

# LEGALFOXES LAW TIMES

## ADMINISTRATIVE PITFALLS AND PITFALLS IN JUDICIARY: A CRITICAL STUDY WITH SPECIAL REFERENCE TO POCSO ACT

By Shivraj Pundir

### ABSTRACT

The *Illicit and Immoral* attitude toward the vexatious and gruesome commission of *Sexual Offences* has been one of the most difficult challenges for the entire *Girl Child* or other innocent sects of *Children* in our *Sovereign, Socialist, Secular, Democratic, and Republic* country like *India*, which appears to be the harshest irony or metaphor. *India* explains its country as the most diverse in nature in context of public values, religious sentiments of various sects of people/civilians living in the society, and respect for women as a source of pride and honour, respect and nurture for the entire masses of *Children* living in an *Indian Subcontinent/Society* are exactly behaving in a very different or barbaric ways by committing gruesome, barbaric, and most terrifying acts of *Sexual Offences* against the naive and innocent *Children* including the *Girl/Male Child Vicinities*. The horrible irony here, or in other words, if I mention about our *Sustainable Country, India*, which seem for being *Prima Facie* very sound and stable in managing all kinds of resources, making legislation or different codes through the *Indian Legislature* providing harsh and deterrent forms of punishment for *Gruesome or Barbaric Accused/Offenders/Perpetrators* is ineffective in controlling the crime rate against minor children related to harsh and ruthless forms of *Sexual Activities or Sexual Encroachments*, including the worst forms of *Sexual Acts* mentioned under the *POCSO Act, 2012*.

The *Researcher* under this *Article* has put an endeavour in highlighting the several *Stringent Methodologies* being adopted by *POCSO Act, 2012* in order to curb *Child Sexual Offences*, and also has highlighted about the *Slow or the Weak Implementations* of *POCSO Act, 2012*.

**KEYWORDS:** (*Indian Legislature, Accused, POCSO, Illicit, Sexual Offences*)

### **INTRODUCTION:**

The uncontrollable situation in the past time as well as in the current situation or era has not that much minimised, but yes for sure the change has duly felt by the *Indian Government* with special respect to the **POCSO** implementations which has exclusively formed or framed for the all-round development, nurture, protection and preservation of the *Minor Children* against the peril and catastrophe incidents of **Sexual Encroachments** or in other words the all worst forms of **Sexual Activities** being committed by the **Savage and Barbaric Anti-Mankind** against the **Innocent Minor Child Vicinities**<sup>3</sup>. Our country later became so sensitive and vigilant in making laws for the *Protection of Children Against Sexual Assaults*, and it also demonstrated how it became so sensitive and vigilant for the entire *Minor Children Vicinities* related to the protection and preservation of them against the *Illicit Steps of Sexual Offences*, which has unquestionably decreased or, in other words, the brutal shadow cast by these crimes which was earlier used to be committed by the anti-mankind under the high zone/large aspect has been for the last couple of years got down<sup>4</sup>.

The **Act of POCSO** not just only justifies, imposed a bulky deterrence on the perpetrators, treats a *Minor Victimized Children* in a best and efficient manner, but the mandate is also to minimize the *Crimes pertaining to Sexual Offences* being committed by the **Gruesome Perpetrators** and also simultaneously to report these cases in the **POCSO Court** being established by the **POCSO Act, 2012**.

The mandate is also to cure in a best possible manner the *Crime Rates* relating to *Active Commissions of Sexual Offences* being committed against the *Minor Child Vicinities* who have been facing a high rate of immorality and dreadful victimization which undoubtedly sabotages the dignity, mental confidence and also it diminishes the social value as in respect which a country like *India* entitles these small minor children who must be dreaming when they born actually that they need to achieve something bigger and positive in their respective life one day, and after the commission of such gruesome or gross atrocities of **Sexual Offences**<sup>5</sup>. The hindrance becomes much active in cases of **Minor Child Vicinities** including **Girl and Male Child** which curtails them to do any physical activities, their mental growth literally stops, they prone to disappearances as in they do not prefer to go outside, showing gregarious behaviour to any person even in their family as well, they get themselves totally isolated from everyone.

<sup>3</sup><https://www.thenewsminute.com/article/what-pocso-act-and-how-it-used-guide-143310#:~:text=The%20POCSO%20Act%20was%20enacted,can%20be%20committed%20on%20boys.>

<sup>4</sup>Ibid.

<sup>5</sup><https://legislative.gov.in/actsofparliamentfromtheyear/protection-children-sexual-offences-act-2012.>

The *Act By-Ipso Facto* determines exclusively the greatest preservation of the *Children* against all forms of *Sexual Offences*<sup>6</sup> being committed by the *Anti-Mankind*, i.e., to say the *Court* introduces certain legal benefits for the victims including the *Minor Child Vicinities* including further on *Girl/Male Child* who have deterred or been exposed to the brutal mindsets of certain *Anti-Mankind/Barbaric Personalities of our Indian Society* in an efficient and pragmatic manner<sup>7</sup>.

The *POCSO Act, 2012* was the first Act being formulated by the Indian Legislature to combat the illicit and immoral steps of Sexual Offences being committed by the Savage Mankind against the naive and innocent Minor Child Vicinities including the Girl/Male Child. Under the Act namely the *Protection of Children from Sexual Offences Act, 2012*<sup>8</sup>, *Child* indeed has been given the greatest importance as the meaning of *Child* originates from *Section 2(1)(d)* which says that the *Child* can be best defined as the person who still not completed his eighteen years of age or the person less than eighteen years of age<sup>9</sup>.

The *POCSO* maintained its optimistic and positive endeavours to be the best and played a pivotal role in securing the *Child's Rights* by overall minimizing the pressure from the *Minor Child Vicinities* including the *Male/Girl Child* and threats of *Sexual Offence's* being committed on the large bulk or spectrum by the *Barbaric Mankind*.



### ***THE DIGNIFIED AND SUSTAINABLE PROTOCOLS OF ARTICLE 21 OF INDIAN CONSTITUTION V. POCSO ACT, 2012: THE EQUAL MANDATE TO COMBAT CHILD ABUSES/MINOR CHILD RAPE.***

The *Indian Constitution* by the virtue of *Article 21* that stands for the *Right to Personal Liberty* which is the bulky consideration being given to the entire persons including the *Child Vicinities* respectively for the sound, dignified, structured, sustainable, and most importantly decent life pattern. In the leading case or the petition filed under the *Hon'ble Supreme Court*, the *Hon'ble Supreme Court* has taken this *Child Abuse* incidents in a very serious manner, as they have prohibited the *Female Genital Mutilation (FGM) in Dawoodi Bohra Community*<sup>10</sup> which according to them sounded the gross violation of *Article 21 of the Indian Constitution*. The

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<sup>6</sup>Ibid.

<sup>7</sup>Ibid.

<sup>8</sup>[https://legislative.gov.in/sites/default/files/The%20Protection%20of%20Children%20from%20Sexual%20Offences%20Act%202012\\_0.pdf](https://legislative.gov.in/sites/default/files/The%20Protection%20of%20Children%20from%20Sexual%20Offences%20Act%202012_0.pdf).

<sup>9</sup>Ibid.

<sup>10</sup><https://www.newindianexpress.com/nation/2018/jul/30/female-genital-mutilation-violative-of-constitutional-rights-supreme-court-1850779.html>.

rationale behind the judgement has been quite logical pertaining to the *Preservation of the Child's Interest*, as the *Shameful and Barbaric Offence of Female Genital Mutilation* which has been *Prima Facie* punishable under both *Indian Penal Code, 1860 (IPC)* and the *POCSO Act, 2012* which stands as the *Protection of Children from Sexual Offences Act, 2012*.

The *Indian Constitution* by the virtue of *Article 21 i.e. Right to Personal Liberty* is always in consonance with the *POCSO Act, 2012*, as the former *Article* also pre-supposes that every *Child* living under the *Indian Society/Subcontinent* must be sustainable, secured, having a dignified pattern of life, non-exposed to any sorts or forms of *Violence's, Abuses, Criminal Exploitations* including *Minor Child Rapes, Aggravated forms of Sexual Assaults* being committed against the *Minor Child Victims, Penetrative Sexual Assaults, Child or the Minor Innocent Children being used as an Object for Pornographic Purposes, Sexual Harassments being faced by the Minor Children* including the *Girl/Male Child* which the *POCSO Act, 2012* broadly covers them under the strict sense as they having the *Deterred Forms of Punishments* against each of such *Sexual Attacks* being committed by the *Hardcore/Barbaric Child Perpetrator's*<sup>11</sup>.

  
**THE EFFECTS AND GROSS VICTIMIZATION OF NAIVE AND INNOCENT MINOR CHILD MASSES BEFORE COMMENCEMENT OF POCSO ACT, 2012/THE EFFECTS OF SEXUAL OFFENCES ON MINOR CHILD VICINITIES.**

The deduced trauma or the reduction of the mental capacity pertaining to the *Child Vicinities/Victims of Sexual Offences* specially pertaining or relating to the *Minor Child* including *Girl Child/Male Child* are the conclusive witnesses or the real survivors of the *Illicit/Immoral Attacks of Sexual Exploitations* which have for the last couple of years has indeed or undoubtedly sabotaged their respective lives, disrupted the sustainable pattern of living of them, made them felt the *Real Isolation*, several *Deaths* has also been accounted<sup>12</sup>.

Thereby, the things have been drastically changed and the *Minor Child Vicinities* are not at all safe in our *Indian Subcontinent/Indian Society* irrespective of having so many *Criminal Laws* including *Indian Penal Code, 1860* and the *Protection of Children from Sexual Offences Act*,

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<sup>11</sup>Ibid.

<sup>12</sup><https://www.inspq.qc.ca/en/sexual-assault/understanding-sexual-assault/consequences>.

2012 or the POCSO Act, 2012. The harsh irony is once the *Minor Children* are being trapped or being exposed to the *Illicit Intents of Sexual Offences*, then the after effect of it will be felt for a longer period time even during the time of their marriage, parenthood, above their respective phases of *Childhood* or the early *Adulthood*, as the *Physiological Imbalances* have once actually occurred or they been affected by such a *Social Curse* in form of the *Brutal Commission of the Sexual Offences* being committed by the *Hardcore Offenders/Barbaric Child Perpetrator's*<sup>13</sup>.

The gross irony has already been revealed by majority of the persons/civilians living in our *Indian Society*, the different *Criminal Agencies*, the *Police Authorities*, the *Hon'ble Courts of India* that under the ambit of the *Commission of Sexual Offences* or the worst forms of *Child Rape/Abuses*, most or majority of the *Offences* have been committed by someone own of the *Victims* including the *Girl/Male Child*. The sufferers are generally exploited or in other words rather, gets *Sexually Exploited*<sup>14</sup> by their own relatives namely: *Victim's Uncle*, *Victim's Family Member Belongings*, who in the lieu of pampering and adoring the *Minor Children*, commits *Brutal Child Rape*, *Committing Aggravated Sexual Assaults*, *Forced Physical Intercourses*, *Using or Hiring Children or the Innocent Minor Children for the Immoral Purposes of Pornographic Acts*, which undoubtedly sabotages the *Mental Confidence*, *Destruction of Physiological Imbalances*, the overall *Emotional, Physical and Sexual Abuses* being committed by the *Hardcore Offenders/Barbaric Child Perpetrator's* against the naive, amiable, and wonderful creation of *God*, *India's* most *Optimistic* and *Valuable Assets* by the name of '*Innocent Minor Children*', who takes birth to perform or achieve something most concrete and grand in their life by getting the best structured education and other fruitful benefits in order to equipped themselves as *Distinct and Sound*, and also to equipped them in such a best and efficient manner to get themselves *Optimistically Wholesome and Sustainable*, so that they get easily competed to different *Respectable, Scholar and Eminent Personalities* in their upcoming life and not to get inculcated in such a dirty, unsound and unsustainable, immoral and pathetic *Crimes of Sexual Assaults* and other *Immoral Offences of Child Abuses/Child Rapes*.

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<sup>13</sup>Ibid.

<sup>14</sup><http://tnsja.tn.gov.in/article/Offence%20relat%20Women%20PSJ.pdf>.

***POCSO ACT, 2012 v. THE UNIVERSAL MANDATE<sup>15</sup> OF INTERNATIONAL SUBCONTINENT TO NURTURE AND PRESERVE THE MINOR CHILD VICINITIES AGAINST GRUESOME OFFENCES OF CHILD RAPE/SEXUAL OFFENCES.***

The cooperation for the protection of *Children* from the worst and barbaric forms of *Sexual Abuses* or rather the *Illicit Child Rapes*, has not only been felt on the part of the *Indian Origin* or the *Subcontinent*, but the *International Organization*<sup>16</sup> too has duly participated and positively endeavoured for a grand success and effective minimization from the tip to the toe, in order to nurture and preserve the *Basic Child Rights* and also in adhering the quality procedures or codes to further stop or restrict the *Malice Intent of the Hardcore Offenders* committing *Gruesome Crimes of Sexual Exploitations/Assaults* against the *Naive and Innocent Minor Children* on the large spectrum. The main cooperation's and endeavours done for the all-round development of the *Child Sustainability's* from both the ends of *International Codes*<sup>17</sup> and *Indian Statutes/Laws* are classified or duly mentioned below:

- Under ***Section 3 of Sexual Offences Act (United Kingdom), 2003***<sup>18</sup>, this law also symbolizes and the mandate is for the all-round *Child Protection from Sexual Acts*, as the Act name *Prima Facie* suggests the same, thereby, if any *Minor Children* is wearing *Clothes* or any kind of other *Outfits*, and some *Brutal or Malice Intent Offender*, even dares to touch her *Clothes* only, then that person shall be held liable for the *Commission of Illicit Act of Sexual Voyeurism/Sexual Offence* under the above-mentioned ***Section 3 of the Sexual Offences Act (United Kingdom), 2003***, this particular statement has been duly held in the case of ***Regina v H***<sup>19</sup>.
  
- The need for the safety and protection of the *Minor Children* from all kinds of *Sexual Abuses* are even duly felt at *Scotland*, where they punishes the *Offender* in the hardest and stringent forms of *Penal Hardships*, under ***Section 20 of the Sexual Offences (Scotland) Act, 2009*** where they clearly mandated or directed, that any *Offender* if dares to commit any *Sexual Act against the Minor Children*, even if they commits or supposes or attempts to commit *Bodily Contact, Physical Contact* with the mindset of

<sup>15</sup><https://www.downtoearth.org.in/blog/health/sexual-assault-under-pocso-act-a-child-rights-perspective-76233>.

<sup>16</sup>Ibid.

<sup>17</sup>Ibid.

<sup>18</sup>Supra Note 13.

<sup>19</sup>Supra Note 13.

committing *Criminal or Forced Intercourses*, then that *Gruesome Offender* shall be booked under **Section 20** of the above-mentioned *Act* namely the ***Sexual Offences (Scotland) Act, 2009***. The rationale behind making or formulating this specific *Act*, is to secure the *Personal Life and Dignity of the Minor Children*.

- The *Child Safety*<sup>20</sup> really seems to be the *Paramount Consideration* of each *Country, State* or *Subcontinent* not in only in respect with the all-round protection of the *Minor Child* from *Worst Abuses of Sexual Encounters* committed by the *Child Perpetrator's* but also to reinstate or enforces their respective *Child Rights* in the each *Country's Court of Law*, whether it may be the *Hon'ble Supreme Court of India* or the *Hon'ble High Courts* of different *States* in *India* or the *Federal or Supreme Court* of different *Countries* of the *World*.

Thereby, under the *Criminal Law* specially made for the *Children Protection* and preservation from the *Sexual Abuses* in the ***State of California***, under the renowned *Act* namely the ***Child Abuse and Neglect Reporting Act*** where the mandate of the *US State* is to protect and prevent each and every *Minor Child Vicinities* from getting exposed to the *Violent Atrocities of Child Abuses* which may include the high rate commission of *Minor's Rape, Minor's Assaults, Minor's Sexual Harassment*, and so on in the row.

- The violence against the *Children* or the entire *Minor Child Vicinities* has been the serious concern worldwide and also for our *Indian Origin*, as we have *Laws* for the same, in actual, *India* is having two of the main *Laws* whose main mandate is to fight against each *Child Exploitations* or other *Worst forms of Child Abuses*, they are namely *The Protection of Children from Sexual Offences Act, 2012* or the *POCSO Act, 2012* and the *Indian Penal Code, 1860* or the *IPC, 1860*.

The irony is despite having the two main *Strict Protocols/Acts/Codes*, *India* has been reporting the high and large magnitude of ***Minor Rape Cases*** in **2017<sup>21</sup>** and **2018** irrespective of having with us the *Pragmatic and Specific Child Protection Laws* like *POCSO Act, 2012*, according to the ***NCRB (National Crime Records Bureau)***, this what *India* needs to control the *Sexual Offences Cases* pertaining to the *Minor Children*

<sup>20</sup>Supra Note 13.

<sup>21</sup><https://www.downtoearth.org.in/blog/health/sexual-assault-under-pocso-act-a-child-rights-perspective-76233>.

and brings back the efficient and streamline or smooth implementations of the above-mentioned Acts of both *POCSO Act, 2012* and *Indian Penal Code, 1860*.

The upcoming *Chapters of this Dissertation* are only about to deal with the *Administrative and Judicial Downfalls/Pitfalls/Loopholes* while framing the *POCSO Act, 2012* as how to make this *Act* more reliable and smoother in relation to the *Child Safety and Protection* of them from the *Sexual Offences*.

Every coin is having the two sides, namely, *Heads and Tails*, similarly every *Act* being drafted or formulated or made by the *Indian Legislature* or the *Law-making Authorities*, are not that perfect, at least in some or in fact in most of the provisions, we find it to be quite *Robust* instead of *Flexible Provisions* which are highly in demand in today's era, as *Law is flexible*, so the *Legal Provisions, Prima Facie* has to be easily amendable, easy to modify or to reform it.

### ***THE NEED TO HAVE MORE FRUITFUL IMPLEMENTATION FOR POCSO ACT, 2012***

The need has been felt for a past couple of years were India, *Civilians* living within the *Indian Subcontinent/Society*, the entire *Society*, which condemned that the *POCSO Act, 2012*<sup>22</sup> is not at all the even, proportionate, and balanced *Law* for the all-round protection of the *Minor Children from the Gross Forms of Sexual Abuses/Sexual Assaults*<sup>23</sup>. The lack of the *Legislative Intent* which had seen by majority of the *Viewers, Indian Legislative Authorities, Indian Civilians* living within the *Indian Societies*, are getting the pragmatic situations very weird and imbalanced as after the *Criminal Amendment of 2013* also, the *Child Rape Cases* are not getting subsided or minimized as side wise we have also the *POCSO Act, 2012*, who looks specifically the matters pertaining to the *Child Sexual Abuses* including the *Girl or Male Child*. This is the setback irony for our *Indian Government* who undoubtedly made *Laws* for the all-round protection and sound development of an entire *Child/Minor Child Vicinities* but the rate of implementation is very slow or not as per the plan being set or made by the *Indian Legislature* for the *Active or Stringent Combat* against the *Sexual Offenders*.

The *Rules* are indeed framed or codified but on the *Open Books of Law* only, or the foundation of the *POCSO Act, 2012* and its respective rules and procedures are only marked in the ***Rule-***

<sup>22</sup><https://www.thehindu.com/opinion/op-ed/strong-provisions-weak-implementation/article5470778.ece>.

<sup>23</sup>Ibid.



**Book** but the rate of compliance of it is indeed not running or having a streamlined flow, as having the *POCSO Act, 2012* also, the *Child's* are being *Illicitly Trapped for the Hunt of Violent and Gruesome Offences of Sexual Assaults, Forced Sexual Intercourses with the Minor Children, The Trap of Sexual Exploitations<sup>24</sup> for using the Minor Children as an Object of Pornographic<sup>25</sup> Exposures and Mediums* which sabotaged the *Life and Sustainable Pattern of Living of the Entire Minor Child Vicinities*.

### **THE INEFFICACIES UNDER POCSO ACT, 2012<sup>26</sup> V. THE INDISPENSABLE NEED FOR CURBING SEXUAL OFFENCES IN BEST AND EFFICIENT MANNER.**

The success of the formation of the *POCSO Act, 2012<sup>27</sup>* for the *Gross Protection of Children from Sexual Offences* was indeed for the short time period, as it received a huge amount of unsatisfaction and non-compliance, which not exactly as mandated or planned by the Indian Legislature won the appraisals of the Civilians/Citizens of the Indian Society at large. The several ambits or the loopholes which made this Act, a non-appraised or suppressed Act for curbing or preventing Child Sexual Abuses matters in the Indian Subcontinent, and they are:

- The **First Pitfall** is in concern with the '*Investigation Efficacy<sup>28</sup>*' pertaining to the Child Abuses or the Child Sexual Offences. The police authorities are unable to Investigate properly into the matters of Child Sexual Abuses as they are not that much equipped in collecting the Evidences or the Proper Evidences through a Proper or Efficient Medium of Collection which made the case *Prima Facie Diluted<sup>29</sup>*.

Thereby, due to *Lack of Proper Evidences* which the Prosecution has to prove it in the *Hon'ble Court of Law*, the *Hardcore Offender/Child Perpetrator's* gets an *Irrational Acquittal*, and through this pronouncement of the judgement delivered by the *Hon'ble Judges*, the *Victims or the Minor's Child Vicinities* who got exposed to the *Savage Form*

<sup>24</sup><https://www.thehindu.com/opinion/op-ed/strong-provisions-weak-implementation/article5470778.ece>.

<sup>25</sup>Ibid.

<sup>26</sup><https://blogs.lse.ac.uk/southasia/2015/12/18/reviewing-indias-protection-of-children-from-sexual-offences-act-three-years-on/#:~:text=The%20POCSO%20Act%20was%20enacted,malpractices%20and%20outdated%20legal%20proceedings.>

<sup>27</sup>Ibid.

<sup>28</sup><https://blogs.lse.ac.uk/southasia/2015/12/18/reviewing-indias-protection-of-children-from-sexual-offences-act-three-years-on/#:~:text=The%20POCSO%20Act%20was%20enacted,malpractices%20and%20outdated%20legal%20proceedings.>

<sup>29</sup>Ibid.

of Child Rapes or the Child Sexual Offences gets an Zero Justice and their respective Child Rights become just being avoided or thrashed up by the Hon'ble Courts. This is yet another *Imbalance of our Indian Justice System*<sup>30</sup>.

- The **Second Pitfall**<sup>31</sup> in the making of this *POCSO Act, 2012* or in the other words, if I say or mention i.e., the *Legislative Intent* was to make this *Act* favourable and benefitted for the Minor Children against the *Violent forms of Sexual Offences*, but the Executives or the Administration has not at all made it worth appreciable.

The **Second Pitfall**<sup>32</sup> is related to the '**Delay in the Lodging Process of F.I.R. (First Information Report)**<sup>33</sup> under **Section 151 of the CrPC, 1973**, i.e., *The Code of Criminal Procedure, 1973*. The *Crime of Sexual Offences* gets committed against the *Minor Children*, but as soon they go to their respective *Local Police Station*, their initiatives of lodging **F.I.R**<sup>34</sup> against the *Child Perpetrator/Accused/Offender* gets delayed in lodging or getting delayed by the *Police Authorities* for lodging their respective *Complaints of Sexual Offences/Sexual Assaults Cases*. This is the worst form of lacuna under or beneath the *POCSO Act, 2012*, which '*Ipso Facto*' weakens the '*Base or the Foundation of POCSO Act, 2012*'.

- The **Third Pitfall**<sup>35</sup> is even more practical which been not all followed in the *Indian Subcontinent* or even at the *Indian Statutes* and neither they have that due or perfect law in order to help the *Police Authorities* for the *Corroboration of Evidences* against the *Habitual Offender's/Child Perpetrator's* for the overall *Commission of the Sexual Abuses/Sexual Acts* against the *Minor Children Vicinities*.

Actually, the **Third Pitfall**<sup>36</sup> is related to the '*Lack of Forensic Evidences Mechanics*<sup>37</sup>', or the '*Tools for Forensic Evidences Instruments*' which if it would have been present in our *Indian Legal Statutes*, then most of the *Child Abuses Cases* would have been solved so efficiently and easily by the *Indian Police Administration*.

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<sup>30</sup>Ibid.

<sup>31</sup>Supra Note 24.

<sup>32</sup>Supra Note 24.

<sup>33</sup>Supra Note 24.

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<sup>35</sup>Supra Note 24.

<sup>36</sup>Supra Note 24.

<sup>37</sup><https://blogs.lse.ac.uk/southasia/2015/12/18/reviewing-indias-protection-of-children-from-sexual-offences-act-three-years-on/#:~:text=The%20POCSO%20Act%20was%20enacted,malpractices%20and%20outdated%20legal%20proceedings.>

There is also the lack of awareness among the *Indian Police Authorities* who are less equipped with the *Mechanics of Forensics Instruments*<sup>38</sup> which made them really helpless when any *High-Profile Cases* related to *Sexual Assaults of Minor Children* comes up to them.

- The ***Fourth Pitfall***<sup>39</sup> is the '*Tedious and Slow Process of Implementation*<sup>40</sup>', '*Monitor of Child Abuses Cases*<sup>41</sup>' under the reign or domain of the *POCSO Act, 2012*<sup>42</sup> and the '*Lack of Fair and Effective Monitor Process by the National and State Commissions for the Protection of the Child Rights* made or formulated under ***Section 43 and Section 44 read with Rule 6 of the POCSO Act, 2012***<sup>43</sup>.

The fact is we want outcome of the respective *Acts or Statutes* made for the general interests of the persons living within the *Indian Society*, but the pragmatic truth or the practicality is until the *Administrative Authorities* who are being designated as the *Real Supervisor or the Monitor Officer* of certain *Act* or rather being highly accountable for certain *Act* if not act accordingly or rather if any sort of *Non-Compliance* being formed or committed on their part, then how can the positive outcomes going to be come or person living in the *Indian Society* do supposes or having a real expectation that *Act* going to be in a streamline flow<sup>44</sup>.

- The ***Fifth Pitfall***<sup>45</sup> construed to be the '*Pressure Zone of Victim's Family to Restrict them for the Raise of Voice against the Offender*', it simply having the rationale of how *Victim's* problems or grievances of having the *Dreadful Experiences of Sexual Assaults* or *Sexual Abuses* are avoided or rather due to the *High Reputation of the Victim's Family*, being completely restricted and this way, the *Victim's Right of Enforcement* pertaining to the *Sexual Assaults/Minor Rapes*<sup>46</sup> being brutally and for the desire of

<sup>38</sup>Ibid.

<sup>39</sup><https://blogs.lse.ac.uk/southasia/2015/12/18/reviewing-indias-protection-of-children-from-sexual-offences-act-three-years-on/#:~:text=The%20POCSO%20Act%20was%20enacted,malpractices%20and%20outdated%20legal%20proceedings.>

<sup>40</sup>Ibid.

<sup>41</sup>Ibid.

<sup>42</sup>Ibid.

<sup>43</sup>Supra Note 24.

<sup>44</sup><http://www.legalservicesindia.com/article/2440/Loopholes-in-POCSO.html#:~:text=Though%2C%20unlike%20rape%2C%20the%20victim,sexual%20assault%20would%20be%20untrue.>

<sup>45</sup>Supra Note 24.

<sup>46</sup>Supra Note 24.

passion being committed by the Offender on the gross spectrum gets sabotaged and ruined.

The biggest problem in our country is the '*Honour Sabotages of Truth*', this simply connotes that no matter the *Victim's* even get *Sexually Exploited* even by their own respective family members, or even by some strangers, the family blames out the *Victim's* itself, that they might had a *Physical Affair* with someone, or they must possessed a *Bad Character* in them, or rather they must have got indulged in some *Wrong Stuffs like Getting Intoxicated, or Attending Immoral Events*, through which they got trapped by the *Offender* and as a consequence of it, they received a *Brutal Rape Encounters, Sexual Assaults, Sexual Harassments or Forced Physical Intercourses*, and simultaneously the *POCSO Act, 2012*<sup>47</sup> is even silent on such imbalances on the respective part of the *Victim's Family*.

As if the *POCSO Act, 2012*, would have been distinct or different in terms of *Compulsorily/Mandatorily Enforcing the Cases of Child Sexual Abuses* even after giving up in lodging or filing cases by their *Family Member's*, we could say then on the serious note that *POCSO Act, 2012* is actually been following the *Righteous Path* or they are indeed in consonance with the *Actual Legislative Intent/Indian Legislature* who formulated or made this *Act* possible in the year of 2012 by the name *The Protection of Children from Sexual Offences Act, 2012 or the POCSO Act, 2012*.

- The *Sixth Pitfall*<sup>48</sup> is the '*Tendencies of the Police Authorities under the POCSO Act, 2012*' to deliberately and repeatedly asking an *Irrelevant Details of Child Abuses* and also to ask leading questions which is totally irrelevant to the '*Investigation Round*' or related to the *Case of Child Abuses*, which on the part of the *Minor Child Victim's* becomes *Re-Traumatized*<sup>49</sup>.

As some questions are totally sensitive content which are related to the *Incident of Sexual Offences*, the *Police Authorities* during Lodging of the *F.I.R* negatively endeavours to *Scandalize the Mental Trauma of the Minor Victims*, by repeatedly asking them certain sensitive and vague questions in order to *Delay the Process of the F.I.R*, so that by creating such *Mental Agony and Pressure for the Minor Children* or

<sup>47</sup><https://legislative.gov.in/actsofparliamentfromtheyear/protection-children-sexual-offences-act-2012>.

<sup>48</sup><https://ccl.nls.ac.in/wp-content/uploads/2017/01/Implementation-of-the-POCSO-Act-2012-by-speical-courts-challenges-and-issues-1.pdf>.

<sup>49</sup>Ibid.

their respective *Family Members*, an intent to *Lodge the F.I.R* gets finally gave up by them, and the *Police Authorities* basically after this, taking up the *Negative Advantages/Benefits* by saying to their *Superior Authority* that the case was indeed weak, nothing as such happened with the *Child*, and it was all time wasting, as they had not support or cooperated us in the *Investigation Process*, and in this way an *Initiation for the Enforcement of the Child Abuses/Minor Child Sexual Offences* gets closed forever and the *Child or the Minor Children* gets no justice<sup>50</sup>.

- The ***Seventh Pitfall***<sup>51</sup> sounded the even most dreadful and dangerous, as '*Impose of Undue-Influence on the Victim's Testimony*' in case the offences if have been committed by the *Close Proximity i.e., the Relatives, Someone Closest of the Victim's or the Kith and Kin's of the Victims, the Blood Relatives of the Victim's* and not the *Stranger*. In most of the cases where *Child Abuses* have been committed by their own relatives, there is the high proximate chances of *Withdrawal of Cases/Non-Enforcement of the Child Sexual Abuses*<sup>52</sup> by putting them into an imminent fear to give up from the cases or better to restrict them to raise their voices for combating against the *Worst form of Sexual Offences*.

LEGAL FOXES

"OUR MISSION YOUR SUCCESS"

- The ***Eighth Pitfall***<sup>53</sup> seems to be the '*Ineffective Implementation of the Special Courts*<sup>54</sup>', these are the *Courts* other than our *Normal or Original Courts in Indian Subcontinent* who looks after the *Criminal, Civil or Revenue Matters*.

The *Special Courts* are like especially set or fixed for solving or minimizing the *Child Abuses Matters or the Brutal Encroachments of Sexual Offences* which indeed sabotages the *Child's Mental Growth* in a broad spectrum.

But the pragmatic truth about the *Special Mandated Courts*<sup>55</sup> being fixed or established as per the accordance of the *POCSO Act, 2012*, is indeed *Slow, Tedious* or in some *Districts* not even effectively running as most of the *Cases* are thoroughly avoided,

<sup>50</sup>Ibid.

<sup>51</sup><https://ccl.nls.ac.in/wp-content/uploads/2017/01/Implementation-of-the-POCSO-Act-2012-by-speical-courts-challenges-and-issues-1.pdf>.

<sup>52</sup>Ibid.

<sup>53</sup><https://ccl.nls.ac.in/wp-content/uploads/2017/01/Implementation-of-the-POCSO-Act-2012-by-speical-courts-challenges-and-issues-1.pdf>.

<sup>54</sup>Ibid.

<sup>55</sup>Ibid.

restricted and withdrawn and not a single case of *Child Abuses* is being tackle up or brought before the *Hon'ble Special Court*<sup>56</sup> being mandated by the *POCSO Act, 2012*.

The most dreadful irony is even the *POCSO Act, 2012*<sup>57</sup> is *Actively Silent* upon this, which makes the *Mechanisms of this Act* sounded like '*Dilute Catalysts*', and this might be the biggest challenge or lacuna of this *Act*, thus, making it even more *Less Efficient* and *Broaden* on the respective part of the *Minor Child Vicinities*<sup>58</sup>.

- The *Ninth Pitfall*<sup>59</sup> seems to be construed as the '*Havoc of Getting Hostile with reference to the Minor Victims of Sexual Abuses*<sup>60</sup>'. This pitfall is the saddest and shattered in nature, as the Victim's only who got exposed to the savage encounters of Child Abuses being committed by the *Hardcore Perpetrator's* escapes from enforcing the matters further on to the *Court of Law*.

This *Hostile Behaviour* is not at all a new or a confusing kind of activity been committing by the *Minor Child Vicinities*, but this been occurring due to the reason of *Terror, Fear, Coercion, Undue Influence* and lots of other *Dreadful Factors* which is being *Inflicted or Imposed* as in *Dreadful and Terrified Manner* by the *Offender* like *Act of Blackmailing* in case the *Accused* is someone *Closest of the Victim's* which actually terrified or affects the *Victim's Mindset* to give their *Testimony in the Court or Police Station* before the *Police Authorities* under the *POCSO Act, 2012*<sup>61</sup>.

The sudden changes in the testimonies of the *Minor Victims of Sexual Abuses/Sexual Exploitations*<sup>62</sup> become so pathetic on the respective part of the *Police Authorities* who had really initiated the case or the incidents of *Sexual Abuses* for the benefit of *Minor Victims* in order to provide them *Indirect Justice or Preparedness of Pre-Trial Mechanisms or the Procedures for Enforcement of Child Right's*, but later on due to the sudden changes in the testimonies of the *Victim's* made the *Cases* also weak and simultaneously it condemns the *Pride and Respect of the Police Authorities* who wanted to take action, but did not able to do

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<sup>56</sup>Ibid.

<sup>57</sup>Ibid.

<sup>58</sup>Ibid.

<sup>59</sup><https://ccl.nls.ac.in/wp-content/uploads/2017/01/Implementation-of-the-POCSO-Act-2012-by-speical-courts-challenges-and-issues-1.pdf>.

<sup>60</sup>Ibid.

<sup>61</sup>The Protection of Children from Sexual Offences (POCSO) Act, 2012.

<sup>62</sup>Supra Note 57.

anything, as through any particular *Vague Statements* or *Processes* being committed by the *Minor Victims* who confesses in such a manner that they were not at all ready to enforce the case of *Sexual Offences*, but rather it was being pressurized by the *Police Authorities* to their respective families and them to initiate case or to lodge a *F.I.R*<sup>63</sup>, and in some cases they clearly refused to be the *Victim or the Victimization of any Sexual or Child Abuses* against them.

### **CONCLUSION & SUGGESTIONS:**

The entire values of the *Society* have indeed gone into vain pertaining to the cultures, the norms, the moral values of the *Childhood* been eroding for last couple of years, which shows the denouncing phase or the denouncing implementations of the *Indian Government* in order to give fair protection to the entire *Minor Masses* or the *Minor Children* in the larger aspect.

The *POCSO Act of 2012* though having several positive advantages including an *Establishment of Speedy Trials through Special or the Fast Track Courts* have in some districts proved to be the strongest methodologies to curb *Child Sexual Abuses*, but if we also simultaneously take the *Loopholes or the Grand Lacunas* for the same, it will effectively give an *Incomplete or an Ineffective Implementation of such Methodologies like Fast Track Courts or the Special Courts* being established under the ***Broad Domain of POCSO Act, 2012.***

Moreover, coming on to the *Child Prevention* against *Gross or the Gruesome Abuses of Child Sexual Abuses or the Menaces*, this *Act*, namely the ***POCSO Act, 2012***, have moderately lessen or minimized the *Fatal Effects of Child Sexual Menaces or Atrocities*, but not as effectively, as the *Indian Legislature* has expected. Talking about some of the best and most effective policies or the procedures, ***POCSO Act, 2012*** has adopted or framed or established under its jurisdiction are being broadly mentioned as follows:

- The broad development of an *Expeditious Redressal of the Child Sexual Offences Matters or an Incidents or the Menaces* by an *Active Procedure or Methodologies of Fast Track Courts* or rather the *Special Courts* being established under the wider facets of ***POCSO Act, 2012***, has indeed played a pivotal and central role in order to lessen or minimizes the cases related to *Child Sexual Offences or the Worst Child Abuses* framed or explained under the ***POCSO Act, 2012***, which stands as ***The Protection of Children from Sexual Offences (POCSO) Act, 2012.***

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<sup>63</sup>Section 151 of The Code of Criminal Procedure, 1973.

- There is the mandate being described under the **POCSO Act, 2012**, which mentions about the *Training cum Education Process* or in other words the *Awareness Campaign for Victimized Children* to further *Educate* them in order to prevent them from the **Gross Atrocities of Secondary Victimization or the Re-Victimization Process**. Simultaneously, it also looks after the large *Masses of the Minor Children* in further order to *Treat them with Due-Nurture* and *Educate* them also in several ambits of **Defence Mechanisms**, so, that, the entire *Minor Children on the Pro-Active Basic or Development*, can easily **Defends or Combats the Worst Apprehension of Child Sexual Terror** in its effective manner.
- The *Active Role* of the various **NGO'S** which played a *Strong Factor* in *Enforcing Child Sexual Matters to the Local Police Station* and also simultaneously providing the *Due-Justice* to them. If any *Child Sexual Menaces* or an *Abuses* being reported to the **NGO**, by calling the **Child Helpline Number on 1098**, after this, the **NGO** actively and without delaying further, reports the **Prima Facie Cases of Child Sexual Offences to the Local Police Station**, and in this way, how an **'Initiation of Lodging F.I.R'** under **Section 151 of CrPC, i.e., The Code of Criminal Procedure, 1973**, takes place in favour of *Minor Children* for their **Gross Protection and Enforcement against Child Sexual Atrocities or Menaces**.

There has been the huge grief and sorrow irony, that for the last couple of years even the *Indian Judicial System* is not at all working properly and due to the multiple *Biased Attitude of the Hon'ble Judges*, the *Accused* are being easily *Acquitted*, as even the *Judges* know, that who is wrong on the sudden spot of time during the *Trial Procedure*, but still indeed it is a matter of sorrow, that the *Offender* by committing a *Gruesome or Heinous forms of Sexual Offences* against the *Naive, Benevolent and Amiable Children*, gets a *Due Acquittal*, which is the biggest failure been proved for the last few years and that too specifically in the case of **POCSO** which acronyms as *The Protection of Children from Sexual Offences Act, 2012*.