

# **ROLE AND IMPORTANCE OF JUDICIARY IN PROTECTING CHILDREN FROM SEXUAL OFFENCES**

\* Prayag Kumar Paswan

Research Scholar, Faculty of Legal Studies, Motherhood University, Roorkee

\*\* Dr. Sandeep Kumar

Assistant Professor, Faculty of Legal Studies, Motherhood University, Roorkee

## ***ABSTRACT***

This article examines the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), which was passed by the Indian government in 2012. The purpose of this Act, which was passed on November 14, 2012, was to protect adolescents from sexual assaults and to make the judicial system a friendly place for them. Every day, there is an increase in child-related crime in India. The establishment of this Act was essential to ensure a swift and secure legal process in situations involving sexual offenses, since children need not to bear painful memories of wrongdoing perpetrated against them. The youngster should also be protected from the upsetting consequences of the arduous legal process. This article provides a thorough overview of the POCSO Act's, significant court decisions, and a number of case studies that illustrate its key features.

**KEY WORDS:** *Child, Sexual harassment, Sexual abuse, Pornography, Special Court, Judgment, Penetrative sexual assault, Judicial case study.*

## **PART I: INTRODUCTION**

There is a strong sense of urgency to provide victims of child sexual assault justice as soon as possible, notwithstanding the depressing rise in cases in India. In our country, the law governing sexual offenses committed with child

is the POCSO Act, which carries harsh consequences for violators. A government estimate states that more than 23% of Indian women are sexually abused or harassed before they become eighteen. Usually, the parents choose not to disclose the occurrence because they are aware of the abuser. India didn't pass any laws to address crimes against children until 2012, even though the UN adopted the Convention on the Rights of the Child in 1989. The Protection of Children from Sexual Offenses Act was passed in 2012 to protect children from all forms of sexual abuse. It prescribed harsh punishments for crimes against minors, including a minimum of 20 years in prison and the death penalty in situations of aggravated penetrative sexual assault. This article will address the POCSO Act, 2012, its provisions, the 2019 revision, the historic ruling, and case studies.

## PART II: PROMINENT CASES & JUDGEMENTS BEFORE POCSO

A summary of key cases and the decisions made in them that laid the legal groundwork for the 2012 Protection of Children from Sexual Offenses Act and a victim-and child-friendly legal system.

### 1. Ghanashyam Misra vs The State (1956)<sup>1</sup>

Ghanashyam Misra was a teacher who had sexually abused a 10-year-old girl on school property. The Orissa High Court extended Misra's sentence in 1956 after learning that the child's attacker was someone in a position of trust or authority. The verdict says, "The circumstances are all of an aggravating nature." The victim is a ten-year-old girl, and the perpetrator is an adult who is 39 years old. He took advantage of his position to make her go into the classroom and do this horrible thing, which may have ended up ruining the girl's entire career.

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<sup>1</sup> AIR 1957 ORI 78.

2. Mathura Rape Case (Tuka Ram And Anr vs State Of Maharashtra on 15 September, 1978)<sup>2</sup>

Mathura, a tribal girl who was underage at the time, is accused of being sexually abused by two police officials on the premises of the Desai Ganj Police Station in the Chandrapur district of Maharashtra on March 26, 1972. After the accused was found not guilty by the Supreme Court, the public outcry and protests led to The Criminal Law (Second Amendment) Act 1983, which amended the rape laws in India.

3. Harpal Singh & Anr. V/S State Of Himachal Pradesh on 14 November, 1980<sup>3</sup>

The Supreme Court granted an excuse for the 16-year-old girl's rape and the delay in submitting the initial information report. The court said that because the issue concerns the family's honor, it is usual for members to consider the situation carefully before determining whether or not to proceed with legal action. The court determined that the child was under 16 years old, thus it did not matter if she consented to sexual conduct. The court further determined that a delay in reporting the issue will not affect the case if a reasonable explanation can be given.

4. Delhi Domestic Working Women's Forum vs UOI and Others on 14 December, 1989<sup>4</sup>

Six teenage domestic servants were brutally raped, beaten, and tormented by army soldiers on a train traveling from Ranchi to Delhi. This decision recognized the challenges that the victims faced throughout the court case and set forth a number of guidelines that needed to be followed when dealing with cases involving sexual offenses:-

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<sup>2</sup> 1979 AIR 185.

<sup>3</sup> AIR 1981 SC 361.

<sup>4</sup> 1995 SCC (1) 14.

- 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.

### PART III: SECTION WISE JUDGMENT: AFTER POCSO

#### 1. Lokesh vs. State (07.06.2019 - DELHC)<sup>5</sup>

- **Subject Matter:** Penetrative sexual assault & Aggravated penetrative sexual assault (Section-3 & 5)
- **Issue:** Whether the act of penetrative sexual assault has been committed on the prosecutrix?
- **Facts:** The prosecutrix, the daughter of the complainant, Guddi, appeared at the police station in 2013 when she was about 4 years old. The prosecution against the current appellant was based on Guddi's statement, which claimed that she, the prosecutrix, and her 9-year-old son had gone to Munirka's Rama

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<sup>5</sup> MANU/DE/2004/2019.

Market to meet the appellant, who worked at a cycle store, for the occasion of “Bhai Duj.” After the ceremony, the appellant told her that his mother had asked them to come to his house, and that Guddi and her child had gone to the appellant's house in Kakrola Vihar, where he resided with his mother. Nevertheless, it was after 10 p.m. when the appellant and the prosecutrix arrived at his residence. She noticed that the prosecutrix appeared upset, so she asked what the circumstances were. She was informed that the appellant had taken her to a bush, stripped off, and inserted something she referred to as her “susu” a term that, in this context, may be taken as a code word for “genitals” in her vagina. And he put his susu in her anus then. The prosecutrix also informed her mother that she started crying after the conduct caused her to experience extreme pain. When she told her mother what had happened, the appellant hit her and threatened to kill her. When the prosecutrix removed her underpants, she revealed edema and bloodstains in her genital region. She continued by saying that she was scared to inform anyone about what had happened, so she sought private treatment for her daughter, the prosecutrix. She notified her family however, and they encouraged her to call the police when the pain continued and she did not get better. In accordance with Sections 3, 4, 5, and 6 of the POCSO Act and Section 376 of the IPC, the Sessions Court declared the accused guilty. Hence, the present inquiry.

- **Held:** In cases involving child sexual abuse, the child prosecutor’s statement is always the first and most important piece of evidence. First of all, it should be mentioned that there isn’t much of a debate in this specific instance regarding the

child prosecutrix's age—four years old, based on records from the Registrar of Births and Deaths office. Guddi testified throughout the trial that she had observed cut marks in the bathroom surrounding her daughter's anal area. Upon questioning the prosecutrix, she was informed that the appellant had undressed in the forest, used a cloth to gag herself, and then “put her (penis) private organ in her anus as well as on her urinating part.” PW-6 went on to state that in addition to injury indications on her body, additional examination revealed two or three incision marks on her daughter's anus. I believe that this testimony, taken as a whole, proves beyond a reasonable doubt that the appellant launched a vicious anal assault on the prosecutrix. In this case, the prosecutrix had barely smelled infancy, much less puberty, therefore the appellant mercilessly pillaged her innocence. The fact that he chose to sodomize her added to the deviance of his conduct. There is no question that the prosecutrix will suffer for the rest of her life due to the appellant. Consequently, the conviction is upheld but the sentence remains unchanged.

2. Mondi Murali Krishna vs. Dumpa Hanisha Naga Lakshmi and Ors.  
(07.05.2020 - APHC)<sup>6</sup>

- **Subject Matter:** Sexual assault & Aggravated sexual assault (Section 7 & 9)
- **Issues:** a. Whether the offences committed by the accused amount to sexual harassment or sexual assault? b. Whether the facts of the case constitute any offence punishable under the provisions of the POCSO Act?

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<sup>6</sup> MANU/AP/0033/2020

- **Facts:** The investigation' findings demonstrated that the defendants were the deceased's elders. They frequently made sexual approaches to her, even though she refused. One of the accused followed her all the way back to her hometown. They used to bother her by calling her without permission, loitering around the college campus, and having inappropriate conversations. She kept a daily journal in which she described each of these activities. Her father was also informed about it by her, and he followed up with the Principal and the HOD. But it was all for naught. The accused's rude and lewd actions during the fresher's party award ceremony, where they touched the dead inappropriately on stage and made her seem awful in front of everyone, were the last straw in the deceased's case. The intense psychological ramifications of this led her to commit suicide in her dorm room. The case fulfills the requirements for the accused to have committed offenses against the deceased that are punishable by Sections 7, 8, 9, 11, and 12 of the POCSO Act, including sexual assault and harassment, according to the investigating officer. Furthermore, a case under the POCSO Act is established because the deceased was a minor at the time of the aforementioned crimes. Because the deceased was not a child when they committed suicide, the sessions court decided that the POCSO Act does not apply. Hence, the present appeal.
- **Held:** a) The sexual assault and harassment committed by the accused in question clearly fall under the purview of Sections 8 and 12 of the applicable Act. Catching her hands and waist with the intention of satisfying their desire, as well as following her around and making sexual offers to her, are acts that clearly constitute an offense punishable under Sections 7 and 11 of the

Act. The phrase “doing any other act with sexual intent” in the second section is used in a way that is sufficiently general to cover a wide range of additional offenses that criminals do against minors with a sexual motive. Because of this, this Court thinks that the second part of the previously mentioned Section relates to the current facts of the case.

b) It is evident that the first part of the Section defines a sexual assault offense as touching a child's vagina, penis, anus, or breast. The second part of the Section defines a sexual assault offense as any other act done with the intent to commit a sexual act that involves physical contact but does not involve penetration. Thus, these acts against the deceased, committed on April 18, 2015, when she was a child and not a major, by accused 2 and 3, about which evidence was acquired throughout the investigation, prima facie amount to a sexual assault offense under Section 7 of the Act. According to Clause (iv) of Section 11, a person who follows, watches, or interacts with a child repeatedly or continuously, whether in person or through digital, electronic, or other means, is considered to have committed the sexual harassment offense as defined by Section 11 of the Act. It is clear that these actions of persistently following her both in person and via a mobile device will result in the penalty specified in this section.

3. Satish vs. The State of Maharashtra (19.01.2021 - BOMHC)<sup>7</sup>

- **Subject Matter:** Distinction between Sexual Assault under POCSO Act and IPC. (Section 7)

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<sup>7</sup> MANU/MH/0064/2021



- **Issue:** Whether the act committed by the accused is sexual assault under POCSO Act?
- **Fact:** On December 14, 2016, the informant, who is the mother of the prosecutrix, made a report at the Gittikhadan police station in Nagpur. She said that the appellant had brought her daughter, who was about 12 years old, to his house while pretending to give her some guava. The prosecutrix pushed her breast there and tried to take off her salwar kameez. When the informant got there, she was able to save her daughter. She immediately filed a First Information Report. Based on the above described FIR, a crime was reported against the appellant/accused.
- **Held:** Since there is no specific information about whether the top was removed or whether he reached inside and touched the 12-year-old girl's breast, the act of pressing her breast would not be considered "sexual assault." If someone touches a lady or girl's breasts with the intention of offending her modesty, that person may be charged with criminal force. We are unable to accept this contribution for the reasons mentioned above. Granted, the prosecution does not assert that the appellant's removal of her top revealed her breasts. As a result, there isn't any direct physical touch, or skin-to-skin contact intended for non-piercing sex. After considering the aforementioned points, this Court concludes that the appellant was found guilty of a minor misdemeanor under Section 354 of the IPC and not guilty under Section 8 of the POCSO Act. Along with a year of rehabilitation and a 500 rupee fine, the appellant was also sentenced to one month of rehabilitation in the event that the fine went unpaid. The offence that is punished under Section

342 of the Indian Penal Code is upheld. If the offence is not finished, the punishment involves a one-month prison sentence, a fine of Rs. 500, and six months of incarceration.

4. Vanita Vasant Patil and Ors. vs. The State of Maharashtra and Ors.  
(02.11.2018 - BOMHC)<sup>8</sup>

- **Subject Matter:** Use of a child for pornographic purposes (Section 13)
- **Issue:** Whether the act of the accused is covered under the provision of using a child for pornographic purposes?
- **Facts:** In the village of Mothi Jui, Taluka Uran, the informant/victim girl resides with her parents, brother, and sisters. She attended the Z.P. Primary School in the Mothi Jui village, where she was enrolled in the fifth grade. Accused No. 1 worked as a teacher and Accused No. 2 as the headmistress at the aforementioned institution. Two months prior to the filing of the report, the girl who was the informant and victim was playing on school property with other children. After calling the informant and two or three other females, Accused No. 1 sent the other girls to their own classroom and brought the informant alone to the 6th-A classroom. Then the first accused allegedly wanted to take a picture of the informant, so he broke out of the assigned classroom, gave her some chocolate, and put her on a bench. Then the first accused put the informant on the bench, undressed her, and used his cellphone to take images of her chest and private parts while claiming to be the one making the payments. The informant kept what transpired a secret from others. The informant went to the Uran Police Station with her

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<sup>8</sup> MANU/MH/3022/2018