and the control of investigative processes. Furthermore, disputes continue about the efficacy and justice of implementing the death penalty for such crimes. The Act's presumption of guilt creates an onerous burden on accused persons, particularly those who cannot afford legal representation. Despite statutory trial completion deadlines, the backlog of cases under the POCSO Act continues to rise, indicating systemic inefficiencies. Notably, the Act does not address compensation for falsely accused persons, raising questions about procedural fairness. These difficulties highlight the importance of a complete assessment and revision to ensure that the POCSO Act is implemented effectively while adhering to justice and due process standards.

The enactment of POCSO 2012 has unquestionably played an important part in tackling the issue of child sexual abuse in India by recognising and regulating numerous types of improper sexual behaviour that endangers children. The significant rise in reported instances demonstrates that the law has made a substantial contribution to boosting public awareness, sensitising the criminal justice system, and ensuring that reporting Child Sexual Abuse is not only encouraged but also mandatory. However, effective execution of POCSO Act, 2012 necessitates the participation of several law enforcement agencies, as well as state and third-party entities, making it a resource-intensive effort at the local level.

BNSS AND BNS – FOUNDATIONAL INSTRUMENT FOR FORNESIC INTEGRATION IN POCSO INVESTIGATIONS

The Bhartiya Nagrik Suraksha Sanhita 2023 and Bhartiya Nyaye Sanhita, 2023, replaced the Criminal Procedure Code, 1983 and Indian Penal Code, introduced a paradigm shift in handling cases under POCSO Act, 2012. The new criminal laws moved the investigative process from the reliance on testimonial process to a framework built on a mandatory technology driven forensic proof. The paper further discusses the key provisions of BNSS that have created a new forensic foundation for handling child sexual abuse, the investigations and detailing the operation mandate.

BNSS PROVISIONS FOR ENHANCING THE USE OF FORENSICS

The adoption of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 is a significant procedural change towards the criminal justice system of India, which incorporates forensic science as the fundamental element of investigation. Section 176(3) is that any offence that is charged with a penalty of seven years or above an area that covers most of the severe offences against children under the Protection of Children from Sexual Offences (POCSO) Act, 2012, involves obligatory attendance of a forensic professional at the crime scene. The provision also requires that the whole evidence gathering procedure should be recorded on video and thus provide an unbiased and indisputable evidence record. This not only changes scientific evidence into a discretionary tool but makes it a non-negotiable procedure requirement that fundamentally changes the standards of investigations. The BNSS also brings strict timeframes, requiring that the investigations in the main sexual-offence cases be taken within sixty days, which is a great rush compared to the earlier standards of the procedure. This 60-day sprint imperative makes agencies conducting investigations to implement divergent working processes to collect evidence, analyze forensics, and prepare a charge-sheet to avoid lapses in the procedure. However, the same reform creates a complicated legal-ethical paradox: although Section 105 and 173 of the BNSS are binding on the audio-visual recordings of the search and witness statements, Section 23 of the POCSO Act does not allow any form of disclosure that can lead to the identification of the child. The BNSS system puts the emphasis on the value of biological evidence, especially DNA. The legislation broadens the list of admissible samples to be adopted to incorporate the blood, semen, swabs, hair, and fingernail clippings, with particular focus on the DNA profiling. Basis. This has been backed by issuing 18,020 Sexual Assault Evidence Collection kits (SAEC) and a time limit of seven days during which medico-legal reports (MLRs) have to be submitted by the medical practitioners under Section 184.

Section 176(3) is the keystone of the BNSS forensic revolution. It is under this provision that a scientific, on-site investigation has become immovable in serious crimes, and forensic analysis is no longer a secondary, lab-based activity, but a primary, crime-scene level activity.

ADMISSIBILITY OF DIGITAL EVIDENCE AND E-SAKSHYA BACKBONE.

The prioritization of digital evidence can under BNSS can be justifies by Bhartiya Sakshye Adhiniyam (BSA), which has introduced new legal framework of admissibility of electronic evidence. The BSA provides legal equivalence of paper records and electronic records to allow the video material required by the BNSS to be admissible in a court. The most important provision that is provided in the BSA is section 63(4) which describes the obligatory certification of electronic evidence, adding to a more restrictive authentication procedure. Further, By providing for a legal equivalence between electronic records and documents stored physically, the BSA guarantees that the video evidence required by the BNSS will be admissible in court.

But, it also creates a more challenging authentication process. Section 63(4) of the BSA is especially important because it describes the necessary certification process for electronic evidence.

MEETING THE "60-60-30": KEY PERFORMANCE MEASURE FOR INVESTIGATION AND TRIAL TIMELINES

A distinguishing feature of the new legislative structure is its strong imposition of deadlines to ensure swift justice, which is critical in POCSO cases. The table below lists the actions which must be

undertaken in the BNSS, together with deadlines and guidance relating to enabling POCSO information to be used to share information on POCSO crimes under the POCSO Act.

Stage	Relevant Section	Deadline
Investigation Completion	Section 193 BNSS	**60 days** from recording of information for POCSO Sections 4, 6, 8, 10.
Framing of Charges	Section 251 BNSS	**60 days** from the date of the first hearing in the case.
Trial Completion	Section 346 BNSS	**2 months** from the date of filing the charge-sheet for offenses including rape
Judgment Pronouncement	Section 258 BNSS	**30 days** from the completion of arguments (extendable to 45 days with reasons).
Victim Progress Update	Section 193(3)(ii) BNSS	Police must inform the victim of investigation progress within **90 days**.

Table 1: Statutory Timeline for Investigation and Trial under BNSS

These stringent deadlines impose significant pressure across the entire justice system, from law enforcement investigators to forensic laboratories and the judiciary, requiring highly coordinated and efficient collaboration.

BNS AND BNSS: THE TWIN TOWERS OF FORENSIC ENABLED JUSTICE

The Bharatiya Nyaya Sanhita, 2023 and the Bharatiya Nagarik Suraksha Sanhita ,2023 together constitute the most significant re-engineering of India's criminal justice architecture since the colonial codifications of 1860–1898. The BNS re-codes the substantive aspects of crime, with an expanded glossary within this category that encompasses various sexual and digital offences, while the BNSS sets forth the procedural framework for a scientific, technology-based model of investigation and prosecution. Together, they present a dual process reform, which advances Indian criminal procedure toward forensic-based accountability.

From the standpoint of forensic jurisprudence, the BNSS converts investigation from a narrative exercise to a scientifically verifiable endeavour. Forensic scientists are conceptually required to visit the crime scene; evidence collection must be recorded on video; investigations into sexual offences must now take place in a stipulated sixty-day window; and the codified requirement for requirements to ensure dual certification with regard to digital evidence under the Bharatiya Sakshya Adhiniyam (BSA) are together mark a determined institutional pivot. These provisions remove the inquiry's traditional reliance on testimonial evidence in and, at a minimum, place empirical verification centrally in the investigation of crimes in court.

For POCSO cases, this structural shift has both potential as well as contradiction. On the one hand, mandatory forensic presence at the scene of the crime along with rapid collection of biological and/or digital evidence enhances the probative value of prosecution cases. Moreover, Sexual Assault Evidence Collection (SAEC) kits with seven-day deadlines for the medico-legal report, as well as recording by electronic means, ensures that a more reliable chain of custody exists and expedites the transition from complaint to charge-sheet. On the other hand, the confluence of audio-visual requirements by BNSS under Section 105 and 173 combined with POCSO's confidentiality protections as enumerated under Section 23 creates doctrinal tension between transparency and privacy. This tension represents a new frontier in procedural ethics as to how to balance efficiency through technology with the constitutional obligation to protect the dignity and anonymity of children.

The Bharatiya Sakshya Adhiniyam finalizes this triad by renegotiating evidentiary thresholds. The demand for dual certification for electronic evidence--by both the device operator and the forensic examiner--creates further detailed admissibility standards, diminishing (if not eliminating) the ability to manipulate evidence. However, this also creates procedural vulnerability, as failure to obtain both certifications may yield important digital or video evidence excluded as admissible; providing opportunity for a possible miscarriage of justice. These implications highlight the need for capacity-building within forensic laboratories and police organizations for evidentiary standards to reflect the

policy of rigorous adherence to procedural type assessments, but not accidently eliminate reliable evidence.

In essence, the BNS establishes the substantive outlines of modern crimes; the BNSS provides the procedural muscle for forensic application; and the BSA establishes the evidentiary validation framework. Collectively, these three statutory pieces make up the three-part structure of a forensic-enabled justice system. For the context of child-protection law, especially POCSO, collectively, these statutes represent a moving away from reactive prosecution towards scientifically proactive investigation—and with this movement, under the regime of POCSO, the architecture of India's justice system is firmly established in a new age of evidentiary precision, institutional accountability, and ethical vigilance.

THE ROLE OF FORENSIC SCIENCE IN DELIVERING JUSTICE

Forensic science is crucial for the administration of justice through its scientific and technical assistance to the criminal justice system. The primary objective is to identify and analyse physical evidence to substantiate criminal case defence, prosecution, and investigation. Forensic science contributes to the administration of justice in several key respects:

- Crime Scene Investigation: Forensic specialists are frequently the initial responders to a crime scene to collect and preserve physical evidence. The evidence includes fingerprints, DNA samples, trace evidence, and more items. Constructing a persuasive argument relies on meticulously collected and preserved evidence.

B. Suspect Identification: Forensic science facilitates suspect identification through procedures such as fingerprint analysis, facial recognition, and dental records comparison. DNA profiling is very useful in identifying individuals involved in a crime.

- Analysis of Evidence: Forensic scientists scrutinise several types of evidence, such as blood, hair, fibres, ballistics, and medicines, to determine their pertinence to a case. They can establish links among the victim, suspect, or crime scene and the evidence.
- Determination of Death and its Cause: Forensic pathologists conduct autopsies to establish the cause and manner of death in cases of suspected fatalities or homicides. Court proceedings and criminal enquiries rely on this understanding.
- Testimony of Experts: Expert witnesses in court are predominantly forensic professionals. Through their specific knowledge and evidence-based analysis, they provide testimony that aids judges and juries in comprehending complex scientific concepts and facts.
- Acquittal of the Innocent: Forensic science can facilitate the exoneration of those unfairly condemned. DNA evidence has been crucial in overturning wrongful convictions and exonerating the innocent.
- Cold Case Resolution: The re-evaluation of cold cases using forensic science may lead to the identification and prosecution of previously unsolved crimes.

Forensic databases, such as the Combined DNA Index System (CODIS), enable law enforcement agencies to share and compare DNA profiles, facilitating the identification of suspects and the resolution of crimes.

- Forensic psychologists and profilers create profiles of unidentified suspects via psychological and behavioural study, therefore aiding investigations and suspect identification.

In conclusion, forensic science is vital to the justice system, providing objective and scientific methodologies for criminal investigation, suspect identification, and evidence presenting in court. It promotes the fair and accurate operation of the criminal justice system, leading to more reliable verdicts and outcomes.

CONCLUSION AND SUGGESTIONS

To protect children from sexual assault, India has passed the POCSO Act, a landmark piece of law. While the Act has largely been effective in increasing awareness and providing legal protection for child sexual abuse victims, there are still areas where it may be improved. We got insights into the Act via critical examination, including its benefits, flaws, and obstacles to successful implementation.

One of the POCSO Act's key characteristics is its wide definition of child sexual abuse, as well as its recognition of numerous types of sexual offences against minors. The Act also provides rules for the courtroom protection of young victims and witnesses, as well as strict sanctions for perpetrators.

However, the Act has certain shortcomings. There is an urgent need for improved training and sensitization of those responsible for carrying out the Act. Furthermore, the Act is unclear on reporting processes for offences against children, particularly those involving sexual acts. Addressing these inadequacies is critical to increasing the Act's efficacy in protecting children from sexual abuse and securing justice for victims.

It is crucial to strengthen protocols for reporting incidents of sexual abuse involving juveniles so that witnesses and victims may come forward without apprehension of retaliation. This can be accomplished by offering extensive support services to victims and their families, as well as increasing knowledge of the Act's legal rights. To effectively address cases of child sexual abuse and provide necessary support to victims and their families, various stakeholders involved in the Act's implementation, including law enforcement, the judiciary, healthcare professionals, and social workers, must be better trained and sensitised.

DNA technology has advanced to the point that it has added new features to the investigation of criminal cases. In addition to this, it has provided the criminal justice system with strong scientific data that supports its assertions. It is essential to implement targeted legislation and legal modifications in order to resolve the legal doctrines, inconsistencies, and applications of DNA technology in relation to the rapidly changing socio-economic issues of Indian society.

For the purpose of preventing cases of sexual abuse and exploitation of children, India must make the strengthening of its child protection system a priority. This includes improving children's access to school, healthcare, and social welfare services, as well as creating an atmosphere in which they feel comfortable expressing their problems and seeking help.

Improving enforcement of the POCSO Act at the federal, state, and municipal levels, as well as raising public knowledge of its provisions, is critical. Implementing these recommendations may improve the efficiency of the POCSO Act and help to greater protection of children in India from sexual abuse. However, it is critical to recognise that the Act's effectiveness is ultimately dependent on the government's political will and dedication, as well as the larger socio-cultural views towards child sexual abuse that exist in India.

As crimes against children grow more common, every institution must take steps to ensure their protection and safety. Child rape is a heinous crime that causes tremendous damage to its young victims, limiting their capacity to explore the world with innocence and trust and instead exposing them to emotions of betrayal, distrust, and terrible sorrow throughout their formative years.

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