



## Child Sexual Abuse in India and the Protection of Children from Sexual Offences (POCSO) Act 2012: A Research Review

Renu,\* Geeta Chopra

*Institute of Home Economics, University of Delhi. Hauz Khas, Delhi -110016, India.*

Submitted on: 3 May, 2019 Accepted on: 24 July, 2019 Published on: 29 July, 2019

### ABSTRACT

Child Sexual Abuse (CSA) is most heinous crime against children and in most instances, it is hidden in nature. It is the most under reported crime. The effect of CSA lingers across the lifetime of an individual. It is now being recognized as toxic stress which emotionally can harm the child irreparably. This paper presents studies on CSA in India. The Protection of Children from Sexual Offences (POCSO) act was enacted in 2012. POCSO has many difficulties in implementation. The paper also presents the researches done on POCSO putting across issues related to mandatory reporting, consensual sex, doctors preparedness for handling CSA victims, and status of special courts under POCSO.

*Keywords: CSA, POCSO, mandatory reporting, age of consent, special courts*

### Introduction

Child sexual abuse is widely prevalent, yet hardly reported. In the name of culture and tradition, at times, sexual violence against children is covered up, ignored or not reported. A protected child is a potential national resource whereas exploited child can become victim first and then an offender. Safety, security, harmony, loves and care is what a child needs to grow fully and to accomplish his/her full potential.

Traditionally, in India, children were valued and pampered. But for some children truth was different they were sexually abused in the name of customs and folk practices. For example, in southern parts of India child prostitution was present in the name of 'devadasi'. Devadasi is a girl child dedicated to worship and service of a deity. Today the truth and reality for CSA is reached to its worst level (Chopra, 2015). India is a highly diverse country. Indian culture is a combination of multiple religions, languages, different traditions, ethnicities and so on. Some underlying values system of Indian culture include things like 'respect your elder', 'keep quiet when elders say things to you', 'you should always obey what elders say', 'adults are always right'. And children are expected to respect this without questioning. But what if elders are wrong? What if elders are exploiting children? What if adults are perpetrator rather than protectors?

Indian policies and programs have always supported the wellbeing of children. As according to the National Policy for Children (2013) in its Preamble it is stated that all children have the right to grow in a family environment, in an atmosphere of happiness, love and understanding. Within NPC 2013 it is also been stated that Survival, Health and Nutrition, Education and Development, Protection and Participation of child should be seen as key priority.

It is the responsibility of all stakeholders to makes the environment conducive for holistic development a child. As the human values are changing and humanitarian principles are gaining momentum, we should consider the child to be the most fundamental and imperative element of the nation. It is our duty to work together in accomplishing the goal of wellbeing of all children (Sarkar, 2016).

#### 1.1. What is CSA?

India has one fifth child population of the world and the Indian government estimates that 40 percent of India's children are vulnerable to threats such as trafficking, homelessness, forced labor, drug abuse, and crime, and are in need of protection (MWCD, 2011). Hence, it should be our prime concern to safeguard them from all kinds of abuse because it's their fundamental right to be protected from all sorts of harms.

Child abuse report by MWCD (2007) unveiled that every second child has been sexually assaulted in India. This report also revealed that India has the doubtful difference of having the world's biggest figure of sexually abused children with a child below 16 years raped every 155<sup>th</sup> minute, a child below 10 every 13<sup>th</sup> hour and one in every 10 children sexually abused at any point of time.

In order to understand child sexual abuse, the United Nation has defined child sexual abuse as contacts or interactions between child and an older or more knowledgeable child or adult (a stranger, sibling or person in position of authority, a parent or a caretaker) when the child is being used as an object

\*Ms. Renu  
Assistant Professor  
Institute of Home Economics, University of Delhi  
Tel: 9899063603  
Email: [renu.b.ed@gmail.com](mailto:renu.b.ed@gmail.com)

Cite as: *Integr. J. Soc. Sci.*, 2019, 6(2), 49-56.

©IS Publications

IJSS ISSN: 2348-0874

<http://pubs.iscience.in/ijss>

of gratification for the older child's or adult's sexual needs. These contacts or interactions are carried out against the child using force, trickery, bribes, threats or pressure (Maitra, n.d.).

A majority of sexual abuse cases occur in the home, school or the neighborhood next door. In India, many gruesome incidents of CSA have been recorded in the past ranging from incest, rapes, sexual abuse, sodomy, inappropriate touch to sexual assaults. The worst part is that such abuse is inflicted upon a child by a person in his immediate circle and a stunning majority of these cases go unnoticed (Kumar et al, 2012).

The importance of keeping children in safe and protected environments is reiterated in a study conducted by Center on the Developing Child, Harvard University (n.d.) as reported "Biology of stress shows how major adversity, such as extreme poverty, abuse, or neglect can weaken developing brain architecture and permanently set the body's stress response system on high alert. Science also shows that providing stable, responsive, nurturing relationships in the earliest years of life can prevent or even reverse the damaging effects of early life stress, with lifelong benefits for learning, behavior, and health". CSA is the toxic stress which impedes the development of the tender child. To combat these increasing incidences of child sexual abuse, a separate law, that is POCSO Act, was formulated.

## 1.2. The Protection of Children from Sexual Offences (POCSO) act 2012

The POCSO act has been drafted to strengthen the legal provisions for the protection of children from sexual abuse and exploitation. According to POCSO Act, 2012 a "child" is a person who has not completed the age of 18 years. POCSO act is gender neutral, providing protection to children of both sexes.

According to Chopra (2015), the POCSO Act prescribes these sexual offences against children: -

Penetrative sexual assault, when person insert penis, or any other object into the body of child or ask child to do so

Aggravated penetrative sexual assault, when trusted person or any government employ insert penis, or any other object into the body of child or ask child to do so

Sexual assault, when a person with sexual intent touches the child's private body parts or ask child to do so

Aggravated sexual assault, when trusted person or any government employ with sexual intent touches the child's private body parts or ask child to do so

Sexual harassment, a person is said to commit sexual harassment upon a child when such person is with sexual intent comment or follow or gaze a child or show any pornography to the child

Using a child for pornographic purposes

## 1.3. UNCRC on CSA

Under the international laws, children are protected from all kinds of maltreatments. UNCRC clearly mentions in "Article 34 (Sexual exploitation): Governments should protect children from all forms of sexual exploitation and abuse. This provision in the Convention is augmented by the Optional Protocol on the sale of children, child prostitution and child pornography" (UNICEF, n.d.)

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials. (CYPCS, 2018)

The present review paper is about child sexual abuse and the law related to child sexual abuse in India POCSO act 2012.

## 2. Methodology

The present review paper is based on the theme of child sexual abuse in India and POCSO act 2012. To investigate these points, authors have collected literature related to child sexual abuse and POCSO in particular. Many articles have been searched through Delhi University library system, and through normal Google search, and Google scholar. The main key words used were POCSO, child sexual abuse in India and globally, international take on laws to protect children from CSA. All the relevant articles were identified and selected for further readings. Total 20 articles on POCSO, 20 articles on child sexual abuse and four reports on special courts have been identified for review. Each article has been read carefully. Authors have critically reported all the major points that have come up in the selected articles on POCSO and CSA. For the last section on Special courts four studies conducted by National Law School of India have been studied and secondary data obtained from these studies has been further analysed. All the articles have been closely read and reported in the present paper to reflect on Child Sexual Abuse in India and POCSO act 2012.

## 3. Discussion

### 3. 1. Child Sexual Abuse in India:

Child sexual abuse is a global problem. In India we have the largest child population, hence making the task of child protection immense. Among all problems, child sexual abuse is the most critical one as it has long term emotional consequences. Since it is a very sensitive issue to explore and people are not comfortable to talk about it, very few research studies have been conducted on it. To understand this better, present paper further collates the relevant studies in the area of CSA and POCSO.

#### 3.1. 1. India's Children and Sexual abuse:

Child sexual abuse impacts not merely the victim but entire humanity. It is clearly reported by multiple studies that impact of CSA is lifelong and grave on children. A study by MWCD on child abuse (2007) stated that "Subject of child sexual abuse is still a taboo in India. There is a conspiracy of silence around the subject and a very large percentage of people feel that this is a largely western problem and that child sexual abuse does not happen in India".

Bhuvanewari and Deb (2016) reported that child sexual abuse is a progressive disorder as it persists. Due to the non-disclosure of offence, offender continues to play with the lives of children. They commit the sexual abuse repeatedly on the same child and on the other children thus making the crime of

a progressive nature. McElvaney (2015) reported that delay in disclosure and non-disclosure of child sexual abuse is one of the major challenges to overcome the problem of child sexual abuse. Why children are reluctant to disclose such experiences have significant implications for addressing the issue of child sexual abuse from the perspectives of child protection and for legal and therapeutic professionals.

Deb and Walsh (2012) found in their study that 18 % of children were victim of sexual violence in the Agartala city of Tripura, India. Boys were more often victims of physical and psychological violence while girls were more often victims of sexual violence. The social adjustment scores of school children who experienced violence, regardless of the nature of the violence, was significantly lower when compared with scores of those who had not experienced violence.

Subramaniyan et al. (2017) reported in their study that to make this world safer for children, we need to guard our sons and daughters equally. The study reported a very low rate of reporting and help seeking among victims of sexually abused boys in India could be due to the domination of patriarchy. This social construct is usually being applied to understand the subordination of girls and women, the fact that it is oppressing all children who are perfect victims irrespective of their gender is being ignored. Male children who are expected to be superior due to their biology and also because of this myth of superiority, there are unreasonable expectations from them to overcome the harmful effects of sexual abuse of childhood without treatment.

Kumar et al. (2017) conducted study in Kerala (India) on abuse in a school environment. The purpose of this study was to estimate the prevalence of sexual, physical, and emotional abuse in a school environment in a developing country. The results highlight the urgent need to address the issue of abuse in the school environment and minimize its impact.

According to Singh, Parsekar and Nair (2014), Child sexual abuse (CSA) is a universal problem with grave life-long outcomes. A similar study conducted in Kenya by Rotu (2009) reported that the main perpetrators of the violence were mentioned as peers while the home featured as the most unsafe place. Wurtele and Kenny (2010) stated that the more knowledge parents have about CSA, the greater is the likelihood that they can create safer environments for their children and thus prevent the occurrence of sexual exploitation.

Kenny et al. (2008) stated that children as young as three can be effectively taught self-protection skills. Parental and family involvement in training is important, and repeated exposure helps children maintain knowledge gains.

### 3.1.2. Extent of CSA in India

The problem of Sexual abuse is massive around the world. As we all know that child population in India is as high as 430 million children (Census 2011) and other factors such as poverty, lack of basic facilities for better standard of life, lack of education adds more into the problem of CSA. Latest reports of National Crime Records Bureau (2016), clearly highlighted that cases under the Protection of Children from Sexual Offences Act, 2012 reported 36,022 (34.4%) cases including child rape. Maximum numbers of cases under crime against children were reported in Uttar Pradesh, Maharashtra and Madhya Pradesh, (15.3%, 13.6% and 13.1% respectively).

Crime Head	Total Cases Reported	Major State/UT during 2016		
		Uttar Pradesh (4,954)	Maharashtra (4,815)	Madhya Pradesh (4,717)
Protection of Children from Sexual Offences Act, 2012	36,022			

(National Crime Record Bureau report, 2016)

The above-mentioned data of NCRB 2016 further emphasis on the need for the study to make people aware about such heinous crimes which deeply exist in our system. Total of 36,022 cases of child sexual abuse including rape were reported under POCSO act in India during the year of 2016. Crime rate in Uttar Pradesh is very high, 4954 rape cases were reported in single state only followed by Maharashtra and Madhya Pradesh.

Kumar et al, (2017) conducted a study in Kerala (India) on abuse in a school environment. Total 6682 school attending adolescents in Thrissur, Kerala participated in this cross-sectional self-report study. More males than females reported being victims of abuse; figures for one-year prevalence were: physical abuse among girls vs boys (83.4% vs. 61.7%), emotional abuse (89.5% for girls vs. 75.7% for boys), and in this study authors have reported that sexual abuse among girls were 29.5% whereas for boys it was 6.2%. Various factors significantly increase the likelihood of abuse—male gender, low socioeconomic status, regular use of alcohol and drugs by family member at home, and having other difficulties at school.

The extent of the child sexual abuse in India is very high. Even then the researches/data available on the CSA is very limited. And preventive measures for children to safeguard are even lesser. Lack of awareness or rather the culture of silencing children is the major cause of flourishing nature of child sexual abuse in India as well as around the world. It's a high time to search for more precautionary measures for children to protect them from such dreadful crimes. Many studies reported that in the absence of evidence many culprits of CSA walk off without conviction. Presently in India we have a special law for children, the POCSO act 2012.

### 3.2. POCSO act 2012

Children in developing countries like India suffer from many challenges. Sexual offences are the most heinous among these. In 2012 Indian government prepared and implemented Protection of children from sexual offences Act (POCSO), 2012. POCSO is a major legislation in the field of child protection. POCSO is the new and revolutionary Act, specially enacted to protect children from sexual offences. Being a new act, the various stakeholders are at times not aware, or don't know how to implement it, considering the best interest of the child. The following sections will highlight using researches, the various issues related to sensitization and implementation of POCSO. The review is organized in these sections:

- Awareness and sensitization about POCSO
- Mandatory reporting
- Age of Consent
- Doctor's readiness to deal with CSA
- Special courts under POCSO



### 3.2.1 Awareness and sensitization about POCSO

Most of us have heard the term POCSO but have very limited knowledge about the law. In this section we will discuss the awareness level of people about the current laws in India to protect children from sexual abuse. POCSO is the most recent and most crucial legislation to protect children from sexual abuse, hence it is important that people should be aware of it.

What does the act say about awareness generation? I quote:

*The Central Government and every State Government, shall take all measures to ensure that—*

*(a) The provisions of this Act are given wide publicity through media including the television, radio and the print media at regular intervals to make the general public, children as well as their parents and guardians aware of the provisions of this Act;*

*(b) The officers of the Central Government and the State Governments and other concerned persons (including the police officers) are imparted periodic training on the matters relating to the implementation of the provisions of the Act (POCSO, 2012).*

Babbar (2014) stated that POCSO is a wholesome law but there is a strong urgency to ensure its implementation and create awareness amongst officers and all stakeholders on what it contains. The act defines exclusively the crime of sexual offences against children and fulfils the mandatory obligations of India as a signatory to the United Nations Convention on the Rights of the Child, acceded to on December 11, 1992. But these systems often do not work due to poor policing and the failure of social services to function properly.

Belliappa and Ghosh (2015) reported that POCSO is a step in the right direction since it has a considered approach to CSA including a nuanced approach to the types and intensities of sexual violations. It is important that teacher training and school level policies take account of the POCSO act and also alert teachers and school heads to their legal responsibility to report abuse. However, like all laws POCSO applies only after a crime is reported; prevention requires interventions which are not necessarily only legal in nature.

Vishwanath (2016) reported that POCSO Act, 2012 creates a strong and efficient legal network for protecting children against CSA and for punishing the perpetrators. The proper implementation of the POCSO Act, 2012 and guidelines are needed. This is possible only by sensitizing the children, parents, schools and caretakers since any untoward and harsh treatment of the victim tends to shatter the confidence of the victim and its family, benefitting the accused.

According to Gupta et al. (2013) reported POCSO casts a duty on the central and state governments to spread awareness through media including the television, radio and the print media at regular intervals to make the general public, children aware of the provisions of this act.

Awareness about the sexual education among the parents and children needs to be enhanced. There is a need to educate students in the school about what constitutes sexual harassment. School administrators, teachers, parents and students all need to play a proactive role in this direction. Awareness about sexual abuse can go a long way in prevention of CSA. Early detection, quick identification and

punishing the perpetrator, quick intervention and supportive environment at the schools and families need to be nurtured (Vishwanath, 2016).

#### 3.2.1. Mandatory Reporting

Under section 19 of POCSO (2012) act it has been clearly stated that “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). Special Juvenile Police Unit, or b). The local police.” Within this section it is evidently mentioned that the reporting of such offence is obligatory and the person who fails will eventually be liable for punishment of up to six months of imprisonments or fine or both. Due to this clause many professionals face many issues. Mandatory reporting has inherent problems, which are going to be discussed in this section.

According to the report of Human Rights Watch (2013) stated that only a minute percentage of child sexual abuse cases are ever reported to the police. Why mandatory reporting is still a question to be resolved and why children and their relatives choose not to come forward is because of the fear that they will not be treated sympathetically. Indeed, many victims and the adults supporting them endure terrible experiences that add to their trauma. These can include intimidating interviews by police officers, degrading and painful medical examinations, and intimidation by perpetrators to drop charges. Court cases too can be unpleasant experiences for the child since they can last for years and involve stressful cross-examinations

As reported by Jagadeesh, Deosthali and Rege (2016), that mandatory reporting clearly aims to punish offenders and reduce crime, and does not directly focus on the best interest of survivors or what they desire. Against this background, when authors had analysed the reasons why survivors do not report crimes, they concluded the fear of losing shelter; apprehensions about retaliation by the perpetrator; anxiety that others will come to know about the assault; and fear of losing community support.

According to Malathesh and Das (n.d.) as per POCSO act, it is mandatory to register a medical legal case in all cases of sexual assault, but most of the times parents oppose it. In this act, the procedure of reporting has not been clearly described.

Seth (2015) stated that the physicians should be aware of the new legislation, Protection of Children from Sexual Offences (POCSO) Act, 2012, which requires mandatory reporting of cases of child sexual abuse, failing which they can be penalized.

Not just in India but in Malaysia also mandatory reporting is present in the laws related to child sexual abuse. Wabah (2017) reported that mandatory reporting is important to protect children from the evil of child sexual abuse. Teachers, school counselors, child care workers, doctors and nurses are mandated to report on any child sexual abuse cases as required by the laws. By reporting the child sexual abuse cases to the respective bodies, it will uphold the justice for the victim; a child can be rehabilitated and the perpetrators will be penalized. Wabah (2017) also stated that in Malaysian law that is Sexual Offences against Children Act 2017. Section 27, 28 and 29 of the Child Act 2001 provide that a medical officer or a registered medical practitioner, the child's family members and a child care provider shall inform the welfare officer if

they are reasonably believed that the child is physically or emotionally injured as a result of being ill-treated, neglected, abandoned, exposed or sexually abused. Failure to do so, will impose fine not exceeding five thousand ringgit or an imprisonment for a term not exceeding two years or both will be imposed on the respective person.

Sagar (2014) stated that Section 19 of POCSO provides for mandatory reporting of sexual offences. This casts a legal duty upon a person who has knowledge that a child has been sexually abused to report the offence; if he fails to do so, he may be punished with six months' imprisonment and/or a fine it mandatory to report upon any person who has an apprehension that an offence is likely to be committed. Similarly, Belur and Singh (2015) reported that Mandatory reporting of CSA by any citizen, but especially those working with children and young people in the education, social, religious and health sectors is enshrined in POCSO (section 19).

Gupta, Aggarwal, and Bhatia, (2013) reported that provision of mandatory reporting by medical professionals, to the police of a actual or anticipated offence (overriding the confidentiality of information) is obligatory, failure of which will result in punishment, with a fine, imprisonment of six months or both. It was feared that this clause of mandatory reporting with punishment will result in under reporting by parents/ a physician who fear legal hassles. Reporting becomes troublesome when close family member is involved. As this leads to family conflicts, separation of child victim from family may create more trauma and criminalization.

Likewise, Agarwal et al. (2017) reported that mandatory reporting to police even when the victim is nonconsenting is a problematic for medical practitioners.

Arya & Chaturvedi (2017) reported that institutions working for benefit of children are based on the foundation of trust. If they are legally bound to report, then it shall adversely affect the trust built by them among the victims.

Binrajka (2015) stated that a point of difference between mandatory reporting under POCSO and the same under laws of other countries is that it imposes an obligation on every person. In most states of USA, Australia and most member states of the EU, only certain professionals such as doctors, teachers, counselors, social workers, and psychologists are mandated reporters. These are categories of people who are frequently in contact with children and are sensitive to the manifestations of sexual abuse in the form of behavioral changes, low self-esteem, and aggression among others.

In clinical practice, many of the times, the parents of the child (victim) insist the treating doctor not to report it fearing stigma and other social reasons. There is also a conflict of "confidentiality" and "duties of the doctor" in this situation. Reporting the incident will break the confidentiality with the patient and not reporting is against POCSO Act. There are no clear guidelines of how to go about the issue in such situations. Is it sufficient to take a written consent from parents not to report the issue to police? Will that written consent protect the treating psychiatrist from legal hassles? (Malathesh and Das, n.d.)

Mandatory reporting is an essential part of POCSO acts 2012 from the above studies it is evident that initially mandatory reporting was favored. Mandatory reporting became the responsibility of all. But gradually as more recent

studies the outcome highlights that obligatory reporting is more negative especially for victims of CSA and their families. Though mandatory reporting is a clause in POCSO, and if not done by professionals like doctors, psychiatrist, and even teachers, it is punishable, but there is always a dilemma that is faced. A child discloses CSA to parents/ other adults out of trust and has expected confidentiality, but mandatory reporting clause over rides the trust/ confidentiality expectation of child again and again. The above studies have highlighted this dilemma.

### 3.2.2. Age of consent and consensual sex

All sexual acts described under POCSO are, without exception, considered to be criminal offences if they involve a 'victim' under the age of 18 years. Adolescence years are the age of exploration and development. In this stage children develop sexually. Considering all sexual act, even if they are done with consent, under POCSO they are considered as crime. According to Malathesh and Das (n.d.), one of the crucial and controversial issues to be addressed in POCSO Act is consensual sex between two adolescents. The POCSO Act has criminalized the act of sex by not making any special provisions for the above situation.

Belur and Singh (2015) reported that in cases of consensual sex between two minors the concepts of victim and perpetrator become interchangeable as the law inexorably criminalises sexual behaviour for under-18-year-old. The Act does not confer any sexual autonomy to children who may then be liable for committing sexual acts under the law.

Ayarkar and Chandrasekhar (2016) reported that the POCSO Act, is in violation of the UNCRC, and is regressive as it criminalises all sexual activity among children, not acknowledging consensual sexual activity among adolescents. An unwanted pregnancy resulting from consensual sexual activity involving an adolescent also ends up being viewed as an outcome of sexual violence by the law.

Arya and Chaturvedi (2017) pointed out that criminalising sex below 18 years will prevent the school counselors and doctors to provide safe sex advice or treat effects of unsafe sexual practices.

Consensual sex should not be considered as rape. In many cases of love and romance young couples get into sexual relationship. This should not be considered as Child Sexual abuse. According to POCSO any sexual act under 18 years of age is punishable.

### 3.2.3. Doctor's readiness to deal with CSA

World Health Organization, in its module of guidelines on medico-legal care for victims of sexual assault, clearly reported that "only approximately one-third of rape victims sustain visible physical injuries." Nonetheless, many Indian police officers, doctors, and judges still seek evidence of a "struggle" and "injuries." When they fail to find these, they often conclude that no rape occurred (World Health Organization, 2003).

Human Rights Watch (2013) reported that many doctors in India simply do not have the skills to perform such an important and sensitive. Many acts of child sexual abuse do not involve violence or penetrative sex, and victims often wash themselves after being assaulted. Doctors then report there is no evidence of rape.

A regular part of the examination of female rape victims, including children, in India, is the “two-finger test” to check the size and state of her hymen and vagina for signs of sexual intercourse and violence. This is standard practice in many Indian hospitals; even though forensic experts say that the test has no scientific value. Even victims of CSA feel humiliating when doctors conduct two finger tests on them. (Human rights watch 2013).

Seth (2015) stated that doctors and allied medical professionals can help prevent child sexual abuse by delivering the message of personal space and privacy to their young patients and parents. Arya & Chaturvedi (2017) reported that lack of proper training to handle the victim of CSA may add to the problems of doctors.

Agarwal, Kumar, and Chavali (2017) reported that amendments in the laws related to child protection have landed the medical practitioners as well as the victim in conflicts of ethical and legal issue such as any medical practitioner can now be asked to examine and prepare a report for victim of sexual assault. Not all can be well trained, and refusal for such examination is now made punishable. And also, nonpenetrative sexual assault has now been recognized and made punishable. However, all such assaults generally do not leave any evidence over the body of the victim. This may result in unnecessary harassment of the medical practitioner for not conducting a proper medical examination or collection of evidence.

In a study undertaken by Patil, Hegde and Yaji (2017), Child abuse is often under reported, especially by the dental health professionals. This could be due to lack of training and experience in identifying and intervening effectively in such situations, fear of litigation, and concern about offending patients or embarrassment about bringing up the topic. These shortcomings can be overcome by legislatively making it mandatory for all healthcare professionals to undergo: 1. Training regarding examining and careful handling of abused patients 2. Training about reporting norms and rehabilitation programs once they encounter an abuse case 3. CMEs/CDEs to learn about India’s juvenile justice and child protection systems. 4. Implementing laws to protect healthcare professionals who report the cases.

Lodha and DeSousa (2017) stated that “the several concerns that rise with regard to POCSO Act (2012) make it debatable in the setting of medico-legal and psychotherapeutic practice. An essential question that must receive adequate description is ‘Whether the legality or well-being of the child is of more importance?’ Though POCSO takes care of the reporting and undertaken legal proceedings with respect to child sexual abuse, it falls short to ensure the provision of good quality services for health care and mental well-being”.

### 3.2.4. Special courts under POCSO

According to Section 28(1), POCSO Act, State Governments should, in consultation with the Chief Justice of the High Court, designate a Sessions Court to be a Special Court to try offences under the POCSO Act, to facilitate speedy trial.

However, if a Sessions Court has been notified as a Children’s Court under the Commissions for Protection of Child Rights Act, 2005, or if any other Special Court has been designated for similar purposes under any other law, it will be regarded as a Special Court under the POCSO Act (POCSO

Act, 2012). According to Section 33(4), POCSO Act, the “child-friendly atmosphere” of the courtroom can be created “by allowing a family member, a guardian, a friend or relative, in whom the child has trust or confidence, to be present in the court.” This provision bears no reference to the physical dimension of the courtroom or the behaviour required to ensure that the child’s interaction with the criminal justice system is child-friendly (POCSO Act, 2012).

The Centre for Child and the Law, National Law School of India, University, Bangalore, India, conducted a study on working of special court under the POCSO act 2012, in the states of Andhra Pradesh, Assam, Maharashtra and Delhi.

The working of the courts was analysed and assured under the various parameters which are presented in the following table.

Parameters of Analysis	Andhra Pradesh	Assam	Maharashtra	Delhi
Special Court designated in all districts	v	v	v	v
Special Courts exclusively try offences under the POCSO Act, 2012	x	x	x	x
Special Public Prosecutors appointed	v	v	v	v
Special Public Prosecutors exclusively try offences under the POCSO Act, 2012	x	x	x	x
Separate entrance for children into the courtroom	v	x	x	2/6*
Waiting room for children and families	x	x	x	2/6*
Toilet located in the vicinity of the courtroom	x	v	v	2/6*
Audio-visual facilities to record evidence of the child available	x	x	x	2/6*
Means available to prevent exposure of the child to the accused in the courtroom	v	v	v	v
Separate room for recording the evidence of child witness	x	x	v	2/6*

(The above table is a compilation of four reports of “A study on working of special court under the POCSO act 2012”, in the states of Andhra Pradesh, Assam, Maharashtra and Delhi by The Centre for Child and the Law, National Law School of India, 2016.

\* In Delhi total six courts were examined. Where as in other states only two district courts were studied)



Special courts play very significant role in the proceedings under POCSO. As in all four states there is a special court for POCSO though in all they are not exclusively for POCSO. Almost all the courts have public prosecutors but they are again not exclusively dealing with POCSO cases. Only in Delhi and Assam courts have separate entrance for children into the courtroom where as in Maharashtra and Andhra Pradesh courts have the common entrance for both. None of the states have waiting room for children and families except in Delhi. Toilet located in the vicinity of the courtroom in all court campus. None of the states have audio-visual facilities to record evidence of the child available except Delhi's Karkarduma court and Hauz Khas court. Almost all courts have means available to prevent exposure of the child to the accused in the courtroom. Assam and Andhra Pradesh courts do not have separate room for recording the evidence of child witness whereas Delhi courts and Maharashtra courts have provisions for separate room for recording the evidence of child witness.

Juyal (n.d.) reported that even the legal prerequisite that each district should have an exclusive POCSO court, the directives have been continuously ignored. The indifferent approach of the government's bureaucracy was reflected that the formulation of manual related to law for implementation take place only after supreme courts interventions.

The appointed judges for CSA cases are not experts in the laws pertaining to child sexual abuse and there is no provision to provide them any additional training for such cases. As a consequence, they believe these cases as an added burden, and hence, cases of CSA are not dealt effectively and efficiently as envisaged under the provisions of POCSO act 2012 (Juyal et al., n.d.).

Special "child courts," as envisaged by the new Protection of Children from Sexual Offences Act, should make a big difference. Maharukh Adenwalla, a high court lawyer in Mumbai who specializes in child rights, says that they will help create a specialized body of professionals who will understand the sensitivities of such cases: This is most necessary as often the system, such as the police and judges, do not recognize that the person before it is a child and not an adult, and requires to be handled differently (Human Rights watch, 2013).

## Conclusion

The findings from the above literature on Child Sexual Abuse clearly indicate that there is a very high need for protection of children from CSA. Data from NCRB emphasized the need of further care and protection of children from CSA. CSA is a matter of shame for the society and till date considered as taboo to be talked about. In the name of culture and the structure of family in India and the low status of children in this structure, makes CSA even more rampant in India homes. As review of studies on CSA shows that child sexual abuse in India is often a hidden phenomenon. Since children are highly dependent on their parents and elders, they are often submissive and obedient to adults. Lack of awareness about laws and reluctant behavior of parents facilitate the continued perpetuation of such heinous crimes (CSA in India, 2016).

Presently, in India POCSO is a special law to protect children from sexual offences. This law is powerful tool to guard children against CSA. Being a new act in the system the various stakeholders are at times not aware, or don't know

how to implement it, considering the best interest of the child. It is more than six years of its existence still many stakeholders are not aware of about the basic points in POCSO. The present paper explores many aspects of the POCSO act.

Awareness about sexual abuse can go a long way in prevention from CSA. Information related to POCSO should come in public domain and awareness among stakeholders will help in eradication of CSA. Many studies on awareness on POCSO revealed that there is great need to disseminate more and more information on POCSO.

Mandatory reporting is an essential part of POCSO act. Mandatory reporting was added into the laws as an attempt to increase the reporting of CSA offences. But in reality, it became problematic to many stakeholders. This is the area under POCSO which needs to be re worked for improved implementation of the law.

Studies have recommended that age of consent, which is the basic area under POCSO, needs to be reconsidered urgently. Any sexual involvement under 18 years of age is considered as offence under POCSO. It has been reported in many studies that consensual sex during adolescence years should not be considered as criminal activity.

Doctors play significant role in the cases of CSA, their readiness and awareness about CSA will help many CSA victims. Many studies reported that sensitization and proper training of doctors is needed to prevent further revictimization of CSA victim.

'Special Courts' or 'Child Courts' can make big difference in the smooth proceedings on CSA cases and implementation of POCSO. Study on special courts highlights that there is clear dearth of such courts. Even the existing special courts premises lacks the basic requirements for such courts like special public prosecutors exclusively for POCSO, separate entrance and waiting room for children (victim), separate room for recording of evidence etc. This area under POCSO needs immediate attention and improvement.

Generally, almost all researches, pointed out toward the various issues and lacunas in the area of sensitization and implementation of POCSO such as mandatory reporting, age of consent, doctor's readiness to deal with victim of CSA through the guidelines of POCSO act and Special courts. These issues need to be relooked carefully to make the law sturdy and implementable holistically.

## References

- Agarwal, S. S., Kumar, L. & Chavali, K.H. (2017). Legal and ethical complexities in the examination of victims of sexual assault in India: A medical practitioner's perspective. *Journal of Medical Society*, Published by Wolters Kluwer –Medknow. 2017;31:72-6. Retrieved on 21<sup>st</sup> May 2018 from doi: <http://www.jmedsoc.org>
- Arya, Y. & Chaturvedi, A. (2017). Analysis of underreporting of cases of child sexual abuse in India. *The World Journal on Juristic Polity*.
- Ayarkar, S. & Chandrasekhar, A. (2016). Who decides the "best interests" of the child? *Indian Journal of Medical Ethics* Vol I No 3 July-September 2016.
- Babatsikos, G. (2010). Parents' Knowledge, Attitudes and Practices about Preventing Child Sexual Abuse: A Literature Review. *Child Abuse Review* Vol. 19: 107-129 (2010). Retrieved on 25<sup>th</sup> May 2018. DOI: 10.1002/car.1102
- Babbar, S. K. (2014). Child Welfare: A critical analysis of some of the socio-legal legislations in India. *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)* Volume 19, Issue 8, Ver. II (Aug. 2014), PP 54-60 e-ISSN: 2279-0837, p-ISSN: 2279-0845.

- Barath, K. S. & Mahalakshmi, V. (2016). Legal implications of POCSO act, 2012 – an analysis. *International Journal of Multidisciplinary Research Review*, Vol.1, Issue – 1, Jan -2016.
- Belliappa, J. L. & Ghosh, S. (2015). Addressing Child Sexual Abuse in India through Legislation, Sexuality Education and Teacher Training. 4(1) A38JIL (2015) 134
- Belur, J. & Singh, B. B. (2015). Child sexual abuse and the law in India: a commentary. *Crime Science* (2015). Retrieved from doi: 10.1186/s40163-015-0037-2
- Bhuvanawari, K. & Deb, S. (2016). Child Sexual abuse: A Progressive disorder. *Indian Journal of Health and Wellbeing*. 2016, 7(6), P.P. 651-161.
- Binrajka, M. (2015). Mandatory Reporting Under POCSO: Are We Ready? *Journal of Indian Law and Society..* (2011).
- Centre for Child and the Law, National Law School of India University, Bangalore (2016). *Report of study on the working of Special Courts under the POCSO Act, 2012 in Andhra Pradesh*.
- Centre for Child and the Law, National Law School of India, University, Bangalore (2016). *Report of study on the working of Special Courts under the POCSO Act, 2012 in Assam*.
- Centre for Child and the Law, National Law School of India, University, Bangalore (2016). *Report of study on the working of Special Courts under the POCSO Act, 2012 in Delhi*.
- Centre for Child and the Law, National Law School of India, University, Bangalore (2016). *Report of study on the working of Special Courts under the POCSO Act, 2012 in Maharashtra*.
- Center on the Developing Child, Harvard University (n.d.). The Impact of Early Adversity on Children's Development. Retrieved from <https://developingchild.harvard.edu/resources/inbrief-the-impact-of-early-adversity-on-childrens-development/>
- Children's and young people's commission Scotland (2018). *Article 34*. Accessed and retrieved on 20-06-18 doi: <https://www.cypcs.org.uk/rights/uncrcarticles/article-34>
- Child sexual abuse (CSA) in India: A Dark reality (2016). *Rostrum legal.com*. Retrieved and accessed on 25<sup>th</sup> July 2018. Doi:<https://rostrumlegal.com/journal/child-sexual-abuse-in-india-a-dark-reality/>
- Chopra, G. (2015). *Child Rights in India: Challenges and Social Action*. Springer (India) Pvt.
- Deb, S & Walsh, K. (2012). Impact of physical, psychological, and sexual violence on social adjustment of school children in India. *School Psychology International*. spi.sagepub.com 33(4) 391–415.
- Ghosh, M. (2018). Significance and Applicability of the POCSO Act, 2012. *Rostrum legal.com*. Retrieved and access on 2<sup>nd</sup> August, 2018 Doi:<https://rostrumlegal.com/journal/significance-and-applicability-of-the-pocso-act-2012/>
- Gupta, N., Aggarwal, N. K. & Bhatia, M. S. (2013). Protection of Children from sexual offences. *Delhi Psychiatry Journal*. Vol. 16. No. 2.
- Human Rights Watch, (2013). *Breaking the Silence: Child Sexual Abuse in India*. Retrieved and accessed on 15 may 2018. <https://www.hrw.org/sites/default/files/reports/india0113ForUpload.pdf>
- Jagadeesh, N., Deosthali, P. B. & Rege, S. (2016). Ethical concerns related to mandatory reporting of sexual violence(case study of 17 year old pregnant girls). *Indian Journal of Medical Ethics Online*. First Published November 25, 2016.
- Juyal, D., Setia, A., Sayana, A., Kumar, A., Rathaur, V. K. & Dhawan, B. (n.d.). Lack of special courts under Protection of Children from Sexual Offences Act: A structural deficit. *Journal of Family Medicine and Primary Care*.
- Kacker, L. & Mohsin, N. (2007). *Study on Child abuse India 2007*. Ministry of Women and Child Development, Government of India. Retrieved from <https://www.childlineindia.org.in/pdf/MWCD-Child-Abuse-Report.pdf>
- Kenny, M. C., Capri, V., Reena, R., Kolar, T., Ryan, E. E. & Runyon, M. K. (2008). Child Sexual Abuse: From Prevention to Self-Protection. *Child Abuse Review* Vol. 17: 36–54.
- Kumar, A., Pathak, A., Kumar, S., Rastogi, P. & Rastogi, P. (2012). The Problem of Child Sexual Abuse in India Laws, Legal Lacuna and the Bill – PCSOB-2011. *Indian Academic Forensic Medicine Journal*. April-June 2012, Vol. 34, No. 2
- Kumar, M. T., Kumar, S., Singh, S. P. & Kar, N. (2017) Prevalence of child abuse in school environment in Kerala, India: An ICAST-CI based survey. *Child Abuse & Neglect*. Volume 70, August 2017, Pages 356-363.
- Lodha, P. & DeSousa, A. (2017). The Prevention of Child Sexual Offences (POCSO) Act And ethical considerations for children in therapeutic practice. *Global Bioethics Inquiry*. Vol. 5 issue 2. Sept.2017.
- Maitra, S. (n.d.). *Understanding child sexual abuse*. Child line India, 2018. Retrieved from <http://www.childlineindia.org.in/Understanding-Child-Sexual-Abuse.htm>
- Malathesh, B. C. & Das, S. (n.d.). Being a Forensic Psychiatrist in India: Responsibilities, Difficulties, and Criticalities. *Indian Journal of Psychological Medicine*. Retrieved from doi: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5733419/>
- McElvaney, R. (2015). Disclosure of Child Sexual Abuse: Delays, Non-disclosure and Partial Disclosure. What the Research Tells Us and Implications for Practice. *Child Abuse Review* Vol. 24: 159–169 (2015).
- Ministry of women and child development, (September 2013). *Model Guidelines under Section 39 of the Protection of Children from Sexual Offences Act, 2012*. Retrieved from <http://www.childlineindia.org.in/pdf/POCSO-ModelGuidelines.pdf>
- Ministry of women and child development, Government of India, (2013). *National Policy for Children (2013)*. Retrieved from doi: [http://wcd.nic.in/sites/default/files/npcenglish08072013\\_0.pdf](http://wcd.nic.in/sites/default/files/npcenglish08072013_0.pdf)
- Ministry of women and child development, Government of India, (August, 2011). *Report of the Working Group on Child Rights for the 12th Five Year Plan (2012 – 2017)*, p. 15. Retrieved from doi:[http://planningcommission.nic.in/aboutus/committee/wrkgrp12/wcd/wg\\_rep\\_child.pdf](http://planningcommission.nic.in/aboutus/committee/wrkgrp12/wcd/wg_rep_child.pdf)
- Patil, B., Hegde, S. & Yaji, A. (2017). Child Abuse Reporting: Role of Dentist in India – A Review. *Journal of Indian Academy of Oral Medicine & Radiology*. Volume 29, Issue 1, January-March 2017.
- Protection of children from sexual offences act, (2012). Retrieved from <http://wcd.nic.in/sites/default/files/childprotection31072012.pdf>
- Ruto, S. J. (2009). Sexual Abuse of School Age Children: Evidence from Kenya. CICE Hiroshima University, *Journal of International Cooperation in Education*, Vol.12 No.1 (2009) pp.177-192.
- Sagar, R. (2014). Child Sexual Abuse: Need for a Preventive Framework in Indian Context. *Journal of Mental Health and Human Behaviour*. Vol. 19(2).. (2014).
- Sarkar, A. (2016). Child abuse-an invisible crime in India. *International Education and Research Journal*. Vol. 2. Issue 6.
- Seth, R. (2015). Child Abuse and Neglect in India. *Indian Journal of Pediatrics* (August 2015) 82(8):707–714.
- Singh, M. M., Parsekar, S. S. & Nair, S. N. (2014). An Epidemiological Overview of Child Sexual Abuse. *Journal of Family Medicine and Primary Care*. 2014 Oct-Dec; 3(4): 430–435.
- Subramanian, V. K. S., Reddy, P., Chandra, G., Rao, C. & Rao, T. S. S. (2017). Silence of male child sexual abuse in India: Qualitative analysis of barriers for seeking psychiatric help in a multidisciplinary unit in a general hospital. *Indian Journal of Psychiatry*.
- UNICEF, (n.d.). *Fact sheet: A summary of the rights under the convention on the rights of the child*. Retrieved from [https://www.unicef.org/crc/files/Rights\\_overview.pdf](https://www.unicef.org/crc/files/Rights_overview.pdf)
- Vishwanath, J. (2016). Legal framework concerning child sexual abuse in India -a critical assessment. *Journal on the Rights of the child*. Vol. I Issue I. 2016.
- Wabah, N. A. (2017). Mandatory reporting as a mechanism of preventing child sexual abuse cases. Retrieved from <https://www.researchgate.net/publication/320799408>
- World Health Organization, (2003). *Guidelines on medico-legal care for victims of sexual assault*. Retrieved from doi: [http://www.who.int/violence\\_injury\\_prevention/publications/violence/med\\_leg\\_guidelines/en/](http://www.who.int/violence_injury_prevention/publications/violence/med_leg_guidelines/en/)
- Wurtele, S. K. & Kenny, M. C. (2010). Partnering with Parents to Prevent Childhood Sexual Abuse. *Child Abuse Review* Vol. 19: 130–152 (2010).