

# STUDY ON JUDICIAL APPROACH TOWARDS CHILD SEXUAL ABUSE IN INDIA WITH SPECIAL REFERENCE TO PRE AND POST POCSO LAW IN INDIA

**Dr. Rekha Pahuja**

Assistant Professor  
S.S. Maniyar Law College, Jalgaon  
North Maharashtra University, Jalgaon  
Mob no: 8554040542  
Email id: rekhapahuja29@gmail.com

“Survivors of abuse show us the strength of their personal spirit every time they smile.”

**-Jeanne McElvaney**

## Abstract

The Social problem of Child Sexual Abuse has been happening for centuries but however it has very recently been acknowledged as a problem in India. Therefore, special law that is Protection of Children against Sexual Offences (POCSO) 2012 has been enacted by the Parliament which criminalizes range of acts including child rape, sexual harassment, and exploitation for pornography etc.. Child Sexual Abuse can be done by touching private parts, taking obscene photos, showing pornography pictures or other such material to child etc. In India, sexual abuse against girl child has added fuel to the fire and it had made its place in one of the hot topic for debate and research in India. The present article therefore, discusses the need for enactment of POCSO Law, its provisions in brief and more importantly the judicial approach towards child sexual abuse cases pre and post POCSO Law in India and its efficacy.

## INTRODUCTION

The Protection of Children from Sexual Offences (POCSO) Act, 2012 deals with sexual offences against persons below 18 years of age, who are deemed as children. The Act for the first time, defines “penetrative sexual assault”, “sexual assault” and “sexual harassment”. The offence is considered graver if it is committed by a police officer, public servant, any member of the staff at a remand home, protection or observation home, jail, hospital or educational institution, or by a member of the armed or security forces. The present Act has also provided for use of child for pornographic purposes and punishment therefore. The Act has imposed obligation on personnel of media, hotel, lodge or hospital or club or studio, or photographic facilities to report any such pornographic, sexually related or obscene to Special Juvenile Police Unit or to the local police.

## OBJECTIVES

- To study the concept and types of sexual offences against the children
- To study the reasons for enactment of POCSO Law
- To analyze the judicial approach before and after enactment of POCSO law
- To conclude with suitable recommendations.

## RESEARCH METHODOLOGY

The researcher has adopted doctrinal method for the purpose of collection of data. It includes books, articles, various law journals, newspapers and internet. The material was collected and arranged in order.

## REASONS FOR ENACTMENT OF POCSO LAW

The very inadequacy of Indian Penal Code and absence of any stringent legislation for effectively addressing and tackling heinous crimes such as sexual exploitation and sexual abuse of children birthed the commencement of POCSO ACT as the very intention of Government establishments was to protect the children from offences of sexual assault, sexual harassment and pornography and to facilitate adequate legal machinery by establishing special courts for trial of such offences and matters incidental connected with child sexual

abuse crimes. This was in due compliance of Article 15 of Constitution of India which mandates the states to protect the children of this nation and in lieu of United Nations Conventions on the Rights of the Child which prescribes the set of standards to be followed by state parties in securing the best interest of the child.

## DEFINITIONS

According to Medem, child sexual abuse is “any sexual act with a child performed by an adult or an older child”. “It is a fact that millions of girls and boys worldwide are being sexually abused within homes and outside”. World Health Organization (WHO) defines child sexual abuse as, “inappropriate sexual behavior with a child and involving a child in sexual activity that he or she doesn’t fully comprehend is unable to give informed consent to, or that violates the laws and social taboos of society”.

## IMPACT OF CHILD SEXUAL ABUSE ON CHILD

Child sexual abuse may cause-

1. Depression
2. Post traumatic stress disorder
3. Anxiety
4. low self esteem
5. propensity to further victimization in adulthood
6. physical injury to child
7. Psychological trauma

## JUDICIAL APPROACH

### BEFORE POCSO ACT,2012

It is important to judicial approach towards the crime of sexual abuse of children before POCSO Law was made.

#### **Ghanashyam Misra vs. The State**

In the year 1956, the Orissa High Court, recognizing that the offence was committed by offence is committed by a person in a position of trust or authority for the child, enhanced the sentence of Ghanashyam Misra, a school teacher who raped a 10 year old girl in the school premises. The judgement reads – “The circumstances are all of an aggravating nature. The victim is a young girl of ten years, and the culprit an adult of 39 years... He took advantage of his position by inducing her to come inside the School room and committed such an atrocious act, the consequence of which might as well be the complete ruin of the future life of the girl.’ Not only did the court enhance the sentence to seven years but also ordered the accused to pay a compensation to the father and the child.<sup>1</sup>

#### **Gurcharan Singh vs. State Of Haryana**

In this case a girl under 16 years was ‘forcibly taken by the accused to his fields, outside the village where he committed rape on her. The court ruled that mere absence of marks of violence on the victim is immaterial because she was under 16 years of age. More importantly, it ruled that the victim cannot be considered as an accomplice to the act.<sup>2</sup>

#### **Mathura Rape Case (Tuka Ram And Anr vs. State Of Maharashtra)<sup>3</sup>**

The Mathura rape case was an incident of custodial rape in India on 26 March 1972, wherein Mathura, a tribal girl who was a minor at the time, was allegedly raped by two policemen on the compound of Desai Ganj Police Station in Chandrapur district of Maharashtra. After the Supreme Court acquitted the accused, there was public outcry and protests, which eventually led to amendments in Indian rape law via The Criminal Law (Second Amendment) Act 1983. **Gorakh Daji Ghadge vs. The State of Maharashtra<sup>4</sup>**

In a case where the father was accused of raping his 13 year old daughter at home, the Bombay High Court maintained that seminal emission is not necessary to determine rape. It also prescribed stringent punishment because the victim was the daughter of the accused. The judgement reads: “Crimes in which women are victims need to be severely dealt with and in extreme cases such as this where the accused, who is the father of the victim girl has thought it fit to deflower his own daughter of tender years to gratify his lust, then only a deterrent sentence can meet the ends of justice.”

<sup>1</sup> AIR 1957 Ori 78, 1957 CriLJ 469

<sup>2</sup> 1972 AIR 2661, 1973 SCR (1) 197

<sup>3</sup> 1979 AIR 185, 1979 SCR (1) 810

<sup>4</sup> 1980 CriLJ 1380

#### **Harpal Singh & Anr. vs. State Of Himachal Pradesh<sup>5</sup>**

The Supreme Court condoned the delay in filing the FIR in case of rape of a 16 year old girl. The court mentioned that it is common that since the honor of the family is involved, family members took some time to decide whether the matter needs to be taken to the court or not. The court also emphasized that since it was proved that the girl was below 16 years of age, her consent in sexual activity was irrelevant. The court also ruled that delay in reporting of the case will not affect the case if a reasonable explanation can be given.

#### **Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat<sup>6</sup>**

The accused, a middle aged man had confined 2 friends of his daughter aged around 10, who had come to his house to meet the daughter, and had raped them. The trial court convicted the accused for rape, violating modesty and wrongful confinement. The High Court upheld conviction while reducing the charge from rape to attempt to rape. The Supreme Court upheld the judgment of the trial court on the ground that minor discrepancies in the evidence were not relevant. The Court further remarked that corroboration for conviction in rape cases is not necessary. This judgment was relied on in later judgments to secure conviction when they were no other eye-witnesses to support evidence given by the victim.

#### **Sheela Barse & Others vs. Union Of India & Others<sup>7</sup>**

Social worker Ms. Sheela Barse took up the case of children below age of 16 illegally detained in jails. As part of the ruling, the Court declared The right to speedy trial is a fundamental right implicit in Article 21 of the Constitution.

#### **Imratlal vs State Of Madhya Pradesh<sup>8</sup>**

The Madhya Pradesh High Court stated in this case that the conviction of the accused can be solely based on the evidence of the victim, if her evidence is worthy of credence. The judgment also noted that for proving an offence of rape, it is not necessary that the accused, who commits rape, must discharge semen inside the vagina. The rule of corroboration is not the rule of law but rather a rule of prudence. The judgment goes on to state that when an offence of rape is proved on girls of tender age, the sentence of imprisonment should be severe.

#### **State Of Haryana vs. Prem Chand And Others<sup>9</sup>**

In a case of rape, the court ruled that “the character or reputation of the victim has no bearing or relevance either in the matter of adjudging the guilt of the accused or imposing punishment.” It went on to characterize the ‘character’ of the victim as irrelevant as a mitigating or extenuating circumstance.

#### **Delhi Domestic Working Women’s Forum vs. UOI and Others<sup>10</sup>**

Six young domestic workers travelling on a train from Ranchi to Delhi were brutally harassed, assaulted and raped by army personnel. Acknowledging the hardships faced by the victims throughout the judicial process, this judgment delineated several guidelines to be followed when dealing with cases of sexual offences:-

- The complainants of sexual assault cases should be provided with adequate legal representation
- Legal assistance will have to be provided at the police station
- The police should be under a duty to inform the victim of her right to representation before any questions were asked of her.
- A list of advocates willing to act in these cases should be kept at the police station for victims.
- The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment.
- In all rape trials anonymity of the victim must be maintained, as far as necessary.
- Rape victims need to be given adequate and fair financial compensation.
- Compensation for victims shall be awarded by the court whether or not a conviction has taken place.

#### **State of Punjab Vs. Gurmit Singh and Others<sup>11</sup>**

In this case, the Supreme Court was highly critical of the acquittal of persons accused of gang-raping a 16 year old girl. The trial court had referred to the young village girl as a person of loose character who had invented the story of rape to justify spending a night out of home. It had refused to rely on her statement. The Supreme Court observed that the appreciation of evidence by the trial court was “not only unreasonable but perverse”. It held that: “The testimony of the victim in such cases is vital and unless there are compelling reasons which

<sup>5</sup> AIR 1981 SC 361, 1981 CriLJ 1, (1981) 1 SCC 560, 1981 (13) UJ 63 SC

<sup>6</sup> 1983 AIR 753, 1983 SCR (3) 280

<sup>7</sup> JT 1986 136, 1986 SCALE (2)230

<sup>8</sup> 1987 Cri Lj 557

<sup>9</sup> 1990 AIR 538, 1989 SCR Supl. (2) 496

<sup>10</sup> 1995 SCC (1) 14, JT 1994 (7) 183

<sup>11</sup> 1996 AIR 1393, 1996 SCC (2) 384

necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury.”

#### **State Of Andhra Pradesh vs Gangula Satya Murthy<sup>12</sup>**

A girl of sixteen was raped and throttled to death. Sessions Court convicted the accused and sentenced him to imprisonment for life and rigorous imprisonment for 7 years. But on appeal, a Division Bench of the High Court of Andhra Pradesh acquitted him citing minor contradiction and discrepancies. This acquittal was challenged by the State of Andhra Pradesh. This time, the court concluded that the acquittal was an error and displayed a lack of sensitivity. It categorically stated: “The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the witnesses, which are not of a fatal nature to throw out allegations of rape.”

#### **State Vs. Freddy Peats and Others<sup>13</sup>**

Freddy Peats ran an orphanage called ‘Gurukul Orphanage’ in Colva, Goa. Between 1980 and 1991, 27 shelter boys were subjected to various perverse sexual activities. Peats would not just abuse them himself but also send the boys along with other foreigners for sex. He would inject the testicles of the boys with steroids and photograph them in an obscene manner. Finally, the matter came to light in 1991. The trial was conducted in camera for the sake of victim boy’s anonymity and dignity. The prosecution proved that Peats had kept the boys in wrongful confinement and committed unnatural offences. It was also proved that he received money in lieu of allowing others to abuse the boys. The judgment was delivered by the additional sessions judge at Margoa in 1996 and the same was upheld by the Bombay Court, Goa Bench in 2000. The judgment stated: “After having personally heard the victim boys in this court and accessed the merits backing the testimony which is overwhelming on record with absolute corroboration almost verbatim inter se and almost illustrated in each one of those photographs coupled with various admissions and the scheming silence of accused no.1, I am of the unshakable belief that accused no. 1 deserved no leniency at all of any nature whatsoever. Quantum of sentence shall definitely be proportionate to the gravity of the crime.” In 2005, at the age of 81, Freddy Peats passed away while still in custody.

**Due to peculiar circumstances the muddamal of the case is being kept in a sealed condition with the Nazir of the court.**

#### **Sudesh Jhaku v/s K.C.J & Others<sup>14</sup>**

A sordid and shocking case of a father, a high ranking bureaucrat in the Ministry of Home Affairs, involving his six year old daughter in a series of sexualised games and orgies with himself and other adults forced the justice system into a series of deliberations on various aspects of sexual abuse and assault. There was a need to elaborate and expand on the meaning of the terms ‘rape’, ‘penetration’ and according a higher punishment to sexual offenders who hold a ‘position of trust and authority’. The court also deliberated on the precautions to be taken when child is called on to depose in court. The order makes mention of several child friendly procedures like asking simple questions (avoiding double negatives) when questioning the child and giving breaks to the child. It also highlights how the presence of a screen can not just retain anonymity of the child and also make her/him uncomfortable when deposing. It also speaks of the presence of ‘support persons’ or ‘neutral adults’ who can handhold and support the child during trial.

#### **State Of Karnataka vs Manjanna<sup>15</sup>**

Hosadgura Hospital refused to medically examine a girl victim of 15 years of age as she had not been referred by the police. In the passing of the judgement, the Court put on record their disapproval of such conduct by Government Hospitals particularly in rural areas where hospital are few and far between citing the loss of evidence on account of the delay in conducting medical examination. The judgement also stated that age assessment of the victim, when in doubt, should be considered in favour of the victim.

#### **Sangeeta Punekar vs State Of Maharashtra And Others<sup>16</sup>**

The experiences faced by social workers while handling the Prem Sagar case resulted in a writ petition to ensure that institutions which house young children are not allowed to function without necessary Licenses. In the Prem Sagar case, Rev. Alfred who was the director of the ‘Prem Sagar’ institution had attempted to rape some children. In spite of the FIR being lodged against Rev. Alfred, it was found that he continued to stay in the

<sup>12</sup> <https://indiankanoon.org/doc/134531/>

<sup>13</sup> <https://www.casemine.com/judgement/in/5b684a714a932645d86edcc9>

<sup>14</sup> 1998 CriLJ 2428, 62 (1996)

<sup>15</sup> <https://www.legalauthority.in/judgement/state-of-karnataka-vs-manjanna-22334>

<sup>16</sup> 2002 (2) BomCR 468



institution and abused the girls. The judgement reinforces some of the provisions of the Juvenile Justice Act that are essential to protect children who are housed in Institutions.

### **Sakshi Vs. Union of India<sup>17</sup>**

The NGO Sakshi filed a writ petition in Public Interest to broaden the definition of rape in cases involving children where the child is abused by insertion of objects into the vagina or insertion of the male organ into body parts such as anus or mouth. The Supreme Court rejected the plea & dismissed the public interest litigation. But it issued valuable guidelines for trial of rape and sexual abuse which concern children. These are known as the Sakshi guidelines:

1. A screen or an arrangement where victim or witnesses do not see the body or face of the accused.
2. Questions put in cross examination on behalf of accused, if they relate directly to the incident, must be given in writing to the Presiding Officer of the court who may put them to the victim/witnessed in a language that is clear and not embarrassing.
3. Victims of child abuse or rape should be allowed sufficient breaks as and when required during the testimony.

### **Anchorage Case (Allan John Waters vs State Of Maharashtra on 23 July, 2008 & Childline India Foundation & Anr vs Alan John Waters & Others<sup>18</sup>**

The landmark case in 2001 in which institutional child sexual abuse was exposed in Colaba, Mumbai in which British nationals and former officers of the navy, Allan Waters and Duncan Grant had started an orphanage by the name of Anchorage Home which was center of sex tourism for many foreign nationals. In March 2006, a Mumbai sessions court sentenced Grant and Waters to six years in prison on the charge of sodomy and sexually abusing five minor boys. They challenged the conviction in the Bombay High Court, which acquitted them in 2008. However in 2011, Supreme Court restored the conviction and the sentence. Grant and Waters have since completed their sentence and returned to the UK where they have been put on the Sex Offenders Register.

### **AFTER POCSO ACT, 2012:**

#### **Alakh Alok Srivastava vs. Union of India and Others<sup>19</sup>**

- The Statement of Objects and Reasons of the Act indicate the focus for reduction of child abuse and protection of children from the offences of sexual assault, sexual harassment and pornography, etc.
- the very purpose of bringing a legislation of the present nature is to protect the children from the sexual assault, harassment and exploitation, and to secure the best interest of the child.
- There is also a stipulation that sexual exploitation and sexual abuse are heinous offences and need to be effectively addressed.
- Part A of the said Chapter contains two Sections, namely section 3 and section 4. section 3 defines the offence of Penetrative Sexual Assault whereas Section 4 lays down the punishment for the said offence.
- The various subsections of Section 5 copiously deal with various situations, circumstances and categories of persons where the offence of penetrative sexual assault would take the character of the offence of aggravated penetrative sexual assault.
- Section 5(k) while laying emphasis on the mental stability of a child stipulates that where an offender commits penetrative sexual assault on a child, by taking advantage of the child's mental or physical disability, it shall amount to an offence of aggravated penetrative sexual assault.
- Chapter VIII of the Act deals with the procedure and powers of these Special Courts and the procedure for recording evidence of the child victim.
- (4) The Special Court shall create a childfriendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court.
- (6) The Special Court not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial.
- (7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial: Provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child.
- (2) The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.

<sup>17</sup> <https://indiankanoon.org/doc/1103956/>

<sup>18</sup> <https://indiankanoon.org/doc/1052165/>

<sup>19</sup> <https://www.casemine.com/judgement/in/5aeb18789eff430a8a070079> also available at:  
<https://indiankanoon.org/doc/140831979/>

- (iv) The Chief Justices of the High Courts are requested to constitute a Committee of three Judges to regulate and monitor the progress of the trials under the POCSO Act.
- The High Courts where three Judges are not available the Chief Justices of the said courts shall constitute one Judge Committee.
- (vi) Adequate steps shall be taken by the High Courts to provide child friendly atmosphere in the Special Courts keeping in view the provisions of the POCSO Act so that the spirit of the Act is observed.

#### **Tara Chand vs. State of Haryana and Others<sup>20</sup>**

In this case the petitioner was convicted under section 376(2)(f) of IPC and section 4 of POCSO Act, 2012 and he was sentenced for 10 years imprisonment.

#### **Akshay vs. State of Maharashtra<sup>21</sup>**

In this case appellant was convicted under section 8 and 12 of POCSO Act, and 354 of IPC. He was sentenced with 3 years rigorous imprisonment and 1000 fine under section 8 of POCSO Act, and also one year rigorous imprisonment and fine of Rs. 1000 for offence under section 354 of IPC and 12 of POCSO Act, 2012.

Very recently, Bombay High Court passed a controversial ruling acquitting 39 year old man from charge u/s 6 of POCSO Act on the ground that pressing the breast of 12 year old girl without removing her top did not entail skin to skin contact and hence it was not an offence under the Act. This decision received severe criticisms by public.

### **EFFICACY OF POCSO LAW**

The effectiveness of any law depends largely on the people's responsibility for its implementation and its application. State governments will have to ensure that all the requirements specified under the law are in place and all key stakeholders will have to internalize the core principles of child rights in order for the law to work. Unless and until the mind set of people is not changed, howsoever competent, stringent and adequate the law is, the purpose will not be achieved.

### **CONCLUSION AND RECOMMENDATIONS**

It can be concluded that the crime of child sexual abuse is a very serious problem as it adversely affects the complete growth and development of child and leaves mental agony forever. Though the POCSO law is welcoming development to curb and fight with this menace, however any socio-legal problem can not alone be curtailed by passing suitable legislation. To cure this problem from grass root, it is necessary to inculcate good values and ethics amongst all the children by their families, in schools and even at college level so that when they grow up there will be very little chances of their becoming criminals. Secondly awareness programmes about this menace shall be conducted amongst the masses with a view to create sensitization regarding sexual abuse. It is equally important that Parents and other close family members shall repose trust amongst their children when they are reporting the crimes like this and console them with much needed support, care and love so that they must not develop feelings of fear and hatred. Parents shall take quick steps to prevent this abuse. They shall file appropriate legal action against abusers and must not be afraid of what people will say. Parents must understand that if they develop friendly relations with their children they will share everything with them including the incidences like this. Besides this, sex education must be imparted amongst the children at all the places be it at home, school or college so that their curiosity to know about sexual aspects knowing must be satisfied rightfully otherwise it may be seen that when proper education about their body parts is not given they may tend to indulge in dangerous ways of getting information. To curb this. It is very important to impart sex education at right time and through right source which may eventually help to develop a better and safer society.

### **REFERENCES**

- [1] The Protection of Sexual Offences Act, 2012, professional Book Publishers
- [2] AIR 1957 Ori 78, 1957 CriLJ 469
- [3] 2661, 1973 SCR (1) 197
- [4] 1979 AIR 185, 1979 SCR (1) 810
- [5] 1980 CriLJ 1380
- [6] AIR 1981 SC 361, 1981 CriLJ 1, (1981) 1 SCC 560, 1981 (13) UJ 63 SC
- [7] 1983 AIR 753, 1983 SCR (3) 280

<sup>20</sup> <https://www.casemine.com/judgement/in/5bbeca23b338d13b18cb7536>

<sup>21</sup> <https://www.casemine.com/judgement/in/5ea6760b9fca192b656bd441>

- [8] JT 1986 136, 1986 SCALE (2)230  
[9] 1987 CriLJ 557  
[10] 1990 AIR 538, 1989 SCR Supl. (2) 496  
[11] 1995 SCC (1) 14, JT 1994 (7) 183  
[12] 1996 AIR 1393, 1996 SCC (2) 384  
[13] <https://indiankanoon.org/doc/134531/>  
[14] <https://wcd.nic.in/sites/default/files/POCSO-ModelGuidelines.pdf>  
[15] <https://www.casemine.com/judgement/in/5b684a714a932645d86edcc9>  
[16] 1998 CriLJ 2428, 62 (1996)  
[17] <https://www.legalauthority.in/judgement/state-of-karnataka-vs-manjanna-22334>  
[18] 2002 (2) BomCR 468  
[19] <https://indiankanoon.org/doc/1103956/>  
[20] <https://indiankanoon.org/doc/1052165/>  
[21] <https://www.casemine.com/judgement/in/5aeb18789eff430a8a070079> also available at:  
<https://indiankanoon.org/doc/140831979/>  
[22] <https://www.casemine.com/judgement/in/5bbeca23b338d13b18cb7536>  
[23] <https://timesofindia.indiatimes.com/city/mumbai/controversial-pocso-rulings-cost-hc-judge-her-confirmation/articleshow/80594664.cms>  
[24] <https://www.casemine.com/judgement/in/5ea6760b9fca192b656bd441>  
[25] <https://indianexpress.com/article/opinion/columns/bombay-hcs-interpretation-of-pocso-risks-making-the-law-redundant-7165780/>  
[26] <https://pib.gov.in/newsite/PrintRelease.aspx?relid=113750>  
[27] <http://aarambhindia.org/prominent-cases-before-after-pocso/>  
[28] <https://pib.gov.in/newsite/PrintRelease.aspx?relid=195530>  
[29] <https://blog.ipleaders.in/short-guide-pocso-act/>  
[30] <http://www.satyamevjayate.in/child-sexual-abuse/reviewing-pocso.aspx>  
[31] [https://www.who.int/violence\\_injury\\_prevention/resources/publications/en/guidelines\\_chap7.pdf](https://www.who.int/violence_injury_prevention/resources/publications/en/guidelines_chap7.pdf)  
[32] <https://vikaspedia.in/education/policies-and-schemes/protection-of-children-from-sexual-offences-act>