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POCSO ACT: AN INSIGHT INTO THE CRIMINAL LAWS AGAINST CHILD ABUSE

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ABSTRACT

Child abuse, a frequently used term, is heard almost by everyone, but does not come to the forefront like other criminal offences. Either some have witnessed and raised their voices or some are too helpless to understand and end up being victimized. In the 21st century, the recurrence of crimes across the country have escalated at such a rate that even children are not spared. This led to the enactment of the Protection of Children from Sexual Offences (POCSO) Act¹ in 2012 to criminalize sexual offences against children. Previously, there was a dearth of any specific enactment, concerned with offences against children. The main purpose of this Act is to protect children from such violence. Before the POCSO Act came into force, the landmark judgment in the famous Mathura case² faced a backlash from many people due to its ambiguity and incorrect approach. This resulted in the enactment of the Criminal Law (Second Amendment) Act, 1983³ amending provisions regarding rape and added provisions for in-camera trials. Also, the court is bound to presume that the victim did not consent to sexual intercourse if she admits that she did not consent⁴. This paper aims to throw some light on the historical background which led to the emergence of the POCSO Act in India along with the shortcomings faced by such enactment with reference to landmark judgments. It also focuses on different kinds of abuses faced by the children in different parts of the country in addition to its causes and effects on the victim as well as the society at large.

Key Words: *Child abuse, Sexual Offences, Harassment, Consent, POSCO Act*

¹ The Protection of Children from Sexual Offences (POCSO) Act, No. 32, Acts of Parliament, 2012 (India).

² Tukaram and others Vs. State of Maharashtra AIR 1979 SC 185.

³ Criminal Law (Second Amendment) Act, 1983, No. 46, Acts of Parliament, 1983 (India).

⁴ S. 114(A) of the Indian Evidence Act, 1872, No. 1, Acts of Parliament, 1872 (India).

1. INTRODUCTION

“Children are a gift from the Lord, the fruit of the womb a reward.” – Psalms 127:3⁵

Children are the purest form of human being that ever exist on earth. Their flower like innocence and subtleness are adored by everyone. In spite of this, their childhood is getting ruined. They are subject to abuse and other kinds of egregious exploitation across the globe. The Protection of Children from Sexual Offences (POCSO) Act⁶ was administered by the Indian Government to deal with violence against children in 2012. It is a comprehensive legislation that covers various kinds of offences against children within its ambit including sexual assault, pornography and sexual harassment etc. The crimes have skyrocketed so much that in India, over 2.5 lakhs cases are pending under the POCSO Act till January 2023 with 3 per cent conviction rate as per 2022.

2. ORIGIN AND OUTCOME OF CHILD SEXUAL ABUSE

Child sexual abuse is an utterly deplorable issue all over the world. A variety of factors are responsible behind the violence against children. These are to be kept in mind while dealing with such cases. Such shameful acts leave a life-long scar on the child's life. In the aftermath, the child is left with severe depression, mental trauma and other prolonged physical health problems in life.

A few of the causes of the abuse are discussed herein under: -

- ***Exploitation of the child*** – The most common way of exploiting children is through child labour. Due to financial instability in the family, they are forced to work in factories and mills from a very young age. They work under the supervision of the employer and since he knows that they do not have the power to raise their voices no matter what is being said or done to them, it becomes easier to take advantage of his position.
- ***Poverty*** - Most of the cases of sexual abuse come from poor families where it is a trend to sell the child to fulfill his daily needs. Parents often assume that because they have brought a child into the world, they have the right to give the child into bondage.⁷
- ***Psychological difficulties***- Some abusive people may have psychological difficulties that are contributing such as: problems controlling their emotions, an obsession with sex,

⁵ Psalm 127:3, New International Version, The Bible

⁶ The Protection of Children from Sexual Offences Act, No. 32, Acts of Parliament, 2012 (India)

⁷ Loveleen Kacker, *Childhood Betrayed* Child abuse and neglect in India, Thomson Press: India 2015

difficulties feeling for other people or understanding social rules.⁸ Also, there are people who derive pleasure by beating and torturing children. In order to fulfill their desires, they commit these acts and they hardly have any idea what consequences it lead to in children. Most adults who sexually abuse children were, during their own childhoods, perhaps abused sexually, physically as well as neglected physically and/or emotionally. In reaction to those experiences of abuse, neglect, betrayal and powerlessness, they may have attempted to find feelings of power and control over others – including sexual power over children.

- **Acquaintances** – Children are innocent beings. They want care and affection. So, they tend to immensely trust the people blindly from whom they feel loved and cared. However, in our society, there are so-called ‘trustworthy’ people who do not think twice before taking sexual advantage on children they know, hoping that they will be unaware of the fact how they are treated and will not protest eventually.
- **Lack of education**- Children who are deprived of education due to financial and social conditions of the family mostly become prey to such people masked with goodness. Moreover, at times, they do not get the support from other people who may not believe them getting victimized and thus, they are compelled to suffer.

Some of the consequences of the abuse are discussed below: -

- **Physical consequences**- The outcome of child abuse can be pernicious and have a long-lasting effect on the mental conditions of the child. These include for example: gynaecological and gastro-intestinal problems, respiratory difficulties and problems related to the muscle and neurological systems, headaches, stomach pains, urinary tract infections etc.⁹ It also results in genital and urethral injuries due to the penetration. Sexually Transmitted Diseases (STDs) are the most common outcome of sexual abuse. They are highly prone to Human Immunodeficiency Virus (HIV).
- **Psychological impacts**- Childhood abuse disrupts the mental and psychological balance in the child. It agitates the cognitive thinking of the brain and hence, the child develops a feeling of fear while socializing with others. They face difficulty in trusting people which may include their close friends, relatives and strangers. They become so much engulfed by the trauma that they are unable to come out of it.

⁸ CEOP Education, <https://www.ceopeducation.co.uk/parents/articles/why-do-people-sexually-abuse-children/> (last visited May 15, 2024)

⁹ Swea Jelic Tuscic, Gordana Buljan Flander, Dragana Materkovic, The Consequences of Childhood Abuse, Paediatrics Today 2013, page 28

- **Behavioral consequences-** As a result of such disgraceful act, children experience behavioral changes. They become easily irritated. They show symptoms of hostility, aggressive behavior, nightmares and suicidal thoughts. Long-term exposure to physical abuse may lead to deficits in motor, cognitive, linguistic and socio-emotional development, lack of success in school, psychiatric disorders such as depression, anxiety and PTSD (Post Traumatic Stress Disorder), and behavioural and adjustment disorders.¹⁰
- **Intimate relationships-** Childhood traumas make understanding people's feelings difficult in the long run. They always fear of getting treated in the same deplorable way and are unable to take the risk of trusting again. They face problem in coping with the issue and trusting their partners.
- **Post-Traumatic Stress Disorder-** Post Traumatic Stress Disorder or PTSD are very common in children after such abuse. CSA can greatly affect the child physically, psychologically, and sexually.¹¹ These children require special care and treatment starting from their parents to other persons close to them. Prolonged counselling sessions can provide them the support psychologically and mentally so to heal their wounds.
- **Social stigma-** It is always the victims rather than the actual offenders who go through the agony socially and mentally. They face the shame and dishonor, and are sometimes, blamed by the society for getting abused despite having any fault of the child.

3. SEXUAL OFFENCES AGAINST CHILDREN IN INDIA

Child sexual abuse (CSA) is defined by the World Health Organisation, WHO as “the involvement of a child in sexual activity that he or she does not fully comprehend and is unable to give informed consent to, or for which the child is not developmentally prepared, or else that violate the laws or social taboos of society.” As per Report of the consultation on child abuse prevention, WHO, Geneva, 29-31 March, 1999. The Report further states that 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.

According to the POCSO Act, the following sexual offences against children are elaborated: -

¹⁰ Swea Jelic Tuscic, Gordana Buljan Flander, Dragana Materkovic, The Consequences of Childhood Abuse, Paediatrics Today 2013, page 27

¹¹ Shalini Gupta, Dr. Seema Garg, Causes and Effects of Child Sexual Abuse, IJISRT, Volume 5 - 2020, Issue 5, page 3

- a. ***Penetrative sexual assault-*** According to Section 3 of the Act, it involves penetration of penis or insertion of any object or applying the person's mouth to the vagina, urethra or anus of the child.
- b. ***Aggravated penetrative sexual assault-*** Section 5 of the Act states that it involves committing penetrative sexual assault by a police officer, member of armed forces or security forces, public servant, staff of a jail, remand home, hospital or educational institution or religious institution on a child. It also includes making the child mentally ill or inflicting him/her with Human Immunodeficiency Virus (HIV) or making a female child pregnant etc.
- c. ***Sexual assault-*** Touching the vagina, penis, breast, anus of the child by any person with sexual intent or causing the child to touch the mentioned body parts or any physical act without penetration is said to be sexual assault as per Section 7 of the Act.
- d. ***Aggravated sexual assault-*** As per Section 9 of the Act, it involves committing sexual assault by a police officer, member of armed forces or security forces, public servant, staff of a jail, remand home, hospital or educational institution or religious institution on a child. It also includes making the child mentally ill or inflicting him/her with Human Immunodeficiency Virus (HIV) or making a female child pregnant etc. Any person making the child strip or parade naked in public or administering drug or hormonal substance to make the child attain sexual maturity also amounts to aggravated sexual assault.
- e. ***Sexual harassment-*** According to Section 11 of the Act, when any person, with sexual intent exhibits or gestures any part of his body or makes the child show any part of the body, entices a child for pornographic purposes, or threatens to use or show any part of the child's body in a sexual act and others, it is said to be sexual harassment.

Some other types of sexual offences or offences against children have been discussed below: -

- i. ***Child Sexual Abuse-*** It means involvement of a child in sexual activities other than penetration. It further consists of some other kinds of abuses which are as follows:-
 - a. **Physical Sexual Abuse:** - Touching and fondling of the sexual parts of the child's body (genitals and anus) or touching breasts of pubescent females is termed as physical sexual abuse. The child is forced to touch the sexual parts of a partner's body. It may also involve sexual kissing and embraces.
 - b. **Non-physical sexual abuse-** Actions like passing vulgar, lewd comments, showing pornography to a child, playing games with sexual themes etc.

- c. Verbal Sexual Abuse: - Using inappropriate language by perpetrator with the child to generate sexual excitement, including making lured comments about the child's body and making obscene phone calls.
- d. Emotional Sexual Abuse: - Here, the child is lured by an adult to fulfill the desires and emotional needs of a spouse by inappropriate actions.
- ii. **Commercial Child Sexual Exploitation**: - It involves the manipulation of the child into sexual activity in exchange for things such as money, gifts, accommodation, affection or status. Here, the child is used as a sexual object in return of remuneration. All these illegal sexual activities are considered sexual offences under Indian legal system. Various offences covered under child sexual exploitation include child prostitution, rape, child marriage, child trafficking, unnatural offences, sex tourism, pornography, etc.
- iii. **Incest**- Incest is termed as the forbidden sexual relationship between close relatives of a family such as brother, sister, parent, etc.
- iv. **Psychological abuse**- It involves certain prolonged deliberate and desperate behavioral acts like isolating the child, scaring him away etc. that create an impression in the mind of the child that he is not good enough, unlovable, weak.
- v. **Online sexual abuse**- Here, the child becomes prey to the online predators through different social networking sites, cyber bullying etc. Text messages, online gaming platforms, live-streaming websites, online conversations are some of the ways children get victimized.
- vi. **Child Sexual Tourism** – It involves the movement of the offender to different places for indulging in sexual relations with the child and using the child as a commercial object in exchange of money, food and clothes.

4. INTERNATIONAL LEGAL FRAMEWORK GOVERNING PROTECTION OF CHILDREN FROM SEXUAL OFFENCES

According to UNICEF, "About 1 in 10 girls under the age of 20 have been forced to engage in sex or perform other sexual acts." Numerous initiatives and projects have been undertaken around the world by different international organisations to create awareness and curb this menace at large. Global Partnership to End Violence against Children, Together for Girls and the WePROTECT Global Alliance to End Child Sexual Exploitation Online are some of the projects that set the ball rolling regarding child exploitation.

International organisations like the League Of Nations first recognized the **Rights of the Child** in 1924 by adopting the Geneva Declaration which was drafted by Eglantyne Jebb, Save the Children

founder. In 1948, the **Universal Declaration of Human Rights** was adopted by the United Nations General Assembly to shower protection and facilities regarding violence against human beings.

The most hailed initiative is the **United Nations Convention on the Rights of the Child (UNCRC)**, adopted by the United Nations in 1989 which is a legally binding international agreement dealing with civil, economic, social, cultural and political rights of every child around the four corners of the world. It consists of 54 articles out of which *Article 1* defines child as the one who is below the age of 18 years and is protected by the rights of the convention. There are mainly four articles which play a crucial role regarding the rights of the children which are as follows:-

- *Article 2 (Non- discrimination)*- Every child irrespective of caste, creed, religion, race, sex, ethnicity is protected under this Convention.
- *Article 3 (Best interests of the child)*- Every child must be given the opportunity to express their interests and that will be given the top priority.
- *Article 6 (Right to life, survival and development)*- Every child has a right to life and to survive with full potential.
- *Article 12 (Right to be heard)*- Every child has the right to express their views, feelings and wishes in all matters affecting them.

There are some other articles which are concerned with child labour¹², drug abuse¹³, sexual exploitation¹⁴, abduction, and sale and trafficking of children¹⁵.

This Convention consists of a number of “Optional Protocols”. Out of these, the **Optional Protocol to the convention on the sale of children, child prostitution and child pornography** protects children from being sold for non- sexual purposes such as other forms of organ donation, forced labour and illegal adoption.

Various additional international agreements, such as the Convention to End All Forms of Discrimination Against Women and the International Covenants on Civil and Political Rights and Economic, Social, and Cultural Rights, are crucial to addressing and eliminating child sexual exploitation.

¹² Art. 32 of the United Nations Convention on the Rights of the Child, 1989.

¹³ Art. 33 of the United Nations Convention on the Rights of the Child, 1989.

¹⁴ Art. 34 of the United Nations Convention on the Rights of the Child, 1989.

¹⁵ Art. 35 of the United Nations Convention on the Rights of the Child, 1989.

5. THE EMERGENCE OF POSCO ACT

Child abuse is a primordial problem in India and over the years, numerous cases of such abominable acts have been reported. Since there was not any full-proof act regarding criminalizing sexual abuses against children, the Indian government passed the POCSO Act in 2012 to curb such menace from the society. According to National Crime Records Bureau, child rape cases have surged by 96% from 2016-2022 including various forms of penetrative assaults.

Before the POCSO Act came into force, the landmark judgment in the famous **Mathura case**¹⁶ faced a backlash from many people due to its ambiguity and incorrect approach. This resulted in the enactment of the Criminal Law (Second Amendment) Act, 1983¹⁷ amending provisions regarding rape and added provisions for in-camera trials. Also, the court is bound to presume that the victim did not consent to sexual intercourse if she admits that she did not consent¹⁸.

Before the enactment of the POCSO Act, 2012, the Indian government was dependent on The Goa Children's Act, 2003¹⁹ to protect children from crimes committed against them. Since, there was not any specific law to criminalise offences against children, sexual offences against children were covered under the following sections of the Indian Penal Code, 1860²⁰ :-

- i. Section 375- Rape (corresponding to Section 63 of The Bharatiya Nyaya Sanhita, 2023²¹)
- ii. Section 354- Outraging the modesty of a woman (corresponding to Section 74 of The Bharatiya Nyaya Sanhita, 2023²²)
- iii. Section 377- Unnatural acts (omitted in The Bharatiya Nyaya Sanhita, 2023)

But, there were certain drawbacks in the above mentioned sections which were overlooked. These sections are a shield against female victims and not the male ones. Like S. 375 of the Indian Penal Code, 1860 does not provide protection to male victims against any kind of sexual acts. Similarly, S. 354 neither defines the term 'modesty' nor does it protect male victims. Likewise, S.377 does not define the term 'unnatural acts' and does not shield children from any sexual offences.

¹⁶ Tukaram and others Vs. State of Maharashtra AIR 1979 SC 185.

¹⁷ Criminal Law (Second Amendment) Act, 1983, No. 46, Acts of Parliament, 1983 (India).

¹⁸ S. 114(A) of the Indian Evidence Act, 1872, No. 1, Acts of Parliament, 1872 (India).

¹⁹ The Goa Children's Act, 2003 and Rules, 2004, No.18, Acts of Parliament, 2003 (India)

²⁰ The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India)

²¹ The Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 (India)

²² The Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 (India)

Thus, there was a need to pass a specific legislation meant only for offences committed against children.

6. KEY FEATURES OF THE ACT

- **Gender-neutral provision-** This Act does not differentiate between the victim and the offender on the basis of gender. This fills up the major loophole which was previously present in the Indian Penal Code, 1860²³. According to Section 2(d) of the Act, “*child*” means any person below the age of eighteen years²⁴. Thus, the definition covers every child, irrespective of gender across the country.
- **Different forms of sexual abuse-** It encompasses various forms of sexual abuses committed against children including sexual harassment, pornography, penetrative & non-penetrative assault.
- **Provision for Special Courts-** It provides for setting up of special courts for speedy trial of offences under this Act²⁵. It also mandates that the special courts shall provide a child-friendly atmosphere by allowing a family member or a guardian to be present in the court.²⁶
- **Mandatory reporting of child abuse-** The law mandates the reporting of child abuse to the police or designated agency specifically for child protection. There is strict punishment for failure to report such abuse by any person.
- **Confidentiality of victim’s identity-** According to Section 23(2) of the Act, the identity of the victim including his/her name, address must not be disclosed in any media unless it is permitted by the Special Court.

7. LOOPHOLES OF THE POSCO ACT

The POSCO Act is a comprehensive legislation enacted to protect children from sexual offences committed against them. In spite of an extensive act, exclusively meant for children, there are certain shortcomings of the act which are discussed in details: -

- There are many incidents happening in every nook and corner of the country which we are not well aware of. But, the rate of reporting such cases to the police station by the family members or the relatives of the victims is very scarce. They fear being attacked or harmed by the offenders in critical cases, or sometimes, they are being threatened or coerced for

²³ The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India)

²⁴ The Protection of Children from Sexual Offences Act, S. 2(d), No. 32, Acts of Parliament, 2012 (India).

²⁵ The Protection of Children from Sexual Offences Act, S. 28, No. 32, Acts of Parliament, 2012 (India)

²⁶ The Protection of Children from Sexual Offences Act, S. 33(4) No. 32, Acts of Parliament, 2012 (India)

raising complaints against them. Most of the cases are not reported out of shame, embarrassment, anger and frustration in order to avoid the social stigma.

- There is a discrepancy regarding Section 22 of the Act. Sub-section (2) of this section does not prescribe punishment for children who raise false complaint or provide false information. But, punishment with imprisonment extending up to six months or fine or both is imposed on those children who file false complaint regarding sexual offences to humiliate, threaten or defame any person.
- The cases which are registered, are hardly executed at a fast rate in spite of having a provision for Special Courts under the Act. There is always a delay in court proceedings. The investigation of the case takes longer than the stipulated time and thus, there is a delay in commencement of trials.
- Some people use this law as a weapon to tarnish the image of others, by making false allegations and portraying the innocent as guilty. The term 'sexual abuse' encompasses a wide ambit of acts accomplished with sexual intent. Now, sexual intent is a question of fact and it is difficult to prove before the court of law. For example, a simple touch may put innocent parents behind the bars who intended to treat their child affectionately.²⁷
- Though the act imposes stricter punishments and penalties for the accused to deter them from committing further crimes, it often results in acquittal of the accused. This deprives the victims of the remedy and thus, they lose trust over the judicial system. Hence, there is a low rate of conviction.
- Another major flaw in the Act is the use of 'last seen theory' in the child sexual violence. According to this theory, the person last seen with the victim is presumed to be the perpetrator if the time gap between the last time they were seen alive is so small that no one else could have committed the crime.²⁸ In **Shyamal Ghosh v State of West Bengal**²⁹, it was held that when the time gap is large, it is unreasonable for the courts to apply this theory.
- It's a fundamental part of criminal jurisprudence that every person is said to be innocent until proven guilty. But here, as per Section 29, when charges are brought against any person for committing sexual assault, penetrative sexual assault and likewise offences, it is always presumed by the court that the offender is guilty from the very beginning. Thus, the principle

²⁷ Legal Specs, <https://www.legalspecs.org/post/pocso-act-features-controversies-and-recommendations>, (last visited on May 19, 2024)

²⁸ Jurists Global, <https://juristsglobal.com/immigration/f/pocso-act-a-critical-study-of-jurists-global-research>, (last visited May 20, 2024)

²⁹ Shyamal Ghosh v State of West Bengal, (2012) 7 SCC 646

of natural justice gets violated, which is based on *audi alteram partem*, meaning ‘no one should be condemned unheard’.

- Child marriages are still prevalent across the country and are considered legal under personal laws. But this act opposes such practice. This creates a contradiction.

As per Section 34 of the act, any offence committed by a child is dealt according to the provisions of Juvenile Justice Act, 2015³⁰ and any question arising regarding the age of the child, it is the discretion of the Special Court to decide. Here, the age of the accused is given priority rather than the gravity of the offence committed. For example, in Kathua Rape case³¹ in 2019, one of the 8 accused, was a minor and was treated juvenile. In spite of his heinous act of smashing the victim with stone causing her death, he was acquitted and not subject to stringent punishment.

8. IMPORTANT JUDICIAL DECISIONS ON POSCO

- **Tukaram and others Vs. State of Maharashtra**³²

Before the POCSO Act came into force, the landmark judgment in the famous Mathura case faced a backlash from many people due to its ambiguity and incorrect approach. This resulted in the enactment of the Criminal Law (Second Amendment) Act, 1983³³ amending provisions regarding rape and added provisions for in-camera trials. Also, the court is bound to presume that the victim did not consent to sexual intercourse if she admits that she did not consent³⁴.

- **Jarnail Singh v State of Haryana, 2013**³⁵

The Supreme Court held that the procedure to determine the age of the child who is in conflict of the law, as provided under Rule 12(3) of the former Juvenile Justice (Care and Protection of Children) Rules, 2007, can be undoubtedly be used in cases falling under POCSO Act as well. Here, Jarnail Singh, the respondent was alleged to kidnap and rape the victim when she was sleeping. As per the rule, in order to determine the age of a child, the first preference is given to the matriculation certificate, then to the date of the child’s first admission in the school and lastly to the, certificate issued by the local municipality. In this case, since the victim studied till standard 3, the age was determined based on the date of birth certificate from the school first attended and it was proved that she was a minor on the date of the offence committed. Thus, the rigorous

³⁰ The Juvenile Justice (Care and Protection of Children) Act, No. 2, Acts of Parliament, 2015 (India)

³¹ Mohd. Akhtar V State of Jammu and Kashmir, 2019

³² Tukaram and others Vs. State of Maharashtra AIR 1979 SC 185

³³ Criminal Law (Second Amendment) Act, 1983, No. 46, Acts of Parliament, 1983 (India).

³⁴ S. 114(A) of the Indian Evidence Act, 1872, No. 1, Acts of Parliament, 1872 (India).

³⁵ Jarnail Singh V State of Haryana, AIR 2013 SC 3467

punishment imposed upon him for 7 years by the Sessions Court was upheld by the High Court, leading to dismissal of the respondent's appeal.

- **Raju Yadav v State of NCT of Delhi, 2023**³⁶

In this recent matter, one of the respondents was found guilty of committing aggravated penetrative sexual assault under Section 6 of the POCSO Act and the other was alleged to abet and aid the offence as per Section 16 of the said act. They were sentenced to rigorous imprisonment for 10 years along with fine of Rs. 10,000/-. It was held that '*the statement of prosecutrix can be the sole basis for conviction unless there are cogent reasons for the Court to be hesitant in believing the statement at its face value or to seek corroboration*'.

- **Attorney General for India v. Satish and Another, 2021**³⁷

This case is referred to one of the controversial matters so far as implementation of POCSO Act is concerned. Here, the defendant lured a 12-year-old child to his house with the intention of offering her guava and touched her breasts and even attempted to take her clothes off. Though he was convicted as per Section 8 of the POCSO Act regarding sexual assault by the Session's Court, but the High Court of Bombay dismissed his conviction under this section when he appealed. The reasoning provided by the High Court welcomed arguments across the country. The High Court was of the view that though the respondent committed 'sexual assault' under Section 7 of the act, there was no skin-to-skin contact as it was done superficially over the victim's cloth. This view was overturned by the Supreme Court and he was justly convicted.

- **Vijayalakshmi and Another v. State Rep. by the Inspector of Police and Another, 2021**³⁸

In the above-mentioned case, a minor girl, having love affair with an adolescent boy, eloped and got married. He was charged under Section 6 of the POCSO Act as well as Section 9 of the Prohibition of the Child Marriage Act, 2006 as per complaint filed by the girl herself as well as her mother. But they wanted to quash the criminal proceedings initiated against him as it was causing mental agony to the girl and they wanted to settle together. The Madras Court held that "*Punishing an adolescent boy who enters into a relationship with a minor girl by treating him as an offender, was never the objective of POCSO Act.*" The court laid down a test to examine whether the offence committed is of individual nature or it is against the society with overriding

³⁶ Raju Yadav v State of NCT of Delhi, 2023 Del 1745

³⁷ Attorney General for India v Satish and Another, 2021 SCC Online SC 42

³⁸ Vijayalakshmi and Another v. State Rep. by the Inspector of Police and Another, 2021 SCC Online Mad 317

public interest. Since, it is of individual nature and ‘*no useful purpose will be served in continuing with the criminal proceedings*’, the complaint was dismissed.

- **Nipun Saxena and another vs. Union of India and others, 2019**³⁹

In this case, the offender raped and killed a woman. He was awarded capital punishment by the Bombay High Court. But the identity of the victim got disclosed through media which traumatized her in the society. The court laid emphasis on guidelines as per Section 23 of the POCSO regarding broadcasting of the victim’s identity. For example, her identity shall not be known to general public in any form of print, electronic or social media.

The court’s obiter dictum was that “*for no fault of the victim, society instead of empathizing with the victim, starts treating her as an ‘untouchable’*. A victim of rape is treated like a “pariah” and ostracised from society.” Only the Special Courts can allow their identity to be revealed and that too, on the interest of the victim only. It also emphasized in setting up of child-friendly courts which provide a calm and relaxed atmosphere so that the child does not become nervous and scared.

- **Shembhalang Rynghang v The State of Meghalaya, 2022**⁴⁰

Here, both the girl and the boy were living together as husband and wife and solemnized their marriage after attaining majority. The minor wife was impregnated by the husband and his mother-in-law filed a complaint under POCSO Act. Though there had been physical sexual contact, in no rational manner, it could be termed as sexual assault or harassment. Thus, the court reversed the sentence and fine imposed as per POCSO Act and it led to his acquittal.

9. CONCLUSION

POCSO Act, being a decade-long legislation, acts as a blanket covering all kinds of sexual offences against children which have been discussed above. Though there are a few drawbacks of this act, recommending and welcoming rectifications will strengthen its applicability and lead to a smooth delivery of justice.

The following recommendations will be helpful for the fruition of the justice system: -

³⁹ Nipun Saxena and another vs. Union of India and others, (2019) 2 SCC 703

⁴⁰ Shembhalang Rynghang v The State of Meghalaya ,2022 SCC Online Megh 67

- The need of the hour is to make the public aware about child sexual abuse so that there is no reluctance to report these crimes to the designated agencies. Talking about these abuses is still considered a taboo in certain parts of the country like in villages and people hesitate to bring the matter to the forefront.
- Circumstances arise at times when the child refuses to undergo medical examination but his/her family insists upon him to undergo. This results in ambiguity and provisions must be laid down what is to be done regarding the same.
- A large number of cases have been already pending since long. Reporting of new cases is increasing the backlog to a certain extent. Thus, the foremost thing to be done is to set up more Special Courts, ensure dismissal of cases at a faster rate and train investigative agencies and judges to handle the matter.
- Though the Act mandates the medical examination of a girl child to be conducted by a female professional, it is not well followed in every sphere. This needs to be taken care of during the examination.
- Guidance towards sex education must be strictly provided, especially in the remote village areas where illiterate minor children, without knowing much about the consequences, get engaged in physical relations.
- While the minor female and the male get involved in consensual physical activity, due to the pressure from the family and fear of social stigma, people misuse the Act and raise complaints against the person which leads to mental harassment.
- The Act already provides for a child-friendly Special Courts for the victim. It should be made sure that this provision is actually followed, not just for the sake of enactment of the law.

The act has remarkably succeeded in fulfilling its objective to a large extent but it still has a long way to go.