



# **The Judiciary's and POCSO's roles: a decade of opportunities and problems**

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## **ABSTRACT**

Children are future of nations to secure its future and for holistic growth of children protecting them from any kind of exploitation and abuse India has ratified United Nation Convention on the Rights of the Child, 1992 POCSO (Protection Of Children from Sexual Offences 2012), herein after referred as POSCO Act, is enacted as consequence of this convention. The Act aims to provide a strong legal framework for protecting children from sexual abuse and exploitation. The extent to which this Act has fulfilled its aim thus becomes a point of focus. The present paper addresses about effectuality of provisions of Act and its implications against child abuse. November 14, 2022 is marked as completion of ten years of POCSO Act. During this course of time Judiciary has become more active in analyzing such cases. The paper also analyzes the pinpoint role of judiciary in interpretation of the Act, to make it more effective.

47,221 POCSO cases have been registered in India in 2022 with conviction rate of 39.6 percent as per data of NCRB. The paper will be combination of both doctrinal an empirical study based on reading case laws and collecting data from NCRB. The empirical study will reveal how the judicial decisions have increased the ambit of the Act. Furthermore empirical study of data will state the problem arises in due course of decision making by judges leading to low conviction rate. The paper attempts to answer impact on society in perspective of judicial approach. Recommendation would be presented in paper regarding measures to be taken to improve procedural aspect of the Act. The study findings includes less number of POCSO courts as till June 2023 only 412 courts are there. Thus this paper seeks to review prominent POCSO case judgments with a view how it had affected the application of the Act and how it had affected the society at large.

**Keywords:** POCSO Act, Judicial approach, Child protection,

## OBJECTIVE

The research paper aims to unfold the key effects of the POCSO Act on protection and safety of children guaranteed under Article 21 of our Constitution. The paper also aims to scrutinize impact of the POCSO Act after a decade. The paper further showcases the judgments given regarding the application of the Act and the impact of those judgments on child as an individual and on society as large. The paper also deals with divulging the opinions of researcher on various questions.

1. How far the decade of POCSO Act has been successful in fulfillment of aim of the act?
2. What data says about child abuse even after a decade of POCSO Act?
3. What challenges are there in implementation of the Act?
4. What role has been played by judiciary through the decisions it made while dealing with POCSO Act. Cases?
5. Whether the decisions of judges has strengthened the application/motive of the Act or the judgments has just become another chapter of discussion and criticism.

## INTRODUCTION

“There is no greater insight into the future than recognizing that when we can save our children be saved ourselves”

Margaret Mead

Though there is no dearth of narrative measures in India protecting rights of the children and promoting their value it is common acceptance that the children have been worst sufferer in the existing socio-legal reforms. The children of all categories, whether come of well of family or hand to mouth, are either actively or passively subjected to numerals exploitations, molestations and ill treatments duly multiplied and brutalities. Discussing child abuse and the kinds of abuse is indeed a difficult task. There is greater need to understand the dimensions and the complexities of child sexual abuse. As per Prof. Finkelhor (1987), the eminent psychiatrist, child sexual abuse is most commonly used in reference to sexual activity involving a child that has at least one or two characteristics.<sup>1</sup> It occurs within the relationship where it is deemed exploitative by virtue of an age difference or care taking relationship that exist with the child; it occurs as a result of threat, coercion, or sometimes enticement taking advantage of age of child and its innocence. When a child is abused in any form, it severely threatens the survival and the development of child as well as undermines the human rights that a child is entitled to.

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<sup>1</sup> DR.NIRMAL KANT CHAKRABARTY, LAW AND CHILD, Pg 281(R. Cambray & CO. Private Ltd 2011)

## INTERNATIONAL CONCERNS REGARDING CHILD ABUSE.

The earliest concern of any world body for the protection of child was the International Labor Organization (ILO) in 1919, Later on many other conventions were made and laws were recognized. The world has moved slowly to recognize the human rights of children. The convention of right of the child (CRC) drafted by UN Commission on human rights and adopted by General Assembly in the United Nations on November 20, 1989 is set of international standards and measures meant for protecting and promoting the well-being of children in society. India has ratified this convention on December 11, 1992. Many other laws and regulations are available at both international and national level for the protection of children, but researchers has focused on POCSO Act mainly, which came into implication as a result of CRC convention signed by India as stated. The paper has dealt with effect of POCSO Act after passing off 10 years.

## POCSO ACT IN NUTSHELL

Until 2012, sexual offence were covered under the Indian Penal Code. However these were not specific for children. Hence, the Government of India passed a special law called the Protection of Child from Sexual Offences Act 2012 (POCSO Act)

The act identifies and criminalizes a range of unacceptable sexual behavior which pose a threat to children. A decade has been completed after the implementation of the POCSO Act.

We have plenty of reasons to celebrate the decade of POCSO Act, the makers of the Act must have predicted that the ultimate objective of the Act is to protect children from offences of sexual assault, sexual harassment, and pornography and to establish special court for speedy trial of offences under the Act must be accomplished at all levels.

In keeping with the best international child protection standards, the said act has been drafted to strengthen the legal provisions for the protection of children from sexual abuse and exploitation. The Act provides far stringent punishments, which have been graded as per the gravity of the offence. The punishment range from simple to rigorous imprisonment of varying periods. The Act defines a child as any person below 18 years of age.<sup>2</sup> POCSO Act is gender neutral and applies to all children.<sup>3</sup> The Act has unique provision of mandatory reporting of case of child sexual abuse under section 19 of the Act. Also the reporting can be done by any citizen and failure to report carries with it legal sanctions. The Act criminalizes a range of behaviors which includes sexual assault short of penetration. Other additional offenses are aggravated penetrative and non-penetrative sexual assault which are stronger and have serious punishment, especially when the same is committed by a specified range of perpetrators from a wide array of situation or conditions. The Act also provided for penalization of abetment of as attempt to commit any offence mentioned under the Act. All sexual acts are considered to be criminal offences under the Act if they involve a victim under the age of 18 years. This is irrespective of the issue of consent or age of the perpetrator.

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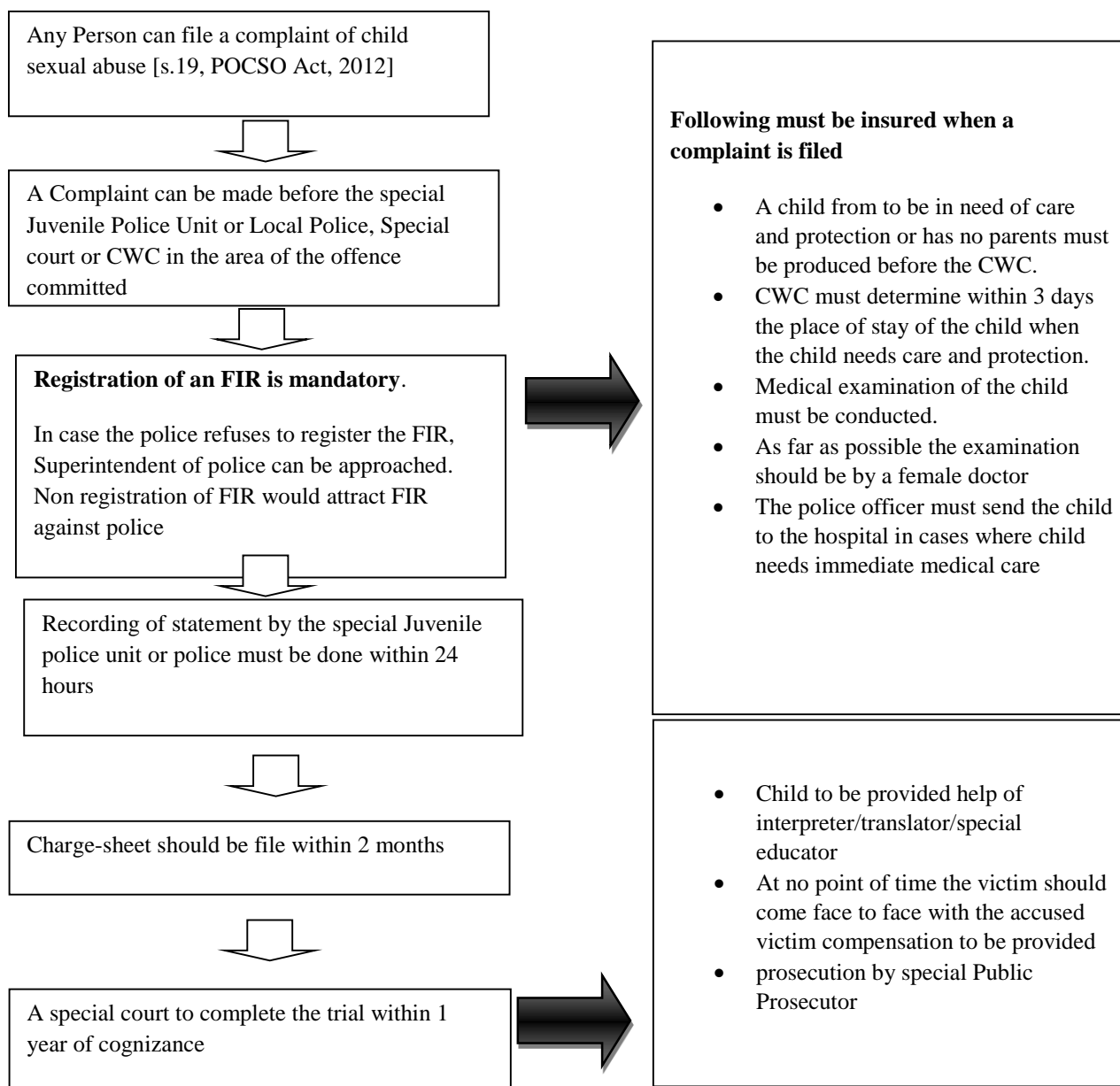
<sup>2</sup> POCSO ACT 2012, Section 2(d)

<sup>3</sup> 2 SCC 703, NIPUN SAXENA Vs. UNION OF INDIA (2019)

Through all this stringent provisions of the Act, it came into force as an extra layer of mechanism to protect vulnerable group of children from such heinous offences.

The POCSO Act is not only a protective statute but it is also a beneficial legislation enacted pursuant to the intention of the framers enshrined in Article 15 (3) of our constitution and there by the statute safeguards a wider social interest of securing children.

### STEPS INVOLVED IN DEALING WITH A CASE OF CHILD SEXUAL ABUSE

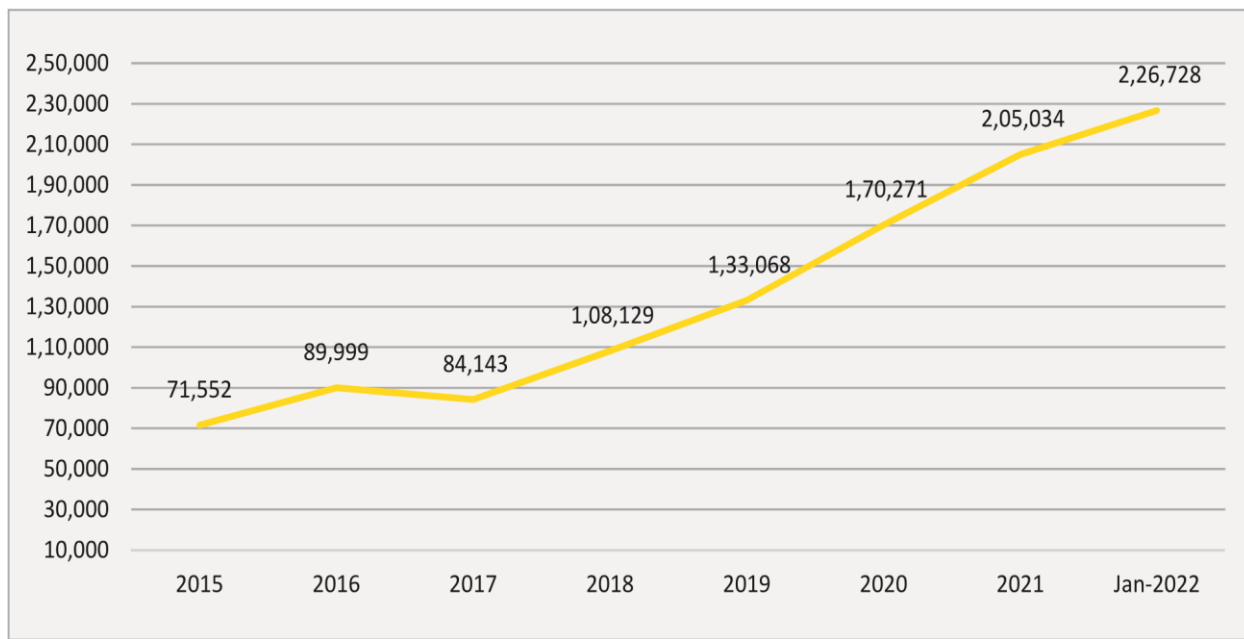


## DATA ANALYSIS OF INCREASING PENDING CASES AND LOW CONVICTION RATE

It has been observed that there is a significant increase in number of pending cases in spite of setting up 1023 FTCs and ePOCSO courts.

The number of cases pending for trial during 2021 increased by 316 percent from 2015 (increase from 71,552 in 2015 to 2,26,728 in Jan 2022). Below graph is showing the trend.

(X axis is showing Pending Cases while Y denoting the Year)



**Trend for POCSO cases pending trials at the end of a given year**

#### TOP STATES WITH MAXIMUM NUMBERS OF PENDING CASES<sup>4</sup>

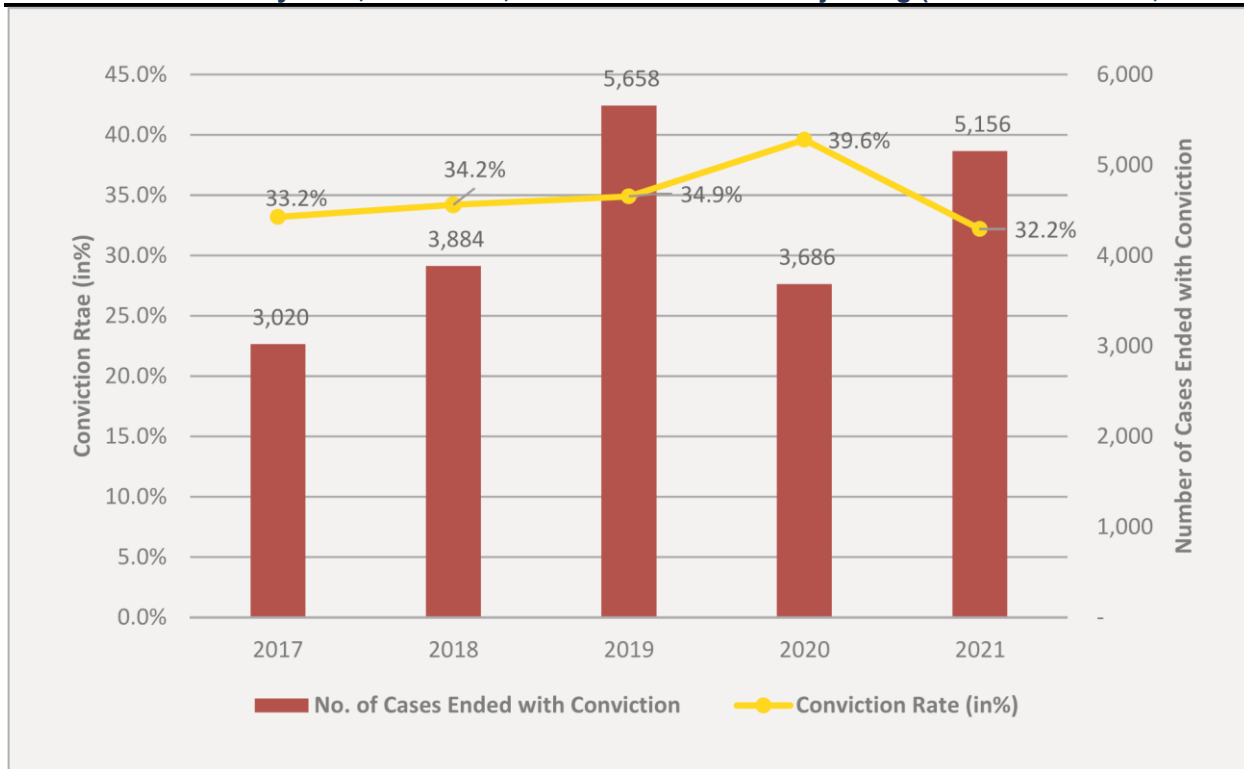
Here top 3 States are mentioned with maximum no of pending POCSO cases

1. Uttar Pradesh: Pending cases from previous years (2013 to 2020): 67264
2. Maharashtra: Pending cases from previous years (2013 to 2020): 57585
3. Madhya Pradesh: Pending cases from previous years (2013 to 2020): 50902

**Convictions in POCSO Cases<sup>5</sup>:** With regard to conviction rate, it is evident that conviction under POCSO has remained constant at around 35 percent during 2017-2019. In 2020 the conviction rate was increased to 40 percent, indicating a substantial increase in convictions under the POCSO Act. However, the same was dropped to 32 percent in 2021

<sup>4</sup> Crime in India, ncrb report 2021, [https://ncrb.gov.in/sites/default/files/CII-2021/CII\\_2021Volume%201.pdf](https://ncrb.gov.in/sites/default/files/CII-2021/CII_2021Volume%201.pdf)

<sup>5</sup> Crime in India, ncrb report 2021, [https://ncrb.gov.in/sites/default/files/CII-2021/CII\\_2021Volume%201.pdf](https://ncrb.gov.in/sites/default/files/CII-2021/CII_2021Volume%201.pdf)



**Conviction rate under POCSO Act in the last four years (2017 – 2021)**

## JUDICIAL INTERVENTION IN THE AREA OF CHILD SEX ABUSE

Laws are dead letters without courts to expand and define their true meaning and operation. The importance of such law is reflected when they are used to deliver any judgment and stand as a rationale pillar behind it. The research paper here elaborates that judgments and laws are not just limited to lawyers, judges, victims, accused but have an impact on society. The courts are entrusted to be the custodian of the constitution. It is judicial obligation of court to safeguard the rights of individual guaranteed by constitution.<sup>6</sup>

In the process of delivering the justice The Supreme Court of India, as well as various High Courts, had laid down various guidelines when it came to deal with child abuse issues.

In case of *Gaurav Jain vs. Union of India*<sup>7</sup> regarding protection of basic human rights and dignity of life of children and prevention of sexual abuse of those female child of fallen women, Supreme Court has pronounced its landmark judgment. It has been held in case that the state parties shall take all the appropriate legislative, administrative and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, including sexual abuse and state parties shall accordance with their national laws ensure alternative care for such child.

*Independent thought vs. Union of India and Anr* is a case decided by Supreme Court of India in 2017<sup>8</sup>. This case holds importance because it established that the rights of children, including the right to protection from

<sup>6</sup> KUSH KALRA, *ROLE OF JUDICIARY AS CATALYST OF SOCIAL CHANGE*, (Thompson Reuters), Pg 545, ISBN-978-93,89407-33-4

<sup>7</sup> AIR 1997 8, SCC 114

<sup>8</sup> 10 SCC 800 (2017)

sexual exploitation and abuse, must be given priority over cultural and traditional practices. Till date case act as crucial precedent in fight against various forms of child sexual abuse and exploitation.

All these cases acts as creating a platform for child's right against sexual abuse and various ways to protect them. The paper thus analyzed how judicial approach had focused on practicality of dealing the issue at the grass root level and this has been explained here.

## JUDGEMENTS WHICH INVITED CRITICISM FROM SOCIETY RELATED TO POCSO ACT, 2012

“Wherever there is a judgment, there is a noise and more of it than you think”<sup>9</sup>

-Daniel Kahneman

There are recent judgments which has created storm and would have set a dangerous precedent and have crippled the society if the judgment have not been assessed by the Honorable Supreme Court.

In case of Sonu Kushwaha vs State of UP<sup>10</sup>, just because of mere wrongful interpretation and idea built around the facts and circumstances of the case specifically while making the distinction between aggravated penetrative sexual assault<sup>11</sup> and penetrative assault<sup>12</sup>, the judge went to deliver an extraneous verdict which had, for the time being devastated the true letter and spirit of the POCSO Act<sup>13</sup>

In Satish vs State of Maharashtra<sup>14</sup>, one of the most controversial skin to skin contact case, the Bombay High Court acquitted the accused under section 7 r.w. S 8 of the POCSO Act and instead convicted the accused under section 354 of the IPC. The accused was held guilty of trying to remove the salwar and pressing the breast of victim. Justice Pushpa V. Ganediwala observe that when there was no specific detail about the top of 12 year old victim removed, the act of accused pressing her breasts would not fall under section 7 of the POCSO Act. Here judgment made by Justice Ganediwala was on the basis of no skin to skin contact. The judgment shocks the nation and creates a need of better understanding of provisions and its extent. This type of scenario urges the need of present research paper regarding role of judiciary in interpretation of laws. Law does not only consist of making of legal provisions it also includes its interpretation and implementation in stricter sense, which can be bit tricky, considering how the elucidation of such legal provisions can vary from case to case. It becomes need of situation to implement and understand the legal provisions in such a way that it suits unique situations arising in every case. The judgment cannot be made to crush the main objective of the act i.e. to punish the sexual offender of children.

<sup>9</sup> Daniel Kahneman , NOISE:A Flaw in Human Judgment, <https://www.google.co.in/books/edition/Noise/XxK6zgEACAAJ?hl=en>

<sup>10</sup> Allahabad High Court, 18 Nov 2021

<sup>11</sup> POSCO ACT 2012, Section 3

<sup>12</sup> POSCO ACT 2012, Section 5

<sup>13</sup> INDIAN JOURNAL OF LAW AND LEGAL RESEARCH, Vol 1, Issue 1, Mar 2021

<sup>14</sup> SCC ONLINE BOM 72,2021



## JUDGMENTS: A POSITIVE STEP TOWARDS SECURING RIGHTS OF CHILD

This section of present paper will also mentions judgments passed by honorable courts which not only justify the aim of the POCSO Act but also interpreted intricacies of the case in peculiar and defined manner to preserve the object of the act.

The Madras High Court reverse acquittal in POCSO case after 9 years. Justice D. Bharatha Chakravarthy stated "Calling assault Animalistic would be injustice to Animals"<sup>15</sup>. The court held the man guilty for the offences of aggravated sexual assault under the POCSO Act and sentenced a man to undergo rigorous imprisonment for period of 10 years for sexually molesting an eight year old girl child.

State of Maharashtra vs. Maroti<sup>16</sup>. Honorable Supreme Court of India has held that reporting of a sexual crime against children is mandatory under section 19 of the POCSO Act 2012, bench of Justice Ajay Rastogi and Justice C.T. Ravi Kumar stated that to achieve the avowed purpose, the legal obligation for reporting of offence under the POCSO Act is cast upon on a person to inform the relevant authorities specified, when he or she has knowledge that and offence under the act has been committed. POCSO law recognize both touch based and non-touch based forms of sexual offence harassment of children including stalking, forcing a child to expose themselves or exposing oneself to a child among other forms of crime according to Section 11 and 12<sup>17</sup>, section 13, 14 and 15<sup>18</sup> of POCSO Act particularly stipulate harsh penalties for exposing children to, or employing them to produce, child sexual abuse material (CSAM often known as pornography)

## RECOMMENDATIONS

The said act recognizes almost every known form of sexual abuse against children as punishable offences and makes the different agencies of the state, such as the Police, Judiciary and Child Protection machinery, collaborates in securing justice for sexually abused child.

Analyzing all the aspects and evaluating judicial impact too following recommendations are being made

1. There is need of “working together” approach for all the different related professionals involved in case of child sexual abuse.
2. A legal framework alone cannot achieve a better environment for children, people’s engagement and leadership from NGOs and civil society organizations are essential for legal policy success.

<sup>15</sup> Upasana Sajeev, Calling Assault Animalistic Would Be Injustice To Animals”: Madras High Court Reverses Acquittal In POCSO Case After 9 Years,<https://www.livelaw.in/news-updates/madras-high-court-reverses-acquittal-in-pocso-case-after-9-years-222857>

<sup>16</sup> Trimukh Maroti Kirkan vs. State of Maharashtra, (2006) 10 SCC 681

<sup>17</sup> The Gazette of India, POSCO ACT 2012, Chapter II, Pg 6,  
<https://wcd.nic.in/sites/default/files/POCSO%20Act%2C%202012.pdf>,

<sup>18</sup> The Gazette of India, POSCO ACT 2012,Chapter III, Pg 6, Pg7

<https://wcd.nic.in/sites/default/files/POCSO%20Act%2C%202012.pdf>,



3. As per National Commission for Justice Delivery and Legal Reforms, adequacy of judicial infrastructure is a basic condition for reducing delay and legal reforms. The Supreme Court established a National Court Management System (NCMS) that says that there is direct connection between physical infrastructure, digital infrastructure and pendency. Thus by providing equipped infrastructure pendency rates can be reduced.
4. There is also an indispensable need to impose reasonable restriction on unnecessary appeals in the said act.
5. Victim child should be interviewed by specialist trained professional and in presence of child psychiatrist in order to get the accuracy of the crime.
6. Analysis of judgment in various POCSO cases have thrown light on the mental health issues that judges face due to lack of special training to deal with POCSO cases of an exposure to gruesome details. Judges are under a legal obligation to judge but while judging, themselves being judged.<sup>19</sup>
7. Adequate efforts to be made to increase awareness about the POCSO Act at school level. Children need to be informed about the mechanism available to them for reporting sexual offences committed against them are their peers.
8. Courts disposal rate needs to accelerate. Despite the fact that there is at least one special FTC in every district and trials are to be completed within a year. The pendency of POCSO cases have gone up by over 190% since 2016, from 90,205 cases till December 2016 to 2,43,237 cases till January 2023. This shows urgent need of more special courts for POCSO and well trained related officials at every level to ensure speedy trial of POCSO cases.

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<sup>19</sup> Sudhanshu Ranjan, Justice vs. Judiciary, Oxford University Press (2019)