

Understanding the Implementation of the POCSO Act 2012: Insights from K.B.K. District, Odisha

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ABSTRACT

Children are a significant marginalized demographic that frequently endures various forms of abuse, particularly sexual assault, instead of engaging in outdoor activities and attending school. The most vulnerable segments of society are them. They are particularly susceptible to such a crime due to their lack of comprehension regarding the ramifications and gravity of the issue. Only until innocent youngsters experience lasting physical and psychological harm can they truly comprehend the suffering of the less fortunate. The issue of children is currently a worldwide problem that exists globally. A child is susceptible to various forms of pressure due to their immaturity, fragility, and dependence on others. The prosperity of all nations hinges on the robust growth and progress of their children. Approximately 39 percent of the Indian population consists of children. Therefore, the Government of India has consistently focused on matters about child care, child welfare, and child development.

The implementation of the Protection of Children against Sexual Offences (POCSO) Act 2012 represents a crucial and positive step forward in protecting children from various forms of sexual abuse, including rape, harassment, and exploitation for pornography. This paper examines the expected benefits and unintended consequences arising from the enforcement of this law within the Indian context. The study evaluates the effectiveness and limitations of the law by analysing several case studies. The introduction of the Protection of Children from Sexual Offences (POCSO) Act has been a significant milestone in upholding the rights of children. The main objective of this law is to protect individuals under the age of 18 from sexual exploitation, as both explicitly stated and implied. However, the blanket prohibition of all sexual activities involving individuals under 18 can pose certain challenges.

Keywords: POCSO Act 2012, K.B.K. District, Odisha, Child Sexual Abuse, Legal Framework, Child Protection, Law Enforcement, Awareness Programs, Child Rights, Victim Advocacy

INTRODUCTION

The World Health Organization (WHO) reports that approximately 25% of girls and 14% of boys globally experience sexual abuse. Shockingly, around 50% of all children encounter some form of sexual abuse, with 20% enduring severe and deeply harmful instances. WHO defines child sexual abuse as any involvement of a child in sexual activity that they cannot fully comprehend or consent to, or that the child is not emotionally or mentally prepared for, or that goes against societal laws or norms? UNICEF defines violence against children as the act of causing physical or mental harm, neglecting or mistreating them, exploiting them, or subjecting them to sexual abuse. It can occur in various settings such as households, educational institutions, orphanages, residential care facilities, public spaces, workplaces, jails, and detention centers. The term refers to the deliberate and harmful mistreatment of a kid, encompassing severe mental, physical, and emotional abuse, specifically through overt or covert sexual gestures or acts. The perpetrator is someone who exploits the child's weakness in order to obtain sexual gratification. The consequences of sexual abuse directed at children are enduring, encompassing psychological, social, and emotional problems as well as aberrant behavior. The typical consequences include suicidal tendencies, persistent depression, severe medical conditions, and substance misuse. These dreadful outcomes may be irrevocable, as they are deeply imprinted in the victim's mentality. The exploitation of children not only has catastrophic and long-term effects on the victim, but also significantly influences the family, community, and society as a whole. India committed to protecting its children from all forms of sexual violence and maltreatment by signing the United Nations Convention on the Rights of the Child.

Child sexual abuse is currently a critical and pressing issue that demands urgent attention. The rising number of reported cases reflects a collective failure of governments and societies to establish safe and nurturing environments for children, as outlined by the United Nations Convention on the Rights of the Child. However, this also presents an opportunity to acknowledge and address the problem, seeking justice for victims and working towards prevention.

There is a growing awareness among the public, fuelled by media attention, and supported by proactive measures from the judiciary, indicating a shift towards prioritizing children's right to dignity and protection. Previously shrouded in secrecy, child sexual abuse has had devastating effects on victims and eroded trust in the justice system.

The enactment of the POCSO Act in 2012, along with the establishment of Special Courts under this Act, signifies progress in identifying and addressing cases of child sexual abuse within a legal framework tailored to meet children's specific needs.

It has been more than seven years since the implementation of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). This specialized legislation was warmly welcomed by Indian society, addressing growing concerns about child sexual assault. Before this act, there were limited or no specific legal measures to prosecute those who committed sexual offenses against children. The enactment of the POCSO Act has raised awareness about these heinous crimes against children, enabling victims, parents, guardians, and witnesses to report offenses.

However, despite the increased reporting facilitated by this law, the actual prevalence of such crimes may still be significantly underestimated. Despite the law's impact, it has not effectively served as a deterrent against sexual offenses targeting children, as evidenced by the persistent prevalence of these crimes.

AREA OF RESEARCH

Although the Act does not include any specific provisions to legalize child abuse in India and promote a kid-friendly environment. Child marriage is the first issue. The researcher highlighted the contradictory stance of Parliament in passing a statute that criminalizes child marriage while simultaneously allowing for it by making it just voidable. Furthermore, it seems to provide the foundation and present compelling reasons for ultimately making marital rape a criminal offense. It even acknowledges the shift in perspective regarding women being considered as possessions of their husbands. Agreeing to get married does not imply agreeing to have sexual relations at any point in time. The existing statute Act clearly demonstrates the indefensible quality of the arguments opposing the criminalization of marital rape, while it only addressed the exception for individuals aged 15 to 18. Furthermore, the study solidifies the age of consent at 18, so strengthening the existing laws under the Protection of Children from Sexual Offences (POCSO) Act, which criminalizes any instances of voluntary sexual activity involving those below the legal age. This situation is concerning, particularly because there is ample evidence that the rape statute and the Protection of Children from Sexual Offences (POCSO) Act are being misused by families of young women to manipulate and exert control over their boyfriends, thereby further restricting female sexuality. It is universally true that young people engage in sexual experimentation. Society and the legal system should explore methods to safeguard minors without criminalizing them for participating in natural, consenting, and developmentally appropriate explorations.

The study is exclusively conducted in the K.B.K. districts of the State of Odisha. The research primarily focuses on the Special Courts, but it also examines other aspects of a POCSO trial, including the police, the prosecution, support services, and more. The research aims to offer a comprehensive understanding of the topics addressed in the state studies. It builds upon these studies by incorporating the perspectives of practitioners and insights from other research projects, thus providing a broader and more complete perspective. The research focuses on proposing a comprehensive and enduring approach to facilitate significant transformation for children who have experienced and remain susceptible to sexual abuse.

PROBLEM STATEMENT

The Ministry of Women and Child Development advocated for the enactment of the Protection of Children from Sexual Offences (POCSO) Act, 2012 to effectively address the grave issues of sexual abuse and exploitation of children by establishing clearer and more stringent legal provisions.

Sexual assault and sex trafficking are widespread and significant problems in India, with a notable increase in sexually transmitted infections among minors over the past two decades. Child victims of sexual abuse often have some form of prior acquaintance with the perpetrator. Hence, it is crucial to address the issue of child sexual abuse by implementing clearer and stricter penalties.

The POCSO Act, 2012 was put in place to combat the abhorrent acts of sexual abuse and exploitation against minors. Additionally, the introduction of the Criminal Law (Amendment) Act, 2013 brought about legal amendments to key statutes including the Indian Penal Code, the Code of Criminal Procedure, 1973, The Indian Evidence Act, 1872, and the Protection of Children from Sexual Offences Act, 2012. The Criminal Law (Amendment) Act 2013 also specifies penalties for offenses such as stalking, voyeurism, disrobing, trafficking, and acid attacks.

RESEARCH OBJECTIVES

The researcher has identified the following research objectives:

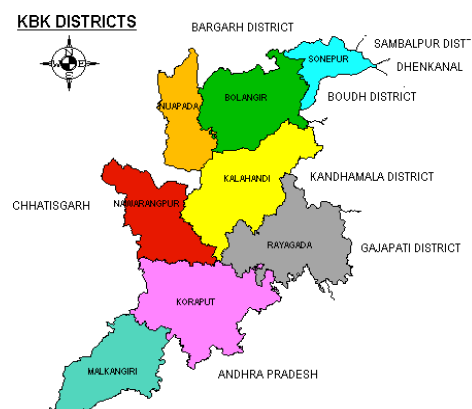
1. The purpose is to examine the process of Trial courts to see if all the provisions of the POCSO Act are being strictly adhered to in order to achieve the intended objective.
2. To identify the anomalies that are infiltrating the system and causing disruptions in accessing justice.
3. The ambiguity of Parliament is seen in the enactment of a law that criminalizes child marriage, while simultaneously allowing for it by making it just voidable.
4. To propose the optimal mechanism, enhancements, modifications, and any necessary revisions.

SCOPE OF RESEARCH

The aim of this research study is to investigate the implementation of the Protection of Children from Sexual Offences (POCSO) Act of 2012 and the effectiveness of the Special Courts established under this Act in the K.B.K. district of Odisha. The goal is to assess whether these courts are delivering "child-friendly justice" and to identify any notable issues or challenges related to the interpretation and application of this Act.

To achieve this, it is essential to conduct a comprehensive examination of the adherence to the POCSO Act and its associated Rules. Additionally, the study will analyze the rulings of Special Courts to identify and understand the emerging outcomes, interpretations, and patterns. It is important to note that this research does not cover the activities of various agencies such as the police, prosecutors, medical professionals, investigative officers, and the child welfare committee, despite their significant roles in implementing the Act.

About K.B.K. District in the State of Odisha

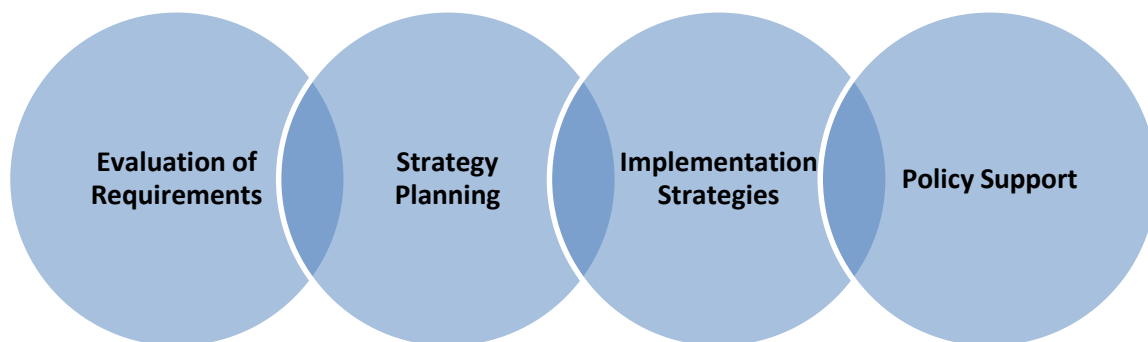


The Kendujhar, Bonai, and Keonjhar (KBK) district in the state of Odisha, India, plays a crucial role in the socio-economic development of the region. Due to its varied geographical characteristics, cultural legacy, and developmental obstacles, the district has garnered significant interest from politicians, researchers, and development practitioners. This extensive investigation examines the historical, geographical, demographic, economic, and developmental aspects of the KBK district, with the goal of offering a thorough knowledge of its complex dynamics.

SPECIAL AREA DEVELOPMENT APPROACH

The Special Area Development Approach (SADA) is a focused technique utilized by governments and development agencies to tackle the distinct developmental requirements of certain regions or areas encountering distinctive obstacles. This approach acknowledges that certain regions, influenced by geographical limitations, socio-economic inequalities, or historical circumstances, necessitate customized interventions to foster inclusive economic development and enhance the well-being of their inhabitants.

Essential Elements of SADA:



The Significance of Monitoring in KBK Districts:

Monitoring plays a crucial role in ensuring accountability by holding government agencies, implementing partners, and other stakeholders responsible for the efficient utilization of resources and the attainment of desired results.

Monitoring facilitates the rapid detection of bottlenecks, problems, and gaps in program implementation, enabling timely remedial actions to be implemented.



LITERATURE REVIEWS

Rajeev Seth & R. N. Srivastava (2017): The disturbing fact of child sexual abuse is that more and more cases are being recorded worldwide, including in India. When it comes to abused children and their families, paediatricians and other medical professionals are frequently the first to interact with them. They play a critical role in the identification of child sexual abuse cases and in offering victims and their families both short-term and long-term treatment and assistance. In 2012, the Protection of Children from Sexual Offences Act (POCSO) was enacted in India. It is a thorough legislation on sexual abuse that establishes requirements for reporting abuse, broadens the definition of sexual offenses, and specifies standards for victim evaluation. The knowledge and skills required for the clinical assessment, reporting, and prevention of child sexual abuse must be acquired by pediatricians and other medical professionals.

Chowdhuri Soumeek (2016): The "The Protection of Children from Sexual Offences (POCSO) Act" of 2012 is a unique law that the government implemented to address situations of child sexual abuse. Given this situation, it was deemed necessary to perform a research on the sociodemographic makeup of the individuals charged with assault under this legislation. The Q-Q plot and Shapiro-Wilk test were used to show that the population's age distribution was normally distributed. The accused's average age was 28.62 years. The age range was 13 years old to 64 years old. 78% of the population was either illiterate or only literate. Most of the accused had several informal sexual connections. A correlation was found between the number of casual sexual encounters and age, with two peaks appearing: one below 20 years old and another beyond 40 years old. Of the patients, 72% had an occasional alcohol intake, whereas 20% were habitual drinkers. Pornographic exposure was observed in a staggering 78% of instances. When the history of several casual sexual interactions was cross-tabulated with the exposure to pornography, the statistics for those under 25 years old increased. On the other hand, a chi-square test using the identical components failed to find a significant correlation (p value not significant). Because rape is so common, preventative efforts should not rely just on reactions to prevent rape; instead, they should address structural and societal risk factors as well as preventing rape from ever happening in the first place.

Kumar Shailesh (2023): This thesis is an empirical socio-legal study that looks at how important players in India's POCSO (Protection of Children from Sexual Offences) Act 2012 saw the reforms. It is specific legislation that addresses situations of sexual offenses against minors, or those who are less than 18 years old. The law aims to expedite the trial of POCSO cases and to give child victims of crime child-friendly procedures and venues across the criminal justice system. The gender neutrality of this law makes it special. Unlike the rape sections of the Indian Penal Code 1860, anybody can be a victim or an offender under this law, regardless of gender. This study aims to close the gap in the academic literature by providing more information on how the POCSO reforms operate from an access to justice perspective. The POCSO changes' effects on accused and victimized children's access to justice are examined in this thesis. Interviews and observations have been conducted using qualitative methodologies for this study.

It is based on six months of fieldwork that was done in Delhi, the capital city of India, and the state of Bihar in north India in 2019–20. 49 stakeholders participated in extensive semi-structured interviews, and special courts and POCSO case trials were observed. Special judges, judicial magistrates, special public prosecutors, defense attorneys, attorneys for non-governmental organizations, police officers, and court employees are some of these important stakeholders. Purposive and opportunistic sampling strategies were used to choose the two sites and recruit the interviews, respectively. A thematic approach was used to analyze the data. Important and fascinating conclusions were drawn from the research on stakeholder views of the POCSO reforms' goals and access to justice, the law's implementation, and the effects of socio-legal institutions and culture on the reforms' ability to function.

Renu Renu, Geeta Chopra (2019): The most horrible crime against children is child sexual abuse (CSA), which is typically concealed in the natural world. It is the crime that is most underreported. Over a person's lifetime, the effects of CSA persist. It is now understood to be toxic stress, which may cause irreversible mental injury to a kid. Studies on CSA in India are presented in this publication. 2012 saw the passage of the Protection of Children from Sexual Offenses (POCSO) Act. POCSO deployment presents several challenges. The study on POCSO addressing topics like required reporting, consenting sexual behavior, doctors' readiness to treat CSA victims, and the status of special courts under POCSO is also included in the article.

ISSUES AND CHALLENGES

Child sexual abuse is a complex issue with ramifications for the legal, social, medical, and psychological domains. Since social and legislative measures have emerged in response to epidemiologic studies, which were the early hallmark of research, the industrialized world has become the center of attention for child protection. Nevertheless, the problem of child abuse persists as a difficult one for society at large as well as for all those working in the sector. It is impossible to know with certainty whether the long-term results of children in the US or other Western European nations have been improved by the child protection services provided on those territories. When comparing children in different social classes, the "perfection" of processes and the clarity of the service norms haven't done much to lessen the disparities in the results of the kids. While it is true that millions of children in the west do not die, their quality of life has to be carefully examined in order to comprehend problems like child prostitution. When compared to child abuse and the commercial sexual exploitation of minors overseas, this presents a few unique concerns.

Key characteristics of the legislation and its modification

The Act is impartial with regards to gender and prioritizes the child's best interests and well-being as the most important factor at every stage, in order to guarantee the child's healthy physical, emotional, intellectual, and social growth. The Act defines a child as an individual who is under the age of eighteen. It emphasizes that the child's best interests and well-being are of utmost importance at all times, with the goal of promoting the child's healthy physical, emotional, intellectual, and social growth.

The definition encompasses various types of sexual abuse, such as both penetrative and non-penetrative assault, as well as sexual harassment and pornography. It also considers a sexual assault to be "aggravated" in specific situations, such as when the victimized child has a mental illness or when the abuse is perpetrated by an individual in a position of trust or authority over the child, such as a family member, police officer, teacher, or doctor.

Individuals who engage in the act of trafficking children for sexual exploitation are also subject to punishment under the provisions pertaining to abetment in the legislation. The legislation mandates severe penalties that are determined based on the seriousness of the crime, including a maximum sentence of life imprisonment and a monetary fine.

The term "child pornography" is defined as any visual representation that portrays explicit sexual activity involving a minor. This includes photographs, videos, digital or computer-generated images that closely resemble real children, as well as images that have been manufactured, adapted, or modified to appear as if they feature a kid. Punishments for offenses listed in the Act include Penetrative Sexual Assault (Section 3) on a minor, which carries a minimum sentence of ten years and may result in imprisonment for life, as well as a fine (Section 4). Any individual who engages in penetrative sexual assault on a child under the age of sixteen will be subject to a minimum prison sentence of twenty years, with the possibility of life imprisonment, meaning they will remain in prison for the rest of their natural life. Additionally, they will be liable to pay a fine.

Aggravated Penetrative Sexual Assault (Section 5) carries a minimum sentence of twenty years, which can be extended to life imprisonment, along with a fine (Section 6). Sexual Assault (Section 7), which refers to sexual contact without penetration, carries a minimum sentence of three years, which can be extended to five years, along with a fine (Section 8). Aggravated Sexual Assault (Section 9) committed by a person in authority carries a minimum sentence of five years, which can be extended to seven years, along with a fine (Section 10). Section 11 of the law deals with the sexual harassment of a child. The punishment for this offense is a prison sentence of three years and a fine, as stated in Section 12.

- The utilization of a minor for the purpose of creating or distributing pornographic material, as outlined in Section 14, is punishable by a minimum prison sentence of five years, along with a monetary penalty. In the case of a repeat offense, the punishment increases to a prison sentence of seven years, in addition to a fine. Section 14 (1)
- The utilization of a minor for the purpose of creating pornographic material, which leads to engaging in sexual acts involving penetration, carries a minimum sentence of 10 years. However, if the kid involved is under the age of 16, the minimum sentence is increased to 20 years.
- The utilization of a minor for pornographic purposes, which leads to a severe form of sexual assault involving penetration, carries a minimum sentence of 20 years imprisonment and a monetary penalty.
- The utilization of a minor for pornographic purposes, leading to sexual assault, carries a minimum sentence of three years and may be extended up to five years.
- The utilization of a minor for pornographic purposes, leading to serious sexual assault, carries a minimum sentence of five years, with the possibility of extending up to seven years.
- Any individual who retains or possesses pornographic material depicting a child in any format, but neglects to delete, destroy, or report it to the specified authority, as prescribed,

with the intention to distribute or transmit child pornography, shall be subject to a fine of no less than Rs 5,000. In the case of a second or subsequent offense, the fine shall be no less than Rs 10,000.

- Anyone who stores or possesses pornographic material involving a child with the intention to transmit, propagate, display, or distribute it, except for reporting purposes or as court evidence, will be subject to imprisonment. Punishable by a maximum of three years of incarceration, a monetary penalty, or both.
- Individuals who retain or possess pornographic material involving a minor for commercial purposes will be punished upon their first conviction: The punishment for this offense is a minimum of three years of imprisonment, which can be extended up to five years. Alternatively, a fine may be imposed, or both imprisonment and a fine may be given. A second or subsequent conviction carries a minimum sentence of five years and a maximum sentence of seven years, along with a fine.
- Provisions pertaining to the procedure for conducting trials of reported offenses.
- The legislation mandates the creation of Special Courts to handle cases related to the Act. These courts prioritize the well-being of the child as the most important factor throughout the entire legal procedure.
- The Act includes processes that are designed to be easily understood and suitable for children for reporting, documenting evidence, conducting investigations, and conducting trials for offenses. The following items are included:
 - The child's statement should be recorded either at their residence or at a location of their choosing, ideally by a female police officer of at least the rank of sub-inspector.
 - Under no circumstances should a youngster be held overnight at a police station.
 - The police officer should not be in uniform while taking the child's statement.
 - The child's statement should be transcribed verbatim.

Provision of an interpreter, translator, or expert as required for the child

- Seeking the help of a special educator or someone knowledgeable about the child's communication style is necessary if the child has a disability.
- The medical examination of the youngster must be undertaken in the presence of either the child's parent or another trusted individual whom the child has faith in.
- If the victim is a female kid, the medical examination must be carried out by a female physician.
- 13. Regular intervals of rest for the youngster during the experiment. Child should not be subjected to repetitive testimony.
- There should be no use of aggressive interrogation or character assassination during in-camera trials involving children.
- The Act acknowledges that the intention to commit a crime, even if unsuccessful for any reason, must be punished.
- Attempting to commit an offense under the Act is punishable by up to half of the prescribed punishment for actually committing the offense.
- The Act also stipulates penalties for aiding and abetting the offense, which are identical to those for committing the offense.

- The Act requires individuals to report the conduct of an offense and the filing of a complaint. Failure to do so might result in imprisonment for six months and/or a fine. Failure by the Police or Special Juvenile Police Unit to report the conduct of an offense under Section 2141 of this act is considered a punishable action.
- In cases involving severe crimes such as Penetrative Sexual Assault, Aggravated Penetrative Sexual Assault, Sexual Assault, and Aggravated Sexual Assault, the accused bears the responsibility of providing evidence to prove their innocence. This service has been established with consideration for the heightened susceptibility and naivety of children.
- In order to deter the abuse of the legal system, penalties have been established for lodging fraudulent complaints or providing false information with malicious intent. The punishment has been intentionally maintained lenient, with duration of six months, in order to promote the act of reporting. If a false complaint is lodged against a minor, the punishment is increased to one year according to Section 22.
- The media is prohibited from revealing the identity of the youngster unless authorized by the Special Court. The penalty for violating this provision by the media can range from six months to one year (Section 23).
- In order to expedite the legal proceedings, the Act stipulates that the testimony of the child must be documented within a timeframe of 30 days. Furthermore, it is mandated that the Special Court must endeavor to conclude the trial within a maximum duration of one year, to the extent feasible (Section 35).
- Upon receiving a complaint, the Special Juvenile Police Unit (SJPU) or local police will promptly take action to ensure the child's relief and rehabilitation. This may involve admitting the child to a shelter home or the nearest hospital within twenty-four hours of the report. The SJPU, or local police, must also promptly notify the Child Welfare Committee within 24 hours of documenting the complaint, in order to facilitate the child's long-term recovery.
- The Act imposes an obligation on the Central and State Governments to disseminate information through various media platforms such as television, radio, and print media on a regular basis. The purpose is to ensure that the general public, especially children and their parents or guardians, are well-informed about the requirements of this Act.
- If an act or failure to act is considered a crime under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376C, 376D, 376E, or section 509 of the Indian Penal Code (45 of 1860), then, regardless of any existing law, the offender found guilty of such crime will be subject to punishment under this Act or under the Indian Penal Code, whichever provides for a greater punishment. The provisions of this Act are additional and do not override any other provisions of any other law. If there is any inconsistency, the provisions of this act will take precedence over any other laws.

The POCSO Act exclusively applies to juvenile victims and adult perpetrators. If two children engage in sexual activity or if a kid commits a sexual offense against an adult, the Juvenile Justice (Care and Protection of Children) Act, 2000, shall be applicable.

CONCLUSION

In order to bring about social change, individuals must be mobilized, and institutions that can carry out and support social engineering and transformation must be established and maintained. As it is in many parts of the world today, child sexual abuse is a serious and pervasive problem in India. Children are forced to suffer in silence when they are denied the required therapeutic and protective help.

The main challenges that the modern world has when it comes to handling sexual abuse of kids are the poor application of laws, the absence of established protocols in remote areas, the culture of silence that prevails, and the marked rise in occurrences that are recorded.

All worldwide organizations that work to prevent child abuse face the difficult issue of creating effective tactics to combat global child maltreatment. The lack of upkeep and enforcement of child abuse laws in many countries makes it difficult to develop effective strategies to prevent child abuse and neglect. It is essential to educate people, groups, and governments on child maltreatment in order to successfully prevent child abuse. A number of international organizations have worked together with governments worldwide to create efficient plans to deal with child abuse. In order to successfully end child abuse on a global scale, a complete international legal framework that can be used to enforce child abuse laws worldwide must be established. Government cooperation is essential to ensuring children's safety and wellbeing. To better address the issue, the POCSO Act should be applauded for broadening the scope of actions that qualify as child sexual abuse. Additionally, it helps the victim a great deal by creating a supportive environment for kids during the investigation and trial of such actions. To accomplish its goals, the Act does not yet have a methodical way to operationalize and apply it.

There are several barriers to the legislation's implementation, despite its radical goal of protecting children from sexual abuse and creating a victim-centered criminal justice system. It may be concluded that Indian criminal law is lacking in many areas after a thorough analysis that takes into account international laws as well as court decisions. Furthermore, there are times when the law is clear but the courts, physicians, and police do not follow the guidelines to the letter, which seriously impedes the victimization of the kid in receiving justice. The delicate issue is not being addressed with subtlety and sensitivity since the enforcement staff is inexperienced. Stakeholders ought to evaluate the situation and address it with compassion, empathy, and an open mind.

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