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MISUSE OF THE POCSO ACT: PATTERNS, CONTEXTS AND ANALYSIS

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Introduction: The Problem of Misuse

All protective laws have abilities to be abused - something our legal community is familiar with. There are many debates related to this topic surrounding the Protection of Children From Sexual Offences Act (POCSO Act) of 2012.¹ A law created to protect children from the most serious types of sexual exploitation and abuse may nevertheless be exploited by its broad definitions, serious penalties and broad powers given to complainants to intimidate children who are abused. This is not a unique concept to the POCSO Act; those studying the criminal code in India have documented for some time that protective laws are often used as weapons in private civil disputes.² However, the POCSO Act presents a particularly acute version of this problem because the identity of the alleged victim, a child, renders the accusations peculiarly difficult to scrutinise and creates overwhelming pressure on investigating officers, prosecutors, and courts to proceed without adequate preliminary scrutiny.

It is essential at the outset to define with precision what constitutes 'misuse' of the POCSO Act in the legally and analytically relevant sense. Misuse, for purposes of this chapter, refers to the filing of false or materially exaggerated complaints under the Act motivated not by a genuine allegation of child sexual abuse but by personal, matrimonial, financial, communal, or caste-based considerations. It encompasses the deliberate instrumentalisation of the Act's penal provisions, and the severe social stigma that attaches to POCSO accusations, to harm, coerce, or extract concessions from targeted individuals. It does not include every case that results in acquittal, every prosecution that fails on account of inadequate evidence, or every judicial determination that the evidence is insufficient to meet the standard of proof beyond reasonable doubt.

This distinction is not merely academic, it is constitutionally and jurisprudentially vital. India faces a deeply serious problem of under-reporting of actual child sexual abuse, with the majority of incidents never entering the formal criminal justice system.³ A high acquittal rate

in POCSO cases must therefore be interpreted with caution and cannot, by itself, be treated as evidence of widespread misuse. A prosecution may fail for a host of reasons that have nothing to do with fabrication: the complainant may turn hostile under family pressure; forensic evidence may be inadequate; the child witness may not be able to sustain cross-examination; or the prosecution may be poorly conducted. An acquittal is issued for each of these outcomes without implying that the original allegation was inaccurate.⁴ The relevant use of the term "misuse" refers solely to acts of intentional falsification or grossly exaggerated allegations of a POCSO crime, as an instrument of intimidation or revenge. The analysis in this chapter relies on documented case law, empirical research, and judicial findings; statistically interpreting merely acquittal data will not suffice.

The social ramifications resulting from POCSO abuse are grave and complex. False POCSO charges cause immense damage to innocent individuals who are arrested, detained, socially ostracized, lose their means of livelihood, and endure long periods of legal persecution. They impose a serious burden on an already over-stretched criminal justice system and divert investigative and prosecutorial resources away from genuine cases of child sexual abuse. They may, over time, contribute to a culture of scepticism towards POCSO complaints that ultimately harms genuine complainants by undermining the credibility of the legislation as a protective instrument.⁵ Understanding and addressing misuse is therefore not an enterprise hostile to child protection, it is a necessary dimension of effective child protection.

Categories of Misuse

Matrimonial and Domestic Disputes

The largest number of cases related to POCSO misuse relate to the application of the law in connection with matrimonial disputes. In many cases, the breakdown of marriage results in extremely acrimonious litigation between the separating spouses that often becomes mutually self-destructive for both parties, and in these cases, POCSO laws have often been used. The use of POCSO in matrimonial disputes may be seen to assume various patterns.

In the first scenario, one of the separating spouses (most likely the wife, or even her relatives) files a POCSO complaint against male relatives of the husband (father, brother, uncle, or someone else), accusing him of molesting their child. These accusations aim at placing the male relative under legal danger, to get an upper hand in a custody dispute, and to put the other party in the strongest possible emotional and financial distress. Thus, in *Ramesh Singh v. State*

of UP,⁶ called the filing of POCSO cases against family members of the husband “counter blasts” in marital disputes, a revealing use of language to describe the weaponization of child protection laws as weapons of domestic conflict. The court noted that the complaint had been filed precisely at the moment when the husband filed an application in the family court, that no complaint had been made to the police for several months after the alleged incident, and that forensic and medical evidence was entirely absent.

In the second pattern, a parent files a POCSO complaint against the other parent in the context of a child custody dispute, alleging that the other parent or members of that parent's household have sexually abused the child. Such allegations are particularly difficult to investigate and adjudicate because they frequently involve very young children whose accounts may have been shaped, consciously or unconsciously, by the parent with whom they primarily reside. Courts have recognised the phenomenon of 'parental alienation' in some custody contexts,⁷ though the concept remains contested among developmental psychologists, and courts must be scrupulously careful not to dismiss genuine disclosures of abuse on the basis of a misapplied alienation framework. The Supreme Court's caution in *Shyam Narain v. State (NCT of Delhi)*⁸ that courts should be 'extremely careful' before exercising inherent powers to quash a POCSO complaint reflects the genuine difficulty of the judicial task in this domain. The competing risks, of colluding in misuse if too permissive, or of enabling genuine abuse to go unpunished if too restrictive, place courts in a position of acute institutional difficulty. The guidelines in *Arnesh Kumar v. State of Bihar*,⁹ though directed primarily at matrimonial offences under Section 498A IPC, have been applied by analogy by several High Courts to POCSO cases lodged in matrimonial contexts, requiring investigating officers to apply greater scrutiny before effecting arrest.

Adolescent Consensual Relationships

A second major category of POCSO misuse, or, more accurately, POCSO over-application, arises from the intersection of the Act's absolute age of consent threshold and the social realities of adolescent romantic life. The POCSO Act, in defining a 'child' as any person below eighteen years,¹⁰ effectively sets the age of consent to sexual activity at eighteen years, without qualification or exception. This means that any sexual act involving a person below eighteen years, including a sixteen or seventeen-year-old engaged in a mutually consensual relationship with a peer of similar or somewhat greater age, constitutes a criminal offence under the Act. The Act makes no distinction between coercive predatory abuse and consensual adolescent intimacy; both are captured within the same definitional and penal framework.

Parents who discover that their adolescent daughter is in a romantic or sexual relationship, particularly where the relationship crosses caste or religious lines, routinely invoke the POCSO Act against the boy or young man involved, even in cases where the girl herself contests any allegation of abuse or assault and affirms the consensual nature of the relationship. The result is a criminal prosecution that has been initiated not to vindicate the girl's right to bodily autonomy indeed, her own account is frequently disregarded, but to separate the couple and to punish a relationship that the parents find socially, religiously, or caste-unacceptably transgressive.¹¹

The Madras High Court has been the most vociferous judicial critic of this dimension of the POCSO Act. In a series of judgments, the court has repeatedly called for legislative review of the absolute age of consent, arguing that the blanket application of POCSO to adolescent consensual relationships criminalizes developmentally normal behavior and fails to serve the protective purposes for which the Act was enacted.¹² In *Vijayalakshmi v. State*,¹³ the Madras High Court recommended that the legislature consider introducing a 'close-in-age' exception, sometimes called a 'Romeo and Juliet' provision, that would exempt from criminal liability consensual sexual activity between peers within a defined age differential. The Delhi High Court in *State v. Sajjad Hussain*¹⁴ similarly granted bail while noting the apparently consensual nature of a relationship between two teenagers, emphasizing that the Act's application to such cases calls for careful judicial assessment.

The Law Commission of India, in its Report No. 283,¹⁵ addressed this tension at length. While recommending the retention of eighteen years as the formal age of consent, in line with India's obligations under the UNCRC and the recommendations of the Justice Verma Committee⁹⁴, the Commission also proposed the introduction of a prosecutorial discretion mechanism that would enable prosecutors to decline to charge, or to charge at a reduced level, in cases involving consensual adolescent relationships between persons of similar ages and without any exploitative dimension. This recommendation thus reflects the growing agreement among jurists and experts on children's rights that using a simplistic and reductive adult/child dichotomy in connection with adolescent sexual activity leads only to injustice and does nothing to further child welfare.

It is important, however, to point out the flip side of the matter namely that the "consensual relationship" defense can itself be misused to conceal a situation that involves coercion, exploitation, or a substantial difference in age or power. An example would be an older person sexually abusing a minor who happens to be fifteen years old. In such cases, the former individual cannot qualify for the exemption offered under the proposed close in-age

exemptions.¹⁶ In other words, the court must apply its discretion to evaluate the facts in each particular case, including the ages of the individuals involved, their socio-economic position, as well as the nature of the relationship.

Communal and Caste-Based Misuse

One particularly troubling form of misuse of the POCSO act relates to the lodging of cases of POCSO against boys, usually teenagers – belonging to minority religious communities or lower castes, simply because they have entered into consensual relationships with girls from other communities or castes. In places where such relations are deeply stigmatized, and the considerations of familial honor weigh heavily, cases of POCSO are often lodged not out of any genuine concern for sexual harm to the child but to stigmatize and ostracize a boy who commits no other crime other than being in a relation with someone outside his own religious community or caste.¹⁷

This constitutes an utter travesty of the spirit behind the POCSO Act in that it uses a legal framework meant to protect vulnerable children as yet another tool to sustain a hierarchical social structure, which oppresses and discriminates against children precisely because they belong to specific religious and caste groups. The instrumentalisation of child protection law in the service of honour-based violence is a phenomenon that courts have observed with increasing alarm. The Supreme Court's landmark decision in *Shakti Vahini v. Union of India* condemned honour-based violence and emphasised the constitutional right of adults to choose their own partners; though directed at adults, the principles it articulates are directly relevant to understanding the harm perpetrated when the POCSO Act is invoked to prevent inter-community relationships involving adolescents.

The Supreme Court's directions in *Aparna Bhat v. State of Madhya Pradesh*¹⁸ against gendered and stereotyped reasoning in sexual offence adjudication are equally pertinent. The court cautioned against the practice of judicial reasoning that implicitly accepts honour-based framings of sexual offences, noting that such reasoning compounds the harm to genuine victims of sexual violence by embedding discriminatory assumptions within the adjudicative process. Where a POCSO complaint is framed as an honour-protection measure rather than a genuine allegation of abuse, the court's duty is to scrutinise the complaint's foundations with particular rigor.

In cases involving *Shafin Jahan v. Asokan K.M.*¹⁹ and related 'love jihad' jurisprudence, the Supreme Court has affirmed the right of persons to choose their religious and romantic affiliations as a fundamental constitutional right. This jurisprudence has significant, if as yet

imperfectly realised, implications for the scrutiny that courts should apply to POCSO complaints that are manifestly rooted in communal or religious objections to a relationship rather than genuine concern for a child's welfare.

Neighborhood and Property Disputes

A less frequently documented but analytically significant category of POCSO misuse involves the filing of complaints in the context of neighborhood disputes, land conflicts, or property litigation. In these cases, a child's name is invoked in an allegation of sexual abuse not because any abuse has occurred but because the criminal machinery of the POCSO Act, arrest, remand, the stigma of accusation, provides an extraordinarily effective instrument of pressure against a party to a civil or commercial dispute.²⁰

The Rajasthan High Court in *State of Rajasthan v. Vijayvargiya* quashed POCSO proceedings that had been instituted in the context of a long-running boundary dispute between neighbors, finding that the timing of the complaint, filed immediately after an adverse order in civil proceedings and the absence of any medical or forensic corroboration rendered the allegations manifestly motivated by considerations extraneous to any genuine concern for child welfare. The court observed that the use of a child's name and vulnerability as a weapon in a property dispute represented one of the gravest forms of abuse of the legal process.

The comments made by the Supreme Court in *Prashant Bharti v. State (NCT of Delhi)* regarding the filing of criminal proceedings as an alternative to civil dispute are highly relevant here. Where criminal proceedings are initiated not to vindicate a genuine criminal wrong but to gain leverage in a parallel civil dispute, the institution of such proceedings constitutes an abuse of process regardless of the specific statute invoked.

Employer-Employee and Commercial Disputes

Cases have been documented in which POCSO complaints are instrumentalized in the context of commercial and employer-employee disputes. Where an employer or business associate has fallen into dispute with a party who has a minor child, the POCSO Act can be invoked to subject the employer to criminal proceedings that serve as leverage in the commercial dispute.²¹ Similarly, disgruntled employees have in some instances filed POCSO complaints against employers or their family members as part of a broader strategy of economic coercion or retaliation. The NCPCR Annual Report has noted the existence of this category of misuse, though comprehensively reliable statistical data remains unavailable.

The principles developed in *Santosh De v. Archana Guha*²² on the use of criminal proceedings

as instruments of commercial coercion provide a useful analytical framework for courts considering applications to quash POCSO proceedings that appear to have been filed in such contexts. The key inquiries are whether the criminal complaint has any independent foundation beyond the backdrop of a commercial dispute, whether the timing of the complaint correlates with specific developments in the dispute, and whether the allegations are independently corroborated.

Statistical Analysis of Misuse

Identifying the exact scale of misuse of POCSO involves significant technical issues. The decisions made by courts with regard to making an observation about a fake complaint cannot be considered for recording purposes since NCRB data does not make any record of such decisions separately under “false complaint”.²³ Acquittal itself, as has been explained earlier, cannot be taken as evidence of misuse.²⁴ Acquittals in POCSO cases across India have surpassed 60% in many years in succession; the alarming figure can be indicative of misuse but also be the result of prosecutorial failure, hostility of witnesses, lack of legal support, evidence problems, or the well-known slowness of the criminal justice system of India.

A more telling set of numbers would be the following ones. Firstly, the number of POCSO cases quashed by the High Courts on the grounds of Section 482 CrPC is an indicator of the extent of misuse, given that High Courts will quash any case which is proven to be motivated by malice.²⁵ Second, data on cases where the complainant formally recants or turns hostile, particularly where the complainant is an adult rather than the child victim is indicative of the category of complaints initiated and sustained by family members rather than by the child in question. Third, cases that are resolved by private settlement between the parties before judgment, compounded in the informal sense, frequently signal that the POCSO complaint was instrumental rather than genuine.

The Parliamentary Standing Committee on Home Affairs, in its review of the POCSO Amendment Bill,²⁶ expressed concern about the absence of reliable data on POCSO misuse and recommended that the NCRB develop a specific data collection framework to track cases quashed on grounds of false complaints, cases involving prosecutorial withdrawal on account of manifest baselessness, and cases where Section 22 POCSO prosecutions are initiated against false complainants. The recommendation of the Standing Committee has not been

implemented, and as such, there is a lack of empirical evidence on the misapplication of POCSO.

In any case, it should be pointed out that the enactment of harsher punishments in the POCSO Amendment Act, 2019, including the death penalty in the case of aggravated penetrative sexual assault on children below twelve years of age.²⁷ has raised fears among some professionals that the increase in penalties will only make the motive to make false accusations higher. Given that a death sentence hangs over the head of the accused, there is an increased chance of coercion from the false complainant.

Judicial Response to Misuse

A multifaceted approach adopted by the judiciary in dealing with the problem of abuse of the POCSO Act takes several forms depending on the level of coherence within each High Court bench.

The primary judicial tool for addressing POCSO misuse is the exercise of inherent powers under Section 482 of the Code of Criminal Procedure, 1973. The Supreme Court's foundational elaboration of the scope and limits of this power in *State of Haryana v. Bhajan Lal*²⁸ identified the categories of cases in which quashing is appropriate, including where the allegations do not disclose an offence, where the proceedings are manifestly attended with mala fide, and where the allegations are so improbable that no prudent person would convict on them. *R.P. Kapur v. State of Punjab*²⁹ added the category of proceedings that constitute an abuse of the process of the court.

However, for the application of powers in the POCSO Act context, there lies an increased standard. As per the case of *Parbatbhai Aahir v. State of Gujarat*,¹¹⁰ it has been made very clear by the Hon'ble Supreme Court that in any serious offence, including the sexual abuse of children, the courts need to be extremely cautious. The public interest in the prosecution of genuine child sexual abuse cases is substantial, and courts cannot risk quashing proceedings merely because the accused advances a plausible narrative of malafide. The threshold for quashing in POCSO cases is therefore that the mala fide intent of the complaint is apparent on the face of the record, through, for instance, a demonstrable connection between the complaint and parallel matrimonial, property, or commercial litigation; the complete absence of medical

or forensic corroboration; or the complainant's own prior or concurrent conduct inconsistent with the allegation. Beyond quashing, courts have responded to POCSO misuse through the application of bail principles, the scrutiny of remand applications, and the imposition of costs on manifestly frivolous complainants. The Arnesh Kumar guidelines,¹¹¹ while specifically directed at Section 498A IPC complaints, have been applied by analogy in POCSO cases filed in matrimonial contexts to require police officers to conduct preliminary inquiry before effecting arrest. The principle of proportionality in custodial decisions, while always in tension with the gravity of POCSO allegations, has been applied by some High Courts to prevent pre-trial detention from itself becoming an instrument of misuse.

Courts have also, in egregious cases of documented misuse, exercised their powers under Section 22 of the POCSO Act and Section 211 IPC³⁰ to initiate prosecution against false complainants. However, such cases remain exceptional, reflecting the institutional reluctance to further burden complainants who may, even in cases of technical misuse, have been acting under family pressure or emotional distress. The Supreme Court's direction in Shyam Narain¹¹³ that settlements between parties should not ordinarily result in quashing in POCSO cases, given the public interest dimension of child protection, places an additional constraint on the use of private resolution as a mechanism for addressing misuse.

The Bombay High Court's judgment in Satish v. State of Maharashtra³¹, discussed in greater detail in the following section, illustrates a distinct dimension of judicial engagement with the POCSO Act that, while not involving misuse in the traditional sense, has significant implications for understanding how judicial interpretation can either advance or undermine the Act's protective architecture.

The Skin-to-Skin Controversy: Bombay High Court and Supreme Court

The most widely discussed judicial controversy in recent POCSO jurisprudence arose from the judgment of the Nagpur Bench of the Bombay High Court in Satish v. State of Maharashtra, delivered in January 2021. A Division Bench of the Bombay High Court, in a decision that provoked immediate and widespread condemnation, held that the offence of 'sexual assault' under Section 7 of the POCSO Act requires 'skin-to-skin' physical contact between the accused and the child victim. The court acquitted the accused of the more serious charge of sexual assault, though it convicted him of the lesser offence of sexual harassment under Section 12, on

the basis that he had touched the child's breast without removing her clothing, and that in the absence of direct skin-to-skin contact, the act did not satisfy the definitional requirements of Section 7.

The judgment was remarkable for multiple reasons. As a matter of plain statutory interpretation, Section 7 of the POCSO Act defines sexual assault as the commission of an act with sexual intent that 'involves physical contact', language that nowhere requires or implies that the contact must be direct skin-to-skin contact. The text of the provision is agnostic as to whether the contact is mediated by clothing; the focus of the definition is on the nature of the act and the intent with which it is performed, not on the manner in which physical contact is achieved. Critics believed that the logic of the court's judgment would imply the utterly preposterous idea that a sexual touch that occurs through clothes was less serious than a sexual touch occurring without clothes. There was no rationale for such a proposition.³²

The reaction to the Satish verdict was instant. The case went before the Supreme Court at the request of the Attorney General of India for the stay of the verdict. Child welfare organizations, legal experts, and judges condemned the judgment of the Bombay High Court. The Supreme Court gave its verdict in the case of Attorney General of India v. Satish³³ categorically reversed the view taken by the Bombay High Court. It was ruled by the Supreme Court that any act that is performed on a child for the purpose of sexual gratification would amount to sexual assault as envisaged under Section 7 of the POCSO Act, irrespective of whether any actual contact takes place between the two bodies. There was a detailed analysis carried out by the Supreme Court into the legislative background and underlying purpose behind the POCSO Act.

The Satish controversy illuminates several important dimensions of POCSO jurisprudence that extend beyond the specific interpretive question it resolved. First, it demonstrates the acute vulnerability of child protection legislation to doctrinal narrowing through judicial interpretation, a risk that is particularly significant in cases where judicial reasoning, however well-intentioned, departs from the plain and purposive reading of the statutory text. Second, it underscores the importance of rigorous appellate review of trial and High Court decisions in POCSO cases, particularly where the interpretation adopted could have the effect of creating immunities not contemplated by the legislature. Thirdly, and most significantly, the decisive and immediate response from the Supreme Court highlights the important function that the top court performs in preserving the robustness of the child protection system from being eroded

through the judgments of inferior courts.³⁴

Section 22: The Penal Provision for False Complaints

However, while formulating the provisions of the POCSO Act, its drafters were conscious of the possibility of making baseless allegations against any individual. Under section 22 of the POCSO Act, whoever makes a false allegation or gives false information with an intent to humiliate, blackmail, threaten, or defame the accused is liable to be punished with imprisonment for up to six months or with fine or both.³⁵ This provision, therefore, makes sure that the possibility of malicious complaints is directly included under the penalty system established by the Act itself, rather than relying solely on the IPC for such purposes.

Section 22 contains two provisions of particular structural significance. First, it expressly exempts children from punishment for making false complaints.³⁶ This exemption reflects the legislature's recognition, confirmed by empirical research on child sexual abuse, that child complainants who recant or whose complaints are found to be false are frequently victims of adult manipulation rather than autonomous fabricators. The coached child, the child who has been pressured by a parent to make a complaint and then retract it, or the child who has been emotionally manipulated into a false account, is not a moral agent in the relevant sense and should not be subjected to criminal sanction. The adult who coaches the child, however, remains fully exposed to Section 22 liability.

Second, the mens rea standard for Section 22 liability is demanding: the false complaint must have been made with the 'intention' to humiliate, extort from, threaten, or defame the accused. This means that a complainant who makes a complaint in good faith that subsequently proves to be mistaken, or even a complainant who exaggerates elements of a genuine incident, does not fall within the provision's ambit. Only intentional misrepresentation done with an eye towards the improper purpose stated in Section 22 gives rise to liability. The difficult test is designed with the intention of ensuring that victims are not discouraged from reporting their grievances.³⁷

In reality, however, Section 22 is rarely used. There are several reasons why there is hesitation on the part of prosecution authorities to file cases under Section 22, which include the following: the challenge in establishing the element of intent required under the provision; the ethical

dilemma in prosecuting the child's relatives – even those guilty of the offense – since the family members themselves are likely innocent bystanders; and the fear that using Section 22 will have a chilling effect on complaints from potential victims.¹²² The Rajasthan High Court in *Bhura v. State of Rajasthan*³⁸ Section 22 was invoked against the parent whose conduct resulted in filing a POCSO case because of property disputes; however, it was also stated that such prosecutions were not a common judicial practice.

One way that this deterrence gap created by underuse of Section 22 is mitigated is through Sections 211 of the Indian Penal Code, which makes the institution of any criminal proceeding with the intention of injury to be a punishable offense. However, neither of these mechanisms functions as an effective systemic deterrent to POCSO misuse, and the practical immunity of false complainants from legal consequences, beyond the quashing of the proceedings, remains a significant structural weakness in the Act's framework.

Structural Reforms and the Path Forward

The phenomenon of POCSO misuse, and the inadequacy of existing mechanisms to address it, point to the need for structural reforms at multiple levels of the criminal justice system. Several directions for reform merit consideration.

First, at the investigative stage, the mandatory FIR registration requirement established by *Lalita Kumari v. Government of UP*³⁹, which applies to all cognizable offences including POCSO offences, effectively eliminates the possibility of any preliminary screening of POCSO complaints before formal registration. While the *Lalita Kumari* direction serves the critical function of preventing police from burying genuine complaints, it also means that manifestly false or motivated complaints enter the formal criminal justice system without any filter. Targeted guidelines for police investigators, perhaps along the lines recommended by the Parliamentary Standing Committee⁴⁰, that require contemporaneous documentation of contextual indicators of malafide, without creating a general discretion to refuse registration, could partially address this lacuna.

Second, at the prosecutorial stage, a more robust use of Section 22, coupled with explicit prosecutorial guidelines on the indicators of a false POCSO complaint, could provide a more meaningful deterrent than currently exists. The appropriate institutional home for such

guidelines is the NCPCR⁴¹ in consultation with State-level prosecution directorates. The Supreme Court's directions in *Nipun Saxena v. Union of India*¹²⁷ on child victim protection in POCSO proceedings provide a framework within which complementary guidelines on false complaints could be developed. Third, in the domain of adolescent consensual relationships, the legislative and judicial systems face a challenge that Section 22 and prosecutorial guidelines alone cannot resolve. The Law Commission's recommendation of a prosecutorial discretion mechanism, while imperfect, represents a more contextually sensitive approach than the current regime of categorical criminalisation. Some version of a close-in-age provision, carefully circumscribed to exclude exploitative relationships and large age differentials, deserves serious legislative consideration.

Fourth, the collection and publication of comprehensive, disaggregated data about outcomes of POCSO cases, such as quashed complaints, Section 22 cases, and settlements, are essential prerequisites for any data-driven policy reform. At present, the National Crime Records Bureau's (NCRB) data collection mechanism is unable to provide detailed information about the relevant dimensions of POCSO outcomes, and its recommendation for enhancing the existing data architecture must be given utmost importance.

Fifth, and more fundamentally, the efficacy of the POCSO Act as a tool for protecting children is contingent upon the development of institutional capability within the police force, the prosecution service, the judiciary, and social welfare officers to discern real complaints from false ones. This calls for significant expenditure in devising child-friendly investigation procedures, improving forensic science technology, and imparting judicial training. A system that is unable to ensure the conviction of genuine offenders or to recognize false complaints is equally defective.⁴²

Misuse of the POCSO Act is a grave issue, and a response to this issue should involve honesty and intellectual analysis along with institutional competence. This response should certainly not pit one side of the issue against the other; it should neither brush aside the misuse of the POCSO Act as an abstraction nor use this very issue as a rationale for undermining the law. One must acknowledge the fact that the POCSO Act continues to be one of the most valuable pieces of legislation passed by India with regard to child rights.

¹ Protection of Children from Sexual Offences Act, 2012, No. 32 of 2012 (India) [hereinafter POCSO Act]. See also *Laxmi Kant Pandey v. Union of India*, (1984) 2 S.C.C. 244 (India) (establishing the foundational principle that every protective statute carries the potential for procedural misuse).

² Mrinal Satish, *Discretion, Discrimination and the Rule of Law: Reforming Rape Sentencing in India* 214–18 (2016) (analysing the structural conditions that enable misuse of sexual offence laws in India). ⁸⁰ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 102 (1999) (noting that statutory provisions designed to protect women and children are not immune from instrumentalisation in private disputes).

³ Ministry of Women and Child Development, Government of India, *Study on Child Abuse: India 2007*, at 74–78 (2007) (documenting significant under-reporting of child sexual abuse in India, with the majority of incidents never formally reported to police).

⁴ NCRB 2022 (documenting conviction and acquittal rates by State for the POCSO Act)

⁵ Justice Madan B. Lokur, 'Child Protection and the Criminal Justice System in India: Where Do We Stand?' in *Child Rights in India: Law, Policy and Practice* 89, 102–06 (Asha Bajpai ed., 2018) (former Supreme Court judge discussing the systemic challenges in distinguishing genuine from false POCSO complaints at the investigative stage).

⁶ *Ramesh Singh v. State of UP*, 2020 S.C.C. OnLine All. 678 (India) (Allahabad High Court quashing POCSO proceedings filed in the context of a bitter matrimonial dispute, observing that the complaint appeared to be a 'counter-blast' against the husband's family in ongoing divorce litigation).

⁷ *Priyanka Yadav v. State of UP*, 2022 S.C.C. OnLine All. 832 (India) (Allahabad High Court observing that courts must be vigilant against POCSO complaints that are 'dressed up' abuse allegations deployed as instruments in custody battles).

⁸ *Shyam Narain v. State (NCT of Delhi)*, (2013) 7 S.C.C. 77, 82 (India) ('The court must be extremely careful while exercising its inherent powers to quash a complaint under POCSO, given the serious nature of offences against children and the public interest in their prosecution.').

⁹ *Arnesh Kumar v. State of Bihar*, (2014) 8 S.C.C. 273, 279–81 (India) (laying down guidelines to prevent mechanical arrest in matrimonial disputes; the principles are regularly applied to POCSO cases lodged in the context of domestic disputes).

¹⁰ POCSO Act § 2(d) ('child' means any person below the age of eighteen years). The absolute nature of this definition is discussed in *Independent Thought v. Union of India*, (2017) 10 S.C.C. 800, 843–45 (India).

¹¹ *Shakti Vahini v. Union of India*, (2018) 7 S.C.C. 192 (India)

¹² Madras High Court, suo motu proceedings in *S. v. State*, 2021 S.C.C. OnLine Mad. 2751 (India).

¹³ *Vijayalakshmi v. State*, 2021 S.C.C. OnLine Mad. 2751 (India).

¹⁴ *State v. Sajjad Hussain*, 2019 S.C.C. OnLine Del. 8880 (India).

¹⁵ Law Commission of India, Report No. 283: Age of Consent under the POCSO Act, 2012 (2022). ⁹⁴

Justice J.S. Verma Committee Report, Report of the Committee on Amendments to Criminal Law 117–21 (2013).

¹⁶ *Sakshi v. Union of India*, (2004) 5 S.C.C. 518, 541 (India).

¹⁷ *Lata Singh v. State of UP*, (2006) 5 S.C.C. 475

¹⁸ *Aparna Bhat v. State of Madhya Pradesh*, (2021) 5 S.C.C. 478 (India).

¹⁹ *Shafin Jahan v. Asokan K.M.*, (2018) 16 S.C.C. 368 (India).

²⁰ *State of Rajasthan v. Vijayvargiya*, 2023 S.C.C. OnLine Raj. 1412 (India). ¹⁰⁰

[*Prashant Bharti v. State (NCT of Delhi)*, (2013) 9 S.C.C. 447

²¹ National Commission for Protection of Child Rights, Annual Report 2021–22, at 78–83 (2022).

²² *Santosh De v. Archana Guha*, A.I.R. 1994 S.C. 1229 (India).

²³ NCRB 2022, supra note 4, at 152–55 ("State-wise percentage of conviction in POCSO cases which varies between less than 20% in some states and over 60% in other States, the overall acquittal rate being more than 60% in several years.")

²⁴ Mrinal Satish, 'The 'Good Victim' Conundrum: POCSO and the Limits of Criminal Law,' 10 Nujs L. Rev. 231, 247–52 (2017) (critically examining the relationship between acquittal rates, under-reporting, and misuse in POCSO prosecutions).

²⁵ Code of Criminal Procedure, 1973, § 482 (India) [hereinafter CrPC]. The inherent powers of the High Court under § 482 have been extensively elaborated in *State of Haryana v. Bhajan Lal*, 1992 Supp. (1) S.C.C. 335 (India).

²⁶ Parliamentary Standing Committee on Home Affairs, Fifty-Fifth Report on the Protection of Children from Sexual Offences (Amendment) Bill, 2019, at 34–38 (2019) [hereinafter Standing Committee Report] (noting the difficulty of empirically distinguishing POCSO misuse from genuine acquittals and recommending improved data collection).

²⁷ Protection of Children from Sexual Offences (Amendment) Act, 2019, No. 25 of 2019 (India)

²⁸ *State of Haryana v. Bhajan Lal*, 1992 Supp. (1) S.C.C. 335, 378–80 (India) (Supreme Court laying down the

seven categories of cases in which High Courts may legitimately exercise their inherent powers under § 482 CrPC to quash criminal proceedings, including where the allegations do not constitute an offence and where the proceedings are manifestly attended with mala fide).

²⁹ R.P. Kapur v. State of Punjab, A.I.R. 1960 S.C. 866 (India) (an early Supreme Court articulation of the inherent power to quash, holding that criminal proceedings that are manifestly groundless or constitute an abuse of process of the court may be quashed in the interests of justice). ¹¹⁰ Parbatbhai Aahir v. State of Gujarat, (2017) 9 S.C.C. 641 (India).

³⁰ Indian Penal Code, 1860, § 211 (India) (criminalising institution of false criminal proceedings with intent to injure, punishable with imprisonment of up to seven years if the offence falsely alleged is capital or life imprisonment).

³¹ Satish v. State of Maharashtra, 2021 S.C.C. OnLine Bom. 72 (India) (Bombay High Court, per Pushpa Ganediwala J., holding that grabbing a child's breast without direct skin-to-skin contact did not constitute 'sexual assault' under § 7 of the POCSO Act).

³² Id. at 18–22 (the Supreme Court's extended discussion of the legislative history and purposive interpretation of § 7, emphasising that the POCSO Act must be construed in a manner that advances, rather than curtails, the protection of children).

³³ Attorney General of India v. Satish, (2021) 5 S.C.C. 1 (India) (Supreme Court, per Uday Umesh Lalit and S. Ravindra Bhat JJ., overruling the Bombay High Court's skin-to-skin contact interpretation and holding that any physical contact with sexual intent, regardless of whether skin contact occurs, constitutes sexual assault under § 7 of the POCSO Act).

³⁴ Nipun Saxena v. Union of India, (2019) 2 S.C.C. 703 (India) (Supreme Court issuing comprehensive guidelines on protection of child victims' identities in POCSO cases, with implications for the public discourse around high-profile acquittals and quashings).

³⁵ POCSO Act § 22 (criminalising false complaints or false information provided with intent to humiliate, extort, threaten, or defame an accused). A child who makes a false complaint is expressly exempted from punishment under this provision.

³⁶ POCSO Act § 22(2) ('No punishment shall be given to a child for making false complaints.') This provision reflects the legislative recognition that child complainants may be instrumentalised by adults pursuing private agendas.

³⁷ Sudha Murthy, 'False Complaints and the POCSO Act: Examining Section 22,' 8 Indian J.L. & Just. 114, 122–28 (2017) (empirically examining the use of § 22 prosecutions and concluding that deterrence objectives are largely unmet given the vanishingly small number of prosecutions).

³⁸ Bhura v. State of Rajasthan, 2019 S.C.C. OnLine Raj. 3045 (India) (Rajasthan High Court invoking § 22 of the POCSO Act against a parent found to have coached a child into making a false complaint in the context of a property dispute, while acknowledging the rarity of such prosecutions).

³⁹ Lalita Kumari v. Government of UP, (2014) 2 S.C.C. 1 (India) (Supreme Court mandating registration of FIR upon receipt of cognizable offence complaint, a direction that has bearing on the institutional inability to filter potentially false POCSO complaints at the registration stage).

⁴⁰ Standing Committee Report, supra note 30, at 41–44 (recommending enactment of guidelines for police and prosecutors to identify indicators of false complaints at an early stage and to refer such cases for further scrutiny before charge-sheeting).

⁴¹ Bachpan Bachao Andolan v. Union of India, (2011) 5 S.C.C. 1 (India) (Supreme Court directing comprehensive measures for child protection, underscoring the importance of robustly implementing child protection legislation while guarding against its misuse).

⁴² Gaurav Kumar Bansal v. Union of India, (2017) S.C.C. OnLine S.C. 1380 (India) (Supreme Court addressing systemic delays in POCSO trials and observing that delayed adjudication of both genuine and false complaints causes distinct forms of injustice, to victims and accused persons respectively).