

## **POCSO: A Revolutionary Act for the Protection of Child (With Special reference to Girl Child)**

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### **Abstract**

*Girl child sexual exploitation is a form of injustice in which an adult or a youngster uses a girl child for his sexual provocation and satisfaction of his lust. Although, it consider as a criminal offence where a man or a teenager engage in sexual act with minor girl which never accepted by the Indian Society. Through this paper, focus is created on the laws framed by the legislature for the protection of sexually abused children and the role played by the judiciary for their Safeguards.*

A Child is a great gift to the humanity. Sexual exploitation of children is one of the heinous crimes. It is gross violation of their faith and is a good reason for our own commitment for protecting these innocent Children. There are many provisions in our constitution for the protection of Children. The opportunities and facilities for healthy development of the Children in an independent and dignified environment and protection from abuse and exploitation of Children's conditions lie in our constitution. A report, published in 2007 by the Ministry of Women and Child development is very shocking. According to this report, about 53% Children admitted in their interviews that they had been victim of sexual abuse or sexual exploitation at any point of time. The surprising fact is; that many accused of sexual abuse or sexual exploitation abuses are from their family members, relatives, teachers, known and neighbor. This report also revealed; that most of the Children who are the victims of

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sexual exploitation from the age group of 5 to 12 Years and the victims of the sexual abuses or exploitation are not only girl child but male child also<sup>3</sup>.

In the year 1960, the United Nations have issued a “Chapter on the Right of Children's in the General Assembly”. This manifesto recognized various rights and entrusts of the children's. India also adopted this Chapter. In the same period, a similar report also prepared by the United Nation on human rights and Child’s right which was adopted by the General assembly of United Nations on 20th November 1989. This report prepared international standards for protection and promotion of Children's right. The Government of India also accepted and adopted<sup>4</sup> the present report. On 11th December 1992, United Nations has passed the conventions on the basic rights of the Children's by incorporating 54 Articles. These articles consist of definition of a child, discriminations, favorable interests of the Children, implementation of their rights, direction to the parents, development on the Child's abilities, protection of name and national identity separation from the parents, general view of the Children’s, freedom of the expression, views, internal views, freedom for religion, freedom for unity, parents liability, protection of separated Children’s, problems and solutions related to many parties and general provision related to fundamental right etc.

## **Indian Constitution and Rights of Children:**

1. Article 14 of the Indian Constitution given the rights to the every person to the equality before the law, irrespective the age and the category.
2. Article 15 of the Indian Constitution prominently presents a unique system beneficial to the children's according to which, even if the state made a special provision in the interest of children's, will not be discriminated constitutionally.
3. According to the Article 21A, the state will provide free and compulsory education to all children between the age group of 6 to 14 years. This provision was not given originally in the constitution but the said provision was added by the 86th constitutional Amendment Act 2002.

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<sup>3</sup> A Study of child abuse 2007, survey report of ministry of Women and Child Development.

<sup>4</sup>Indian Government rectified \_11 Dec 1992.

4. Article 21 conferred the right to life and personal liberty. In fact, while interpreting this provision from a human point of view, the Supreme Court has given adequate protection to the human rights related to the children on various occasion and through judgments.
5. Article 23 prohibits human trade and child labour. It is noteworthy that this provision has special importance in liberating children from immoral exploitation.
6. Article 24 ensure the safety of life and health of minor Children's this provision prevents the employment of Child under 14 years of age to work in the factory or in any other hazardous industry.
7. Article 39 (e) imposes the responsibility on the state to ensure that the Childs of the tender age should not be abused anywhere.
8. Article 39 (f) makes expectation from the state government to give the Childs opportunities and facilities for healthy development in an independent and dignified environment and protect them from all forms of the exploitation.

Provisions related to the development and protections of Children, Youth were made by the law makers along with the punitive laws i.e. IPC. The laws related to the sexual offences and exploitation to the Children were made in IPC. The details of Crimes and per petal crimes are being mentioned in brief by the following table-

### **Crime against Child and the punishment under the provisions of Indian Penal Code 1860.**

<b>Sections</b>	<b>Offences</b>	<b>Penalties/ Punishment</b>
<b>292</b>	<b>Obscene and Indecent</b>	<b>Imprisonment 2 years and with fine</b>
<b>354</b>	<b>Outrage of her Modesty</b>	<b>Imprisonment 1-5 years with fine.</b>
<b>360</b>	<b>Kidnapping from India</b>	<b>Imprisonment for 7 years with fine or both.</b>
<b>361</b>	<b>Kidnapping from lawful Guardian</b>	<b>Imprisonment for 7 years with fine or both.</b>
<b>366 A</b>	<b>Procuration of minor girl.</b>	<b>Imprisonment for 10 years with fine or both.</b>

<b>366 B</b>	<b>Importation of girl from foreign country.</b>	<b>Imprisonment for 10 years with fine or both.</b>
<b>372</b>	<b>Selling minor for the purpose of prostitution.</b>	<b>Imprisonment for 10 years with fine or both.</b>
<b>376 (2) (f)</b>	<b>Rape, Gang rape.</b>	<b>Life Imprisonment.</b>

**Information Technology Act, 2008:** Today the uses of social media has increase which become an easy mode to provide the material for the satisfaction of sexual desire or lust. although these materials are prohibited and restricted under IT Act 2008 but still they are easily available. for such purpose section 67 B has a great importance. Under Section 67 B of the Information Technology (Amendment) Act-2008, Production and forwarding the Child pornography is deep tried to be a punishable act. Sexual harassment activities, publishing through electronic form will be punished as per Act. The legislature has enacted various laws to prevent the crimes against the child but child crime is not in controlling position and increasing day by day. Almost daily, we heard about the sexual offences in newspapers, news channels internal etc. It is shameful and strange that the girl Childs are not safe in the society and they are being subject to sexually abused and exploited by their parents, neighbors, school staff, teachers, relatives etc. as per the crime record bureau; 106958 cases were registered in the year 2016 and out of them 18,480 cases were related to the child sex abuses and exploitation. 16,079 cases were reported, registered in UP Only<sup>5</sup>. This data is only of registered cases but there may be so many cases which might have been unregistered due to some reasons. For the above reasons only sexual assault, protection of child from sexual harassment, pornography, related or incidental or identical subject became the main reason for the need of a protective law was felt for the effective implementation of law which can be effective against those person who commits heinous crimes of sexual abuse and sexual exploitation. Keeping this aspect in the mind, the parliament has passed the protection of Children from sexual offences Act in 2012. The establishment of the special courts was one

<sup>55</sup> National Crime Report Bureau, Ministry of Home affairs, Government of India, Report 2016.

of the objects of the Act. This act came into the force since 14th Nov, 2012 in whole of the India except Jammu and Kashmir.

## **Main features of the Protection of Children from Sexual offences Act-2012 (POCSO):**

### **Who is a Child:**

According to this Act, a child means someone who is under the age of 18 years<sup>6</sup>. The Childs of this age group are innocent and legally they are not competent to give their own consent<sup>7</sup>. The consent of a child deemed not material and the Child has been protected from sexual assault, sexual exploitation, sexual harassment and pornography, under the provisions of the Act. This act is an-expression of gender neutrality because this act provides the equal protection not only for girls but for boys also.

### **Offences and Penalties:**

For the first time, crimes like sexual assault, sexual harassment and pornography were clearly defined and serious forms of crimes were also mentioned in this Act<sup>8</sup>. An offence is considered more serious, when such crime is committed by a person who is in the position of a guardian of the child or who has some kind of authority over the child like Security, Force, Police, Officer or Public Servant etc.

## **The Main offences described in this Act and their punishment**

### **1. Penetrative sexual assault:**

A person is deemed to be guilty of sexual assault by penetration when he enters his penis or any part of his body (Which is not a penis) to some extent into the mouth, vagina, urethra and anus of a child or does with him by any child or does with any other person by the child, or keeps his own mouth on the penis, vagina, urethra, anus of any Child, does with him or with

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<sup>6</sup>POCSO Act section 2 (d).

<sup>7</sup>Indian Contract act 1872 Section 2 (ii).

<sup>8</sup>POCSO (Protection of Children from Sexual Offences-2012)

any other person by the Child<sup>9</sup>. He shall be punished with imprisonment for a period which shall not be less than 7 years but can be extended upto life imprisonment and shall also be punishable with fine (Section-4). Section-5 of this Act defines serious sexual assault. For this offence, a person can be given rigorous imprisonment for a term not less than 10 years but can be extended upto the life imprisonment and shall be punished with fine also.

## **2. Sexual Assault-(Section 8 to 10):**

When a person who touches child's, vagina, penis, anus, breasts with sexual intention, touches or prepare any other person to touch his penis, vagina, anus, breast by the Child with sexual impulse or does any other act, in which the sexual relationship ends without penetration. The person shall be guilty of sexual assault for which he may be punished 3 years minimum and can be extended upto 5 years and shall be punished with fine also. Section 9 of this act defines serious sexual assault having punishment of imprisonment not less than 5 years, which can be extended upto 7 years and be punished with fine also.

## **3. Sexual Harassment:**

Sexual harassment is a crime which has been defined in Section 11 of this Act and it occurs when a person- (a) States any word, sound, reflection of organ with a sexual blessings. (b) Ask a child to show his body or any part of the body. (c) Show any obscene object in any form or media for the purpose of pornography, to the Child. (d) Seeing, contacting, or following the child constantly personally, through electronic or other means. (e) Threats for using and circulating in media by photographs and by drawing any picture in any form. (f) Making lure any Child for the purpose of pornography. Any person, who is guilty of any above crime, shall be punishable with imprisonment upto 3 years and with fine also. This provision is given in Section 12 of This Act.

## **4. Use of Child for the purpose of Pornography:**

This Provision is given in the section 13 of the Act. The crime of the pornography is committed when any person uses a child for sexual gain in any form of media and he does it either for personal use or for distribution, the forms of the media includes television channel, advertisement, internet, any other electronic format and print media also. A guilty person of

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<sup>9</sup>Section 3 of Protection of Children from sexual offences.

this offence will be punished with the imprisonment upto 5 years and with fine also. A person who is guilty with the continuing or consequent offence will be punished with imprisonment upto 7 years and with fine also.

## **5. Establishment of Special Courts and their Procedures<sup>10</sup>:**

The provision for the establishment of the special courts for the speedy trial of the offences stated in this act has been given in the section 28 of this Act. The special court will conclude the complete trial possible within one year<sup>11</sup> from the date of taking cognizance of offence. A session court can be designated by the state government as special court in consultation with the chief justice of the concern high court in every district and it should be done by the state government. In addition to this there are several other provisions related to friendly investigation and friendly prosecution. Keeping this view in mind, there is a provision for recording the statement of Child at his home or his choice place, not to keep in the police station and his medical examination is to be done in the presence of his parents or any other person who is trustable by the Child<sup>12</sup>.

Similar a duty is also imposed to the special courts to ensure that the Child will not be called again and again for the examination and any question which violates the character of the child should not be asked during the trial of the case<sup>13</sup>. Apart from this, the media is prevented from reveling the identity of the Child. If media revealed the identity and name of the child victim, without the permission of the special court, there is the provision for imprisonment of six months to one year<sup>14</sup> for the act.

Generally, the prosecution has the burden for proving the guilt, and criminal mood of the accused<sup>15</sup> but in the case of the prosecution of an offence of the Act, the court will make an assumption of the existence of the criminal mentality condition of the accused and will also assume that a person has committed such offence. Now it is depended on the accused to

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<sup>10</sup>POCSO Act Section 14 (1).

<sup>11</sup>POCSO Act Section 35.

<sup>12</sup>POCSO Act Section 27 (3).

<sup>13</sup>POCSO Act Section 33(1).

<sup>14</sup>POCSO Act Section 23.

<sup>15</sup> Section 101 of Indian Evidence Act 1872.

prove it against the assumption, so now the accused has to prove that he did not committed this crime and is not the guilty.

**Judicial Response:** Here the main focus is created on the attitude of judiciary towards the protection of girl child and what steps are taken by the courts for their protection. the focus is create on the basis of following cases.

In case titled as Exploitation of Children in Orphanages in the *State of Tamil Nadu v. Union of India*<sup>16</sup>, the apex court was unhappy by observing the fact that despite the directions as given to the states in so many cases, nothing concrete has been done with respect to the provision of POCSO Act. The Hon'ble Court again emphasize and directed to the state to create the healthy environment so that the future of the country i.e. our children may be saved.

In case titled as *Kamlesh Vaswani v. Union of India*<sup>17</sup>. The Apex court while discussing the issue of child pornography it was observed that the stated to positive steps to try and to call off the sites showing pornographic material

In case of State of *Maharashtra v. Viren Gyanlal Rajput and Another*<sup>18</sup>, a minor girl was raped and murdered. The body of the girl was recovered at the instance of the accused moreover he tried to remove the evidence of the case. While taking all these fact in consideration the Hon'ble Court was of the view that the accused was guilty of the offence committed by him.

In case titled as *Ravi Shankar @ Baba Vishwakarma v. State of M.P*<sup>19</sup>. thirteen year's girl child was raped and murdered after kidnapping and the accused tried to disappear the evidence. The court was of the observation that the accused was overcome by his lust and is guilty of the offence. while awarding him the life imprisonment the court was of the view that by awarding lesser punishment to such accused a wrong message will spread in the society.

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<sup>16</sup> (2014)2 SCC 180

<sup>17</sup> (2014) 6 SCC 705

<sup>18</sup>2015 (1) Crime 783 (Bombay)

<sup>19</sup> SC. 5347.



In case titled as *Vijay Raikanwar v. State of M.P.*<sup>20</sup> the accused was awarded death sentence by the trial court for rape and murder of a girl having age of seven and half years. The apex court commuted the death sentence to the life imprisonment.

In case titled as *Ravi s/o Ashok Ghaumara v. state of Maharashtra*<sup>21</sup>, the accused raped and murdered a girl of two years of age, the court while observing that he accused could not control over his carnal desire surpassed all natural and social limits, awarded him life term imprisonment.

In case titled as *Sheela Barse v. Union of India*<sup>22</sup>, Justice Bhagwati stated that if the children are the nation assets then it is the duty of state to ensure the complete development of the personality of the children. It is the duty of the society to take proper care of the children and to create healthy environment.

Therefore, by issuing numerous guidelines from time to time, our judicial system played an important role for the protection of the rights and dignity specially of the girl child as well as the society.

## Relief and Rehabilitation

POCSO Act-2012 also has the provision for Special Juvenile Police or Local police. This unit of Police will provide prompt treatment and provide rehabilitation to the Child on the complaint. This special police will report within 24 hours without any delay to the child welfare committee or special court and report to the session court where special court has not been established. The special court may also order for interim compensation to meet an immediate need for relief and rehabilitation of the Child either on Suo-motto or after registration of the first information report of the case.

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<sup>20</sup>(2019) 4 SCC 2010

<sup>21</sup> AIR 2019 SC 5170.

<sup>22</sup> AIR 1986 SC 1773.

## **Conclusion**

Of Course, POCSO Act-2012 will proved as a powerful weapon to curb the horrific environment of the Child sexual abuse and will help to establish an appropriate mechanisms to protect the best interests of the Childs. This act gets the honor to became the first special law relating to the sexual offences against the Child. The National Child Rights commission and the state child rights commission have the responsibility for monitoring and successful implementation of this Act, although the act provides the provisions for making aware to the public, the parents and to the guardians of the child. The Centre and the State government held responsible for making arrangements for the proper Publicity/Advertisement of the beneficial provisions of the Act through media in society but in the absence of the wide publicity or the advertisement, this Act did not take a form of campaign. Besides this, to control over the volume of such crimes, the moral education in the schools and colleges are also requires.