

Silent Screams: Addressing the Epidemic of Child Sexual Abuse in India

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This research paper explores the distressing reality of a pervasive crisis affecting the nation's most vulnerable population. There is an urgent need for comprehensive intervention to tackle the silent epidemic of child sexual abuse. Every day, a number of children all over the world are subjected to some form of sexual abuse or exploitation. Children are at risk of experiencing sexual violence in a wide variety of environments and locations. A child in India has the right to be protected from abuse, neglect, and exploitation at home and elsewhere. Still, children are sexually abused in all kinds of places, including at home, at school, and in the community. As per the National Crime Records Bureau (NCRB), crimes against minors are on the rise. The number of crimes against minors rose from 1,29,032 in 2017 to 1,62,449 in 2022. According to NCRB, 63,414 incidents under the POCSO Act were recorded in 2022. The number of POCSO cases increased by more than 94% between 2017 and 2022. This research paper examines the problem of child sexual abuse in India and the challenges associated with the problem.

Keywords: Child Sexual Abuse, Sexual Violence, Victims, Protection, Compensation

Introduction

Child sexual abuse (CSA) is a global issue with serious long-term effects. The sexual abuse of children is one of the most horrible crimes. Sexual assaults and sexual offences against children or adolescents are reported regularly around the country.¹ With over 44 crore children, child sexual abuse remains a major and pervasive problem in India. According to studies, the trauma of child sexual abuse victims leads to a slew of psychological and emotional issues that they may never overcome, resulting in poor overall development.² Children and parents may even choose not to disclose such instances due to embarrassment, social stigma, a communication gap between child and parents, lengthy legal procedures, and other factors, and therefore suffer in silence.³

Statement of the Problem

Child sexual abuse is a serious national problem and a growing cause of concern in India. To address the problem of sexual abuse of children the government has enacted a special law in the form of the Protection of Children from Sexual Offences (POCSO) Act, 2012. According to official data, the

¹ Belur, J., & Singh, B. B. (2015). Child sexual abuse and the law in India: a commentary. *Crime Science*, 4(1), 26.

² Tyagi, S., & Karande, S. (2021). Child sexual abuse in India: A wake-up call. *Journal of Postgraduate Medicine*, 67(3), 125–129.

³ Srivastava, K., Chaudhury, S., Bhat, P. S., & Patkar, P. (2017). Child sexual abuse: The suffering untold. *Industrial psychiatry journal*, 26(1), 1–3.

number of cases registered under POCSO increased year after year. The number of cases under the act has increased by more than 94% between 2017 and 2022. This poses a serious question on the state of child sexual abuse in India. So, a systematic probe into the issues of child sexual abuse is warranted.

Objectives of the Study

The basic objectives of the paper are as follows:

- (1) To understand the child sexual abuse and its kinds.
- (2) To analyze the extent of the problem of child sexual abuse in India
- (3) To examine the legal framework for child sexual abuse in India.
- (4) To determine the various challenges associated with its implementation.

Research Questions

The main research questions of the paper are as follows:

- (1) What is child sexual abuse and its various forms?
- (2) What is the magnitude of the problem of child sexual abuse in India?
- (3) What is the legal framework for child sexual abuse?
- (4) What are the challenges in the implementation of the law?

Research Methodology

The study uses a doctrinal methodology for the research work. It is done through primary as well as secondary sources. The Primary sources include the legislation and the secondary sources include the research articles, reports, studies, and online sources relevant to the study.

Child Sexual Abuse Defined

Child sexual abuse refers to sexual activities committed against children, by adults or peers and usually involves an individual or group taking advantage of an imbalance of power. Force may be used, with offenders frequently using authority, power, manipulation, or deception.

A more explicit and detailed definition has been provided by the World Health Organization (WHO):

“The involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violate the laws or social taboos of society. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity being intended to gratify or satisfy the needs of the other person. This may include but is not limited to: the inducement or coercion of a child to engage in any unlawful sexual activity; the exploitative use of child in prostitution or other unlawful sexual practices; the exploitative use of children in pornographic performances and materials.”⁴

Child sexual exploitation involves the same abusive actions. However, an additional element must also be present - the exchange of something (e.g., money, shelter, material goods, immaterial things like

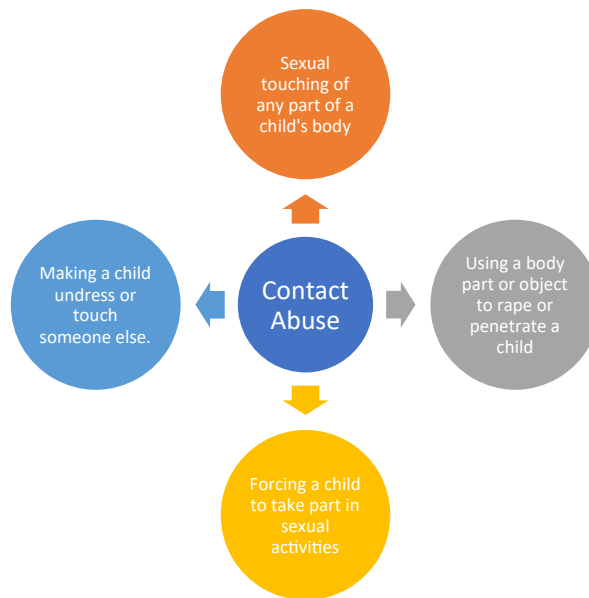
⁴ World Health Organization. Report of the Consultation on Child Abuse and Neglect Prevention, 29-31 March. Geneva, Switzerland: World Health Organization; 1999. [cited 2021 Jan 12]. Document WHO/HSC/PVI/99.1.

protection or a relationship), or even the mere promise of such.⁵ It can occur offline, online, and through a combination of both.

Types of Child Sexual Abuse

There are 2 types of child sexual abuse – contact and non-contact abuse.

The first kind of child sexual abuse is contact abuse. In this kind of sexual abuse, the abuser makes physical contact with a child. It can be in different forms like.



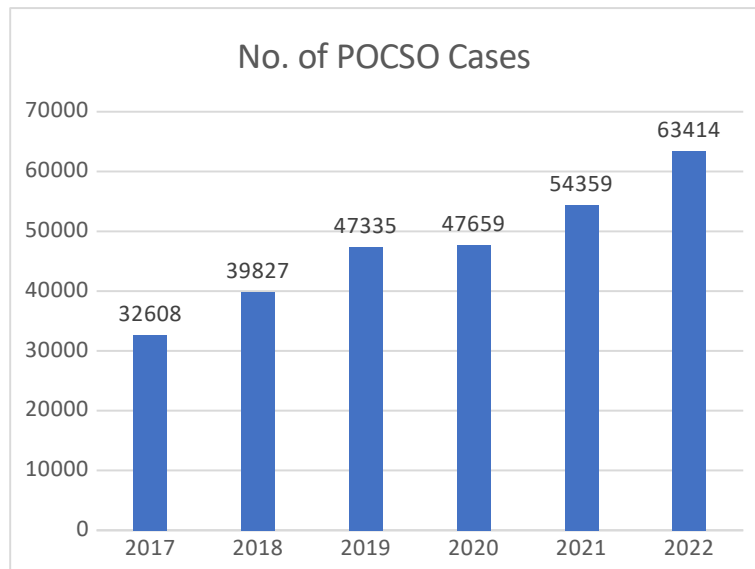
The other kind of child sexual abuse is called non-contact abuse. In this kind of abuse, the child is abused without being physically touched by the abuser. It may be in different ways like:



⁵ Interagency Working Group on Sexual Exploitation of Children. (2016). Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse. Bangkok: ECPAT International.

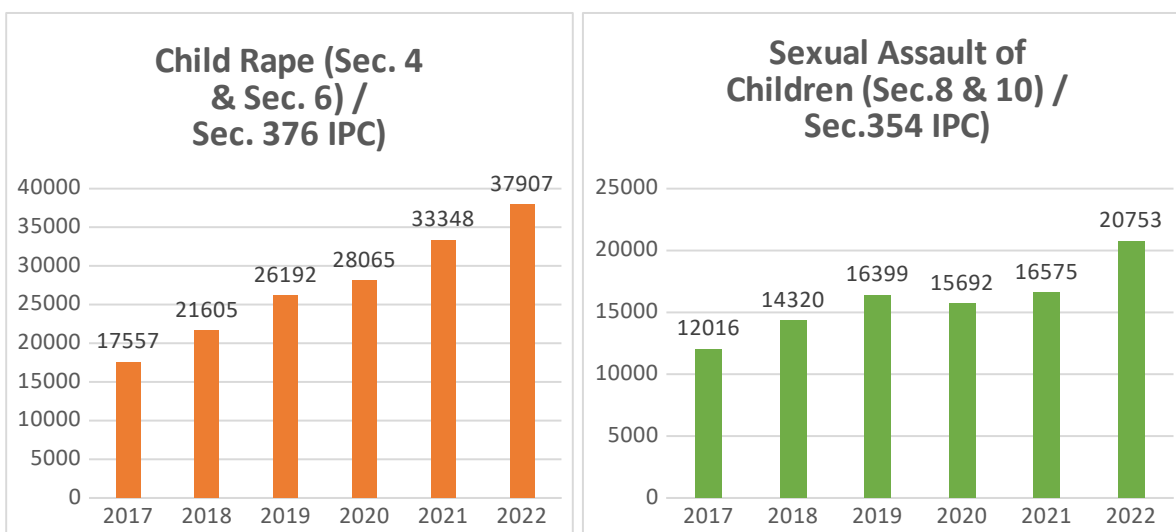
Magnitude of the Problem

Sexual abuse against children is one of the major concerns for law enforcement agencies and governments in India. As per the data from the National Crime Records Bureau (NCRB), crimes against children have been on the rise. Cases reported under the POCSO Act have also been increasing over a while. Data from the NCRB indicates that the number of cases registered under POCSO increased by more than 94% between 2017 and 2022. In 2022, 63,414 cases each were reported under this Act. This translates to a daily average of 173 cases reported under POCSO.

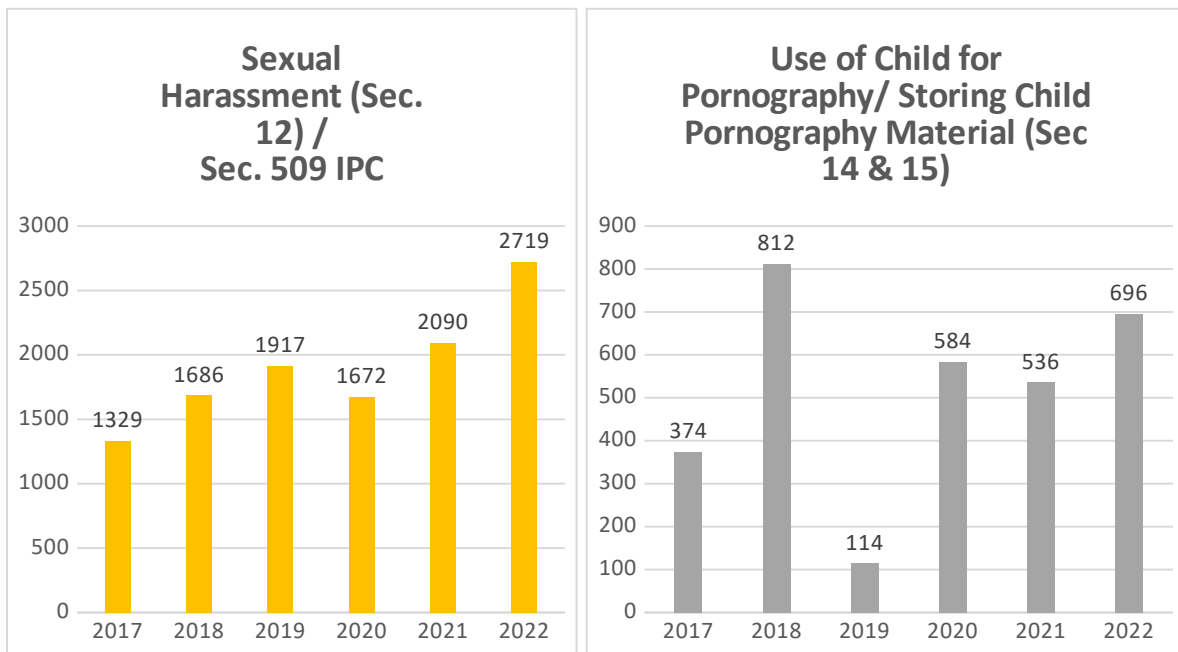


Amongst the total number of cases registered in 2022 under the POCSO Act, around 59% of the cases were for Child Rape (Sec. 4 & 6 of POCSO Act/ Sec. 376 of IPC), with around 99% of the victims being female. Followed by sexual assault (Sec. 8 & 10 of POCSO Act /Sec. 354 IPC) with around 32% of the total cases. Followed by sexual harassment (Sec. 12 of POCSO Act /Sec. 509 IPC) with around 4% of the total cases. Followed by the use of child for pornography/ storing child pornography material (Sec 14 & 15 of the POCSO Act.)

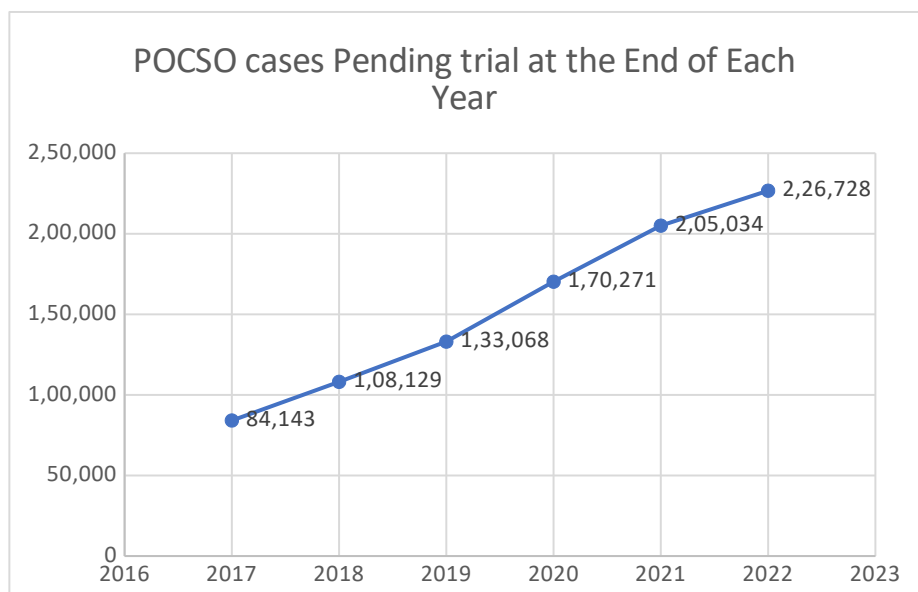
Number of Cases Registered under Various Sections of POCSO



⁶ National Crime Records Bureau, “Crime in India”, 2017-2022



The pendency of POCSO cases at the end of each year is on a gradual rise with each passing year except for 2020, rising to more than 169% between 2017 and 2022.



Constitutional and Legal Framework

India has robust legal safeguards in place to prevent crimes involving child sexual exploitation. The nation is a party to numerous international and regional frameworks and has ratified the majority of significant international accords pertinent to the fight against child sexual exploitation. To comply with its regional and international responsibilities, India has also steadily adopted and updated national legislation about child sexual exploitation.

⁷ Ibid

Constitutional Provisions

The Indian Constitution is the country's highest law. It empowers the State to take measures to prevent abuse of children's impressionable years and grants children several rights. Children's vulnerability and right to protection are recognized by the Constitution. Articles 14, 15, 15(3), 21, 21, 23, 24, 39(e), and 39(f) of the Constitution of India reiterate India's commitment to the protection, safety, security, and well-being of all of its citizens, including children, and establish the right to equality, protection of life and personal liberty, and right against exploitation.

Legal Provisions

Protection of Children from Sexual Offences (POCSO Act), 2012

Before the notification of the Protection of Children from Sexual Offences (POCSO) Act in 2012, there was no comprehensive law that addressed sexual violence in the nation. The *Bhartiya Nyaya Sanhita* Section 363 (rape) (earlier IPC's Sections 375) and Section 74 (outraging modesty) {earlier 354 IPC} were utilized by the legal and judicial systems to handle sexual assault against females, while Section 377 IPC (unnatural sexual offences) which is now repealed under *Bhartiya Nyaya Sanhita* was used to address comparable offences committed against males.⁸

The POCSO Act 2012 was enacted to provide a strong legal framework for the protection of children from sexual offences while safeguarding the interest of the child at every stage of the investigation and judicial process by incorporating child-friendly mechanisms for reporting, recording of evidence, investigation, and speedy disposal of cases through designated Special Courts. The Act defines a child as someone under the age of 18 and protects all children under the age of 18 from penetrative sexual assault, non-penetrative sexual assault, sexual harassment, and pornographic offences. Along with it the act provides for the procedure for reporting the cases, the procedure of recording statements of the child, special courts, and its power and procedure. In 2019, the Act was amended to enhance punishments. Under the amended provisions, the minimum punishment for penetrative sexual assault has been increased from 7 years to 10 years, and for cases where the child is below 16 years of age, the minimum punishment has been increased to 20 years. The death penalty has been introduced as a possible punishment in cases of aggravated penetrative sexual assault.

The Challenges with the Implementation of POCSO

Challenges associated with the POCSO can be divided into 3 categories:

- A. Procedural Challenges
- B. Administrative Challenges
- C. Challenges faced by the victims and their family

A. Procedural Challenges

About Investigation

The investigating officers are not adequately trained in investigating sexual crimes against children, which requires specialized training. Evidence collected from crime scenes and the victims is compromised due to delays in reporting. The casual approach to handling the crimes results in substandard charge sheets and final reports for courts, which further leads to low conviction rates.

⁸ https://www.ihdindia.org/pdf/IHD-UNICEF-WP-5-asha_bajpai.pdf (Accessed on 18 April, 2024)

Delays in Trials

Speedy justice for child victims of sexual abuse is necessary for the children to overcome the trauma. In fact, the POCSO Act also mandates the designation of special courts. Despite a legislative mandate and designation of certain special courts, it is concerning to note that the pendency of these is still very high. The pendency of cases in the courts was 89.2% by the end of 2022⁹. Such high pendency continues to exist despite setting up fast-track courts exclusively for expeditious trials relating to POCSO.

In Awarding Compensation

Section 33 of the POCSO Act, coupled with Rule 7 of the POCSO Rules, states that the Special Courts may, on their own or in response to an application, "recommend the award of compensation," assess the quantity of compensation, and make a direction for the award of compensation".

Apart from this, the Victim Compensation Scheme (VCS) under Section 375A of the CrPC obligates the state to prepare a scheme to compensate victims of crime, by collaborating with the Central Government. However, shocking data revealed before the Supreme Court *In Re Alarming Rise in Number of Reported Child Incident cases*¹⁰ highlighted how the scheme has more or less remained ornamental and is rarely fulfilled with no interim or final compensation being awarded in 99 percent of the cases.

Determination of Age

The establishment of a minority of the victim in a POCSO case is a critical component of the trial as the Act applies only to persons who are below the age of 18 years. Unfortunately, establishing the age of the victim and the alleged offender is a serious challenge due to poor documentation.

Witness Protection

Despite the Supreme Court, through its order in *Mahender Chawla and Ors Vs Union of India*¹¹, mandated all States and Union Territories in India to set up Witness Protection Schemes and Standing Committees in every district, the Scheme has not been implemented on the ground. Only a very few States have enacted a Witness Protection Act. In the absence of witness protection, victims are deterred from cooperating with investigators and providing accurate testimony in court, which raises the possibility that they may turn "hostile" and withdraw their prior statements, leading to wrongful acquittals. Without a provision protecting witnesses, victims and witnesses are subject to unwarranted pressure, which undermines the prosecution.

B. Administrative Challenges

Lack of Required Infrastructure

Police stations, medical facilities, and child protection setups do not have the basic infrastructure to respond to children adequately. Child-friendly infrastructure in police stations and courts is important to ensure that the child victim and accused do not come face-to-face during the investigation and trial of the case, as well as to protect the privacy of children and their families. A small number of courts in the country have established separate waiting rooms and separate deposition rooms with video-conferencing

⁹ National Crime Records Bureau, Government of India, Crime in India 2022 Table 4A.5, page 8.

¹⁰ Re Alarming Rise in Number of Reported Child Rape Incidents 2020 7 SCC 87

¹¹ AIR 2018 SC (SUPP) 2561

facilities for children. Medical facilities do not have spaces specifically allocated for the examination and treatment of victims of sexual violence.

Inadequate Staff

There is an insufficient number of women officers. The Act stipulates that a woman sub-inspector must record the statement of the affected child at the child's home or preferred location. A report in 2019 revealed that only 7.28% of India's police force comprises of women, it is practically challenging to adhere to this condition.¹² Also, there is an unavailability of a professional workforce such as counselors who can provide support to children who have faced sexual violence. Similarly, special public prosecutors handle cases other than the POCSO Act, despite the need for exclusivity.¹³

Lack of Convergence between Stakeholders

Stakeholders involved in the investigation, child protection, prosecution, and health care do not have opportunities to converge and discuss systemic and case-specific issues. There are many agencies mandated to work towards providing different kinds of services at different stages to the affected children and their families. The lack of coordination and convergence between them becomes a barrier in the goals of holistic and restorative care.

Monitoring

The National and State Commissions for the Protection of Child Rights are required to monitor and evaluate the implementation of the Act regularly in addition to generating public awareness about the provisions of the Act.

Low Allocation of Funds

Low allocation of funds is a hindrance leaving the social infrastructure lacking and also resulting in inadequate funds for programmes for children.

C. Challenges Faced by the Victims and their Family

Secondary Victimization

In the pursuit of justice, children interact with multiple people at different stages and narrate the same incident repeatedly, which multiplies the trauma, and is perhaps detrimental to the case. They also face stigma from the community, schools, family, and peers, leading to having to change residences and schools to avoid facing social pressures in many cases.

Mental Health Services Not Considered Essential

There is a dearth of mental health professionals who are trained in responding to children who have faced sexual violence and trauma in most districts in India. This, coupled with the fact that mental health is not considered a serious issue in the community, makes for children not receiving mental health services.

¹² Nthya Subramanian, In charts: Only 7% of India's police force is women. This hurts investigations into gender violence, available at <https://scroll.in/article/937265/in-charts-only-7-of-indias-police-force-is-women-this-hurts-investigations-into-gender-violence> (Last accessed on 18 April, 2024)

¹³ CCL-NLSIU. "Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues Based on CCL-NLSIU's Studies on the Working of Special Courts in Five States." 2018

Lack of Adequate Support to Children during Criminal Justice Processes

There is a lack of adequate support for the victims and their families during the prolonged process of getting justice.¹⁴

Concluding Remarks

Child sexual abuse is one of today's most pressing issues. The increasing number of reported cases of children who have suffered some form of sexual abuse reflects the failure of the state and society to provide children with an environment conducive to growth, as required by the United Nations Convention on the Rights of the Child. Child sexual abuse is a hidden crime that frequently goes unnoticed because the perpetrators are people the victim knows, the victim feels embarrassed to report the abuse due to social shame, or for any other reason. As a result, the victim suffers in silence and without assistance. The introduction of the POCSO Act has resulted in an increase in the reported cases of child sexual abuse in India. While it intended to halt the rise in sexual offences against children, it failed due to serious flaws in its execution. It takes focused and coordinated efforts by implementing agencies, as well as a strong multidimensional strategy, to ensure a timely trial and minimize the re-victimization of individuals affected. It has been observed that reported cases of sexual abuse are handled insensitively by investigating and law enforcement organizations. The majority of healthcare personnel lack the skills and training required to investigate and manage incidents of child sexual abuse. As a result, the child suffers additional trauma. The court processes in India are a long and hard ordeal. In child sexual abuse cases, where the burdens of testifying repeatedly and over extended periods fall on already traumatized children as well as parents, the complainants are pounded by the process, prompting them to retract their charges in certain situations. Moreover, the special courts, as proposed by the Protection of Children from Sexual Offences Act, are likewise ineffective where over 2.43 lakh cases under the POCSO Act were pending in POCSO Courts as of January 2024.

Suggestions

1. To provide appropriate training and sensitize the officers dealing with cases under the POCSO Act.
2. To establish appropriate numbers of Special Courts for adjudication of POCSO cases which can help efficient and quick resolution of cases.
3. To Train the judicial officers regarding victim compensation provisions and their due implementation in all appropriate cases.
4. To ensure the accurate documentation of the age records of the children.
5. To Enact and ensure the strict compliance of the schemes relating to witness protection.
6. To allocate adequate funds for developing child-friendly infrastructure.
7. To Appoint an adequate number of female police officers, mental health counselors, and exclusive public prosecutors for the cases under the Act.
8. To secure maintenance of coordination between various stakeholders involved in the process of justice.
9. To raise awareness about the law and regular monitoring of the implementation of the same.
10. To make sure that the child victims are not subject to secondary victimization in the course of their quest for Justice.

¹⁴ HAQ, POCSO National Consultative Report 2019, <http://haqcr.org/wp-content/uploads/2019/04/pocso-national-consultation-report-april-2019.pdf> (Accessed on 19 April, 2024)