

# Revisiting the POCSO Act: Legal Gaps, Judicial Trends and Global Perspective on Child Sexual Protection

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**Abstract:** India is home to more than 444 million children and is one of the world's largest child population. But they are often vulnerable to certain maligned treatments perpetrated by individuals with ill intentions. This informs the establishment of appropriate legislation to offer some degree of protection against such treatments. Sexual crimes and offences are of major concern across the world – India not being an exception – and it is even more disturbing when these crimes are committed against children, which presents a complex and diverse issue that cannot be pinned to one singular factor despite apparent risk factors being developmental vulnerability and gender inequalities<sup>1</sup> In view of the ensuing circumstances within the Indian context, this article aims to evaluate the effectiveness of POCSO Act through a comparative study to determine how the legislation compares to similar legal instruments in operation in other countries.

**Keywords:** Child Protection, POCSO Act, Sexual abuse law, adolescent consent, Comparative legal Study

## 1. Introduction

The POCSO Act is enacted with the primary objective of shielding minors from distressing impact of sexual abuse, and marks a significant milestone in India. It is classified as a gender-neutral legal instrument that categorizes individuals under the age of 18 years as children. It is primarily directed at the criminalisation and impedance of sexual offences and crimes against children. India's involvement, as a signatory to the United Nations Convention on the Rights of the Child (UNCRC), 1989 could have catalysed the promulgation of the POCSO Act<sup>2</sup>. More so, the damning report from the Ministry of Women and Child Development on Child Abuse in India might also have acted as a creditable appendage. In the report, it was found that 53.22% of the children covered in the report had been subjected to one form of sexual abuse/harassment or the other, with most of them not even reporting the cases to anyone due to fear of stigmatization and further maltreatment<sup>3</sup>.

The Act was amended in 2019, with major focuses on child pornography and an increase in the severity of sentences for convicted persons committing sexual crimes against minors. Based on the Amendment, child pornography was defined as capturing the visual representation of the sexual activities of children either through the use of videos, pictures, digital images, or computer-generated elements [whether solely or in combination]. The transmission of child pornographic materials was also deemed punishable in this Act. The Amendment established that aggravated penetrative sexual offences against children can carry minimum rigorous

imprisonment was raised from 10 to 20 years which can extend to life imprisonment<sup>4</sup>. Noteworthy, the sexual harassment committed against a child by a police officer, armed forces 1cc official, jail or remand home staff member, or a public servant is classified as an aggravated form of assault and carries severe consequences<sup>5</sup>.

This study is significant in the context of India's evolving legal response to Child sexual offences and offers valuable insights for lawmakers, judicial bodies and child rights activists working to bridge the gap between legal provisions and their practical enforcement.

“This paper adopts a doctrinal legal research method involving critical analysis of statutory texts, case laws, and comparative legal instruments from selected jurisdiction”

## 2. Key Features of the POCSO Act

### 1) Gender neutrality

The POCSO Act charts a different course from taking a gendered approach to legislation against sexual offences as attainable with the Indian Penal Code and other legal instruments. This is highlighted by how the Act considers anyone – whether boy or girl – below 18 years old as a child.

### 2) Special court formation

The Act has provisions for the formation of special courts across different districts to expedite cases of child sexual abuse<sup>6</sup>. The Court should create a friendly environment for children with a family member, guardian, relative or someone

<sup>1</sup> WHO (ed.), *Responding to children and adolescents who have been sexually abused: WHO clinical guidelines 74* (World Health Organisation, Geneva, 2017).

<sup>2</sup> Ministry of Women & Child Development, “India Report on the World Summit for Children” (Ministry of Women and Child Development, Government of India, 2000).

<sup>3</sup> Ministry of Women and Child Development, “Study on Child Abuse India” (Ministry of Women and Child Development, Government of India, 2007).

<sup>4</sup> POCSO Amendment Act 2019, Section 6(1)

<sup>5</sup> POCSO Act 2012, ss. 5, 9

<sup>6</sup> Sec. 28

whom the child has confidence in being present during the trial. More so, the child is not to be subjected to any form of character assassination or aggressive investigation. The Court also accepts video evidence submitted by the victim.

### 3) Victim's privacy

The POCSO Act also touches on media coverage of such cases, especially with respect to the victim's identity which must be kept private<sup>7</sup> except if the Special Court grants approval to the contrary.

### 4) Mandatory reporting of child sexual offences

Sections 19–22 of the POCSO Act make it mandatory for third parties to report cases of child sexual abuse since children are largely defenceless and vulnerable – responsibility is ultimately placed on society to defend the interests of children. In *Nar Bahadur Vs. State of Sikkim*<sup>8</sup> teacher of the filed an FIR (First Information Report) at the Police Station upon discovering the child was carrying a pregnancy.

### 5) Guilty until proven innocent

As against the conventional principle of “innocent until proven guilty”, the POCSO Act is premised on the rule of “guilty until proven innocent”. Based on this, the accused shoulders the responsibility of presenting credible evidence to prove his/her innocence in court.

### 6) Implementation substantiation

The provisions of Section 44 of the POCSO Act are directed at ensuring its implementation, with the National Commission for Protection of Child Rights (NCPCR) – under the Commission for Protection of Child Rights Act, 2005<sup>9</sup> – tasked with monitoring the Acts implementation.

### 7) Punishment for false accusations

Contained within the POCSO Act is the provision for the punishment of individuals who falsely accuse others of committing sexual abuse in a bid to defame, humiliate, threaten, or intimidate the latter. There is however an exemption from punishment for children<sup>10</sup> who make false accusations.

### 8) Stringent Punishments

It was formulated to effectively to address the heinous crimes of sexual abuse and sexual exploitation of children. Legal provisions were made through implementation of criminal Law (amendment) 2013, which amended Indian Penal Code, Code of criminal Procedure and Indian Indian Evidence Act.

<sup>7</sup> *Ibid.*, s. 23(2)

<sup>8</sup> 2018 SCC Online Sikk 28

<sup>9</sup> The Commission for Protection of Child Rights Acts, 2005 (4 of 2006)

<sup>10</sup>, s. 22(2)

<sup>11</sup> United Nations Convention on the Rights of Child Guidelines regarding the implementation of the Optional Protocol to the

## Constitutional protection

### 3. International Laws for protection of children from sexual abuse

The precedence for the formulation of international laws on sexual crimes against children can be traced to the United Nations Convention on the Rights of the Child centres on protecting children from discrimination and all kinds of exploitation and neglect; providing assistance to children's basic needs; preventing children from harms, and ensuring their participation in decisions that affect them. There have been several appendages to this over the course of time. For one, actions involving children who are sexual crime victims are expected to be framed by applicable human rights ethics and standards. Essentially, the status of child victims as a child and a victim should not be undermined because of the criminal activities perpetrated against him/her Furthermore, in enacting laws on crimes against children, it is pertinent that the best interests of the children must be prioritized and given utmost consideration. Therefore, the actions or decisions taken concerning the victims of child sexual crimes while formulating laws – as may be facilitated or influenced by private or public social welfare agencies, courts of law, legislative entities, police, or administrative systems – must seek to preserve the best interests of the child<sup>11</sup>.

Another instrument worth considering on the international front is the Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents. Its objective is to drive far-reaching and collaborative global efforts, capturing different initiatives and agencies, to tackle the challenges emanating from the information society<sup>12</sup>. More importantly, it seeks to “define, prohibit and criminalise, following existing international human rights standards, all acts of sexual exploitation of children and adolescents in their jurisdiction, irrespective of any stage of consent or marriage or cultural practice, even when the adult is unaware of the child's age”.

The Lanzarote Convention – The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse – registered as the first major treaty that factored in emerging technological developments in the discourse on the protection of children against sexual crimes, and it is directed at classifying the grooming [which describes the act of soliciting children to carry out sexual activities using ICT] as a criminal offence<sup>13</sup>. In other words, the Lanzarote Convention pushes for the criminalization of sexual abuse and exploitation against children; the prosecution of offenders, and provision of substantial support and remedies for victims. The Lanzarote Convention outlines inhibitive and commensurate penalties against grooming, pornography, prostitution, sex tourism, and sexual

Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2019)

<sup>12</sup> Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents (2008)

<sup>13</sup> Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), CETS No. 201 (2007)

abuse, and urges civil society, the private sector, and state and national authorities to work together to end impunity. Thus, collaboration at the national and international levels is considered indispensable for the effective eradication of online sexual abuse and exploitation of children, as well as the protection of the victims.

The Budapest Convention (otherwise known as the Council of Europe Convention on Cybercrime) is another similar framework aimed at criminalizing offences such as child pornography, especially those committed through computer systems. It provides an instrument for international police and judicial collaboration in ICT-/internet-related crimes against children as cybercrimes are investigated using retrievable electronic evidence<sup>14</sup>. The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography was also endorsed by the United Nations General Assembly in 2000, and it came into force in 2002. This particular convention was targeted at the prohibition of child prostitution and child pornography, and it charges signatory parties to proscribe these acts along with child trafficking while advancing the rights and protection of children<sup>15</sup>. The Convention also acknowledges the victim child's vulnerability, with strategies adopted to identify special needs, even as protection from threats and retaliation is offered<sup>16</sup>.

Another convention is the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. It aims to foster collaboration among signatory parties to effectively prevent, suppress, and prohibit the trafficking of children and women and also supports the repatriation and rehabilitation of the victims<sup>17</sup>. Extensively, the Convention also calls for the punishment of the financiers and facilitators of trafficking,<sup>18</sup> calling on the signatory parties to collectively provide comprehensive measures of legal aid in relation to the inquiry, investigation, proceeding, or trial of children and women trafficking<sup>19</sup>. Furthermore, it canvasses for the provision of support, ranging from legal advice to counselling, and healthcare services, for the victims<sup>20</sup>.

#### 4. Indian Judiciary on Child Protection

There are indications to show the varying or dividing stances of the Indian judiciary on the interpretation and application of the POCSO Act. This may be considered a possible loophole in the legal framework of the Act. For instance, Kale<sup>21</sup> posited that different Indian courts have questioned the objective behind enacting the Act in recent times, and this was particularly concerning how the POCSO Act tends to regulate

or criminalise adolescent sexuality since there is no distinction between consensual and non-consensual sexual contact between children. Some others described the POCSO Act as a double-edged sword while pointing out the positive and negative aspects of the legislation<sup>22</sup>.

Relevant to the objective of this article are a few court cases – that hinged on the POCSO Act – discussed below:

##### *Sabari Sabarinathan Vs. The Inspector of Police*<sup>23</sup>

This case was heard by the Madras High Court which ruled that the relationship between a girl under 18 years of age and a teenage boy cannot be classified as being alien or unnatural since biological attraction and mutual innocence were a facilitator. In suggesting the way forward, the Court was quoted as follows: “*Any consensual sex after the age of 16 or bodily contact or allied acts can be excluded from the rigours provisions of the POCSO Act and such sexual assault, if it is so defined can be tried under more liberal provision, which can be introduced in the Act itself and in order to distinguish the cases of teenage relationship after 16 years, from the cases of sexual assault on children below 16 years.*”

##### *Vijayalakshmi & another Vs. State Rep.*<sup>24</sup>

The Court in this case drew attention to the need to consider the infusion of science and psychology of adolescents – especially as romantic/sexual relationships are fundamental to the development of intimacy and self-identity of the individuals within this age category – when hearing cases that involve the POCSO Act within the ambit of consensual relationship. The Act does not give provision for the sexual relationship or intercourse that persons under the age of 18 years bracket may agree to thus obliterating the prospect of minors or adolescents' consent in such cases. It follows that the consent provided by adolescents does not register as 'valid' based on the provisions of the POCSO Act.

The case of *Satish S/O Bandu Ragde Vs. State of Maharashtra*<sup>25</sup> highlighted the contentions that may arise with the application of the POCSO Act – three courts were involved in this particular case. The accused were caught to have floundered the breast of a 12-year-old girl while also attempting to remove the covering around her waist. The Special Court set up under the POCSO Act provisions found him guilty and sentenced him to 3 years in prison with a Rs.5,000 fine. Unsatisfied with this judgement, the appellant appealed to the Bombay High Court which eventually ruled that Section 7 of the POCSO Act explicitly touched on sexual assault, which involves skin-to-skin contact, and not issues such as breast floundering which was the substantiated

<sup>14</sup> Council of Europe, Convention on Cybercrime, ETS No.185 (2001)

<sup>15</sup> The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, art. 3

<sup>16</sup> *Id.*, art. 8

<sup>17</sup> The South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, art. 2

<sup>18</sup> *Id.*, art. 3

<sup>19</sup> *Id.*, art. 6

<sup>20</sup> *Id.*, art. 9

<sup>21</sup> *Sanskriti Madhukar Kale (2024)*. Criminalization of Adolescent Love: Critical Analysis of the Law Commission. Available at:

<https://www.nujssacj.com/post/criminalization-of-adolescent-love-critical-analysis-of-the-law-commission> (last visited on October 30, 2024).

<sup>22</sup> Neha Susan Varghese., "The double-edged sword of consent law in India" 6.3 *International Journal of Legal Research Studies* 27 (2021).

<sup>23</sup> Criminal Appeal No.490 of 2018, Madras High Court

<sup>24</sup> CrI.O.P.No.232 of 2021, Madras High Court

<sup>25</sup> Criminal Appeal No. 161 of 2020

offence of the appellant here. The Bombay High Court then set the order of the Special Court aside and sentenced the appellant to 1-year imprisonment with a fine of Rs.500. The case was further contested in the Supreme Court where the judgement of the Bombay High Court was ultimately overturned with the Judge stressing that sexual intent – and not necessarily skin-to-skin contact – was enough to establish sexual assault under the provisions of the POCSO Act<sup>26</sup>.

A possible misuse of the POCSO Act can be seen in the case involving *Aas Mohammad Vs. State*<sup>27</sup> wherein the Accused was found to have had sexual intercourse with a 14-year-old girl leading to pregnancy. The case was brought forward after the Accused refused to take the hand of the girl in marriage based on an initial agreement with her parents. The Accused was however cleared of the allegations after agreeing to marry the victim while also offering a compensatory sum of Rs.30,000. The Court consequently ruled that the Accused fulfilled his initial commitments. While the decision of the Court here clearly went against the spirit of the POCSO Act, it brings to the limelight the inadequacy of the Act to distinctly address the issue of child marriage.

The case of *K.S. Puttaswamy Vs. Union of India*<sup>28</sup> also brought the issue of the problematization of criminalizing sexual relationships between couples under 18 years of age to the fore as the Court considered the infringement on the privacy rights of minors.

Despite the consideration for special court formation, convictions of child sexual offenders have been relatively slow in the face of several pending cases. This is despite Clause 2 of Section 35 of the POCSO Act stipulating pending cases of sexual crimes against children should be heard [and judgment executed] within one year from the date such a case was first reported<sup>29</sup>. The prevailing scenario might have led the Supreme Court to rule that special courts under the POCSO Act should be set up in the space of 60 days in districts with 100 or more pending child sexual crime cases<sup>30</sup>. Statistics show that only about 14% of the reported cases under the POCSO Act end up in convictions as against 43.4% that do not<sup>31</sup>.

Some successes regarding the conviction of child sexual offenders have however been recorded with the enactment of the POCSO Act. *Pintu Das Vs. State Govt of NCT of Delhi*<sup>32</sup> and *Nawabuddin Vs. State of Uttarakhand*<sup>33</sup> are two notable examples with the defendants in both cases sentenced to serve probation or prison terms. The Court in the case of *Pintu Das Vs. State Govt of NCT of Delhi*<sup>34</sup> emphasised that a strong stance against the sexual harassment of children will communicate that such cases are addressed with an unmistakable highest level of seriousness and also encourage the prompt reportage of the crimes by victims and others while reducing the stigma associated with the pursuit of justice. The summary of the case of *Nawabuddin Vs. State of Uttarakhand*<sup>35</sup> was such that a 65-year-old man (the accused) was brought before the honourable court after penetrating the vagina of a 4-year-old with his finger and was sentenced to 15 years of probation due to the fact that he was advanced in age. The Court consequently recommended that sexual offences against children must be treated with extreme seriousness and that no form of leniency should be granted to convicted offenders.

#### *Sankar Kisanrao Khade Vs. State of Maharashtra*<sup>36</sup>

This case was heard at the Supreme Court which emphasized that most child sexual crimes are committed by individuals who are known to the victims. The Court then held that sexual offence can take different forms, including sexual assault, deliberate exposure of children to sexual activity for commercial purposes/exploitation, sexual molestation, or stimulating, coercing, or encouraging children for sexual gratification.

## 5. Comparative Study

A comparative study involving seven different countries, including India, the United Kingdom, The Netherlands, Germany, Canada, Turkey, and the US, to gain insights on the issue of child sexual abuse and measures taken towards protecting children across board. The summary of the findings is presented in the table below:

**Table 1:** Showing comparative study summary

Country	Legislation	Age (in years)	Prevalence rate	Conviction rate	Punishment & other comments
United Kingdom	The Sexual Offences Act, 2003 <sup>37</sup>	Under 13–18	7.5% <sup>38</sup>	84.2% <sup>39</sup>	• Rape and sexual assault (involving penetration): Life imprisonment

<sup>26</sup> (2022) 5 SCC 545

<sup>27</sup> (2017) SCCOnLine Del 7750

<sup>28</sup> AIR 2018 SC (SUPP) 1841

<sup>29</sup> *Supra* note 11, s. 35(2)

<sup>30</sup> HT Correspondent, "Set up special courts for Pocsos cases: SC", *Hindustan Times*, July 26, 2019, available at: <https://www.hindustantimes.com/india-news/set-up-special-courts-for-pocso-cases-sc/story-EEu2bf4JYYX2AcufE3nB7N.html> (last visited on October 26, 2024)

<sup>31</sup> Shreya Chaturvedi, "POCSO: Critical analysis" 11 *JETIR* (2024)

<sup>32</sup> CRL.A. 192/2024 & CRL.M. (BAIL) 380/2024

<sup>33</sup> (2022) LiveLaw (SC) 142

<sup>34</sup> *Supra* note 48

<sup>35</sup> *Supra* note 49

<sup>36</sup> (2013)5 SCC 546

<sup>37</sup> The United Kingdom Sexual Offences Act 2003

<sup>38</sup> Office for National Statistics 2021, Child sexual abuse in England and Wales: Year ending March 2019, available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/childsexualabuseinenglandandwales/yearendingmarch2019#what-do-we-know-about-the-prevalence-of-sexual-abuse-during-childhood-> (last visited on November 1, 2024)

<sup>39</sup> Samuel Osborne, "Child sexual abuse prosecutions fall by around half in four years", *Sky News*, January 20, 2022, available at: <https://news.sky.com/story/child-sexual-abuse-prosecutions-fall-by-around-half-in-four-years-12520404> (last visited on November 1, 2024)

					<ul style="list-style-type: none"> <li>• Sexual assault, facilitating or causing a child to engage in sexual acts, engaging in sexual activity in the presence of a child: 6 months imprisonment/Fine to Life imprisonment</li> <li>• Causing a child to watch sexual acts: 6 months imprisonment with/or a fine to 10 years imprisonment</li> <li>• Child sex offences committed by a young person or children: 6 months imprisonment with/or fine to 5 years imprisonment</li> <li>• Sexual communication with a minor: 12 months imprisonment with/or fine to 2 years imprisonment</li> </ul> <p>No punishment if the partners are 12–14 years old or 14–16 years old.</p>
The Netherlands	Dutch Criminal Code <sup>40</sup>	Under 12–16	35% <sup>41</sup>	41% <sup>42</sup>	<ul style="list-style-type: none"> <li>• Sexual penetration: Minimum of 12 years imprisonment or fine</li> <li>• Engaging in lewd acts: Minimum of 8 years imprisonment or fine</li> <li>• Showing pornographic images: Minimum of 1 year imprisonment or fine</li> <li>• Virtual meet-up for sexual activity: Minimum of 2 years imprisonment or fine</li> </ul> <p>Sex between minors is not punishable.</p>
Germany	German Criminal Code <sup>43</sup>	Under 14–16	n/a	n/a	<ul style="list-style-type: none"> <li>• Sexual acts with a minor: 6 months to 10 years imprisonment depending on the grievousness of the offence</li> <li>• Child sexual acts leading to death: Minimum of 10 years imprisonment to life imprisonment</li> <li>• Sexual acts with a child relating to upbringing education or taking advantage of predicament: Maximum of 5 years imprisonment</li> <li>• Production, supply and display of pornographic content with children: 13 months to 5 years imprisonment</li> <li>• Commercial production, supply and display of pornographic content with children: 6 months to 10 years imprisonment</li> <li>• Rape: 1 year to 10 years imprisonment</li> </ul>

<sup>40</sup> Dutch Criminal Code, art. 244, 245 249

<sup>41</sup> NL Times, “Netherlands is failing to protect children against sexual violence: National Rapporteur”, *NL Times*, June 8, 2021, available at: <https://nltimes.nl/2021/06/08/netherlands-failing-protect-children-sexual-violence-national-rapporteur> (last visited on November 1, 2024)

<sup>42</sup> National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (2020). Key figures and insights – Trafficking in human beings and sexual violence against children.

<sup>43</sup> German Criminal Code, art. 174, 176, 180, 182, 184

Canada	The Constitution of Canada <sup>44</sup>	Under 16–18	39% <sup>45</sup>	12% <sup>46</sup>	<ul style="list-style-type: none"> <li>Child sexual crime involving penetration: 90 days – 2 years imprisonment (without a jury); 1–14 years imprisonment (with a jury).</li> <li>No punishment if the offender is 12–13 years old.</li> </ul>
Turkey	The Turkish Criminal Code <sup>47</sup>	Under 12–18	58.8% <sup>48</sup>	44.6% <sup>49</sup>	<ul style="list-style-type: none"> <li>Child sexual crime involving penetration: Minimum of 2–18 years imprisonment depending on the age of the offender</li> <li>Child sexual assault: Minimum of 8–10 years imprisonment depending on the age of the offender</li> </ul>
USA	CAPTA <sup>50</sup>	Under 16–18	15% <sup>51</sup>	2.5% <sup>52</sup>	<ul style="list-style-type: none"> <li>Solicitation or transportation of a minor for the purpose of sexual activity or prostitution; sex trafficking of a minor: Minimum of 10 years imprisonment</li> <li>Sex trafficking of a minor under 14 years old or involving the use of coercion, force, or fraud; Production of child pornography: Minimum of 15 years imprisonment</li> <li>Aggravated sexual abuse with a minor; buying or selling of children for pornography: Minimum of 30 years imprisonment</li> </ul>
India	POCSO Act, 2012 <sup>53</sup>	Under 18	28.9% <sup>54</sup>	14% <sup>55</sup>	<ul style="list-style-type: none"> <li>Child sexual crime involving penetration: Minimum of 7 years imprisonment</li> <li>Aggravated penetrative sexual act with a child: Minimum of 20 years imprisonment</li> <li>Child sexual assault: Minimum of 5–7 years imprisonment</li> </ul>

The summary of findings on the comparative study (Table 1) shows that child sexual crime is a major concern in many countries with different legal instruments in place to prosecute offenders and provide some degree of protection to children.

The punishments for child sexual abuse vary from one country to another, but the Netherlands appear to have rather weak legislation in this regard. This is because of the provision made for prison terms to be converted to fines, as offenders are taken through rehabilitation and resocialization<sup>56</sup>. The prevalence rate of child sexual offences is considerably high in the Netherlands. The apparent association between conviction and prevalence rates can be seen in the case of the UK, which is observed to have the lowest prevalence rate at 7.5% with a conviction rate of 84.2%. The prevalence rate of sexual crimes against children in the US has however been relatively low compared to other countries – the second lowest among the countries in the

comparative study – despite the significantly low conviction rate (2.5%). This draws attention to the possible impact of socioeconomic or sociocultural predisposition on child sexual crime prevalence<sup>57</sup>. Of all the countries, India is the one with a potential death penalty for perpetrators of aggravated sexual offences against children<sup>58</sup>. Despite this, the considerably low rate of conviction in India (14%) could be reducing the extent of impact in the fight against child sexual crimes. Despite these worrying figures, it is worth noting that cases of sexual crimes against children in India remain underreported<sup>59</sup>.

## 6. Conclusion and Suggestions

The POCSO Act is a viable legislation for the protection of children against sexual crimes. ‘However, as revealed by this Analysis, there are a few loopholes in the Act that need to be addressed to ensure proper and more effective use of the instrument. Nonetheless, sexual offences against children

<sup>44</sup> The Constitution of Canada, art. 151, 152, 153

<sup>45</sup> Canadian Centre for Child Protection (August 2, 2022), Sexual crimes against Canadian children rising at alarming rate, new Stats Can police-reported data shows, available at: <https://protectchildren.ca/en/press-and-media/news-releases/2022/statistics-canada-2021> (last visited on November 1, 2024)

<sup>46</sup> Michelle McQuigge (October 26, 2017). Only 1 in 10 substantiated sex assaults result in conviction: StatsCan, available at: <https://globalnews.ca/news/3827388/sex-assault-convictions-statscan/> (last visited on November 1, 2024)

<sup>47</sup> The Turkish Criminal Code, art. 103, 104

<sup>48</sup> Protect Project. Child Sexual Exploitation in Turkey, available at: <https://sites.gold.ac.uk/the-protect-project/child-sexual-exploitation-in-turkey/> (last visited on November 1, 2024)

<sup>49</sup> Stockholm Center for Freedom (September 10, 2024). 40,000 child sexual abuse reports filed in Turkey in 2023, available at: <https://stockholmcf.org/40000-child-sexual-abuse-reports-filed-in-turkey-in-2023/> (last visited on November 1, 2024)

<sup>50</sup> The Child Abuse Prevention and Treatment) Reauthorization Act, 2010

<sup>51</sup> Center for Disease Control and Prevention (May 1, 2024), About Child Sexual Abuse, available at: <https://www.cdc.gov/child-abuse-neglect/about/about-child-sexual-abuse.html>

<sup>52</sup> The United States of America’s Preventing Child Sex Abuse Act of 2023, s. 724

<sup>53</sup> *Supra* note 11

<sup>54</sup> Megha Chaturvedi, “Child Sexual Abuse in India: Alarming statistics, lifelong impact, how to heal”, *India Today* August 4, 2023, available at: <https://www.indiatoday.in/education-today/featurephilia/story/child-sexual-abuse-in-india-alarming-statistics-lifelong-impact-how-to-heal-2416285-2023-08-04>

<sup>55</sup> *Supra* note 47

<sup>56</sup> *Supra* note 58

<sup>57</sup> Zareena, Nazir Naila, *et al.* “Socioeconomic and Demographic Risk Factors of Child Sexual Abuse in Pakistan: A Case Study of Khyber Pakhtunkhwa Province” 11 *Pakistan Journal of Humanities and Social Sciences* (2023)

<sup>58</sup> *Supra* note 11, s. 6(1)

<sup>59</sup> Sydney Moirangthem, Naveen Kumar, *et al.* “Child sexual abuse: Issues & concerns” 142 *Indian Journal of Medical Research* 1-3 (2015)

keep increasing day by day despite the strict legislation in place, and it could be inferred the rate of conviction has been considerably low as against what the spirit of the POCSO Act intends. Reviews in certain areas may be required to improve the concreteness of the Act, and it is given this that the following suggestions are made:

#### **Taking a stance on consensual sexual activity between minors**

The POCSO Act appears evasive on the issue of the consensual sexual relationship that may exist between individuals who are under the age of 18 years old. As it stands, such a relationship is criminalised under the POCSO Act even though the Act refers to potential offenders with terms such as “any person” or “whoever” without explicitly stating the age. The POCSO Act should consider highlighting the offender’s age – as probably “any person above 18 years of age” – in the quest to (de)criminalise consensual sexual activities between people under 18 years of age.

#### **Prohibition of Child Marriage Act, 2006 as an appendage**

The POCSO Act 2012 aims to discourage sexual crimes against children without considering the prospect of child marriage in a country with specific marriage age limits – 18 years for males and 21 years for females. This may herald the call for the incorporation (of) or reference to the Prohibition of Child Marriage Act, 2006<sup>60</sup> for consolidation purposes.

#### **Age verification instrument**

The POCSO Act is rather presumptive as it prays the Police or law enforcement agencies to carry out their due diligence in ascertaining the ages of both the offenders and victims. However, to establish unalloyed veracity. Hence, the POCSO Act needs to identify the documents required to verify the age of the parties involved in cases of child sexual crimes.

#### **Expediting child sexual crime prosecution**

Timely completion of the prosecution of child sexual crime cases has remained a notable challenge. Efforts must therefore be directed toward removing the bureaucracies that tend to delay serving justice to bring the cases to a commendable closure. This would mean ensuring that already existing special (POCSO) courts are functioning optimally and also establishing more of such courts in districts that are currently lacking enough.

#### **Involvement of Communitites**

Legislative measures are necessary and valuable but what is needed is its proper implementation through schools, colleges, NGOS which will significantly improve the reach and effectiveness of the Act.

While the POCSO Act represents a robust step towards protecting children from sexual offences, its implementation continues to face procedural, cultural and legal hurdles. This study identifies gaps in the criminalization of consensual adolescent behaviour, delayed prosecution, and the absence of clear age verification mechanisms. Strengthening judicial infrastructure, aligning complementary laws, and engaging community institutions could improve the Acts real world effectiveness.

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<sup>60</sup> Prohibition of Child Marriage Act 2006, s. 3