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Pocso and Judiciary: Issues and Concerns***Dr. Tarushi Pandey****Assistant Professor, Indian Military Academy, Dehradun*

The Protection of Children from Sexual Offences Act, 2012 is a special statute that has laid down an exhaustive law which aims to protect children from offences related to sexual assault, harassment and pornography. This Act came under Article 15(3) of the Constitution which has empowered the State to make special provision for women and children. This Act provides ample opportunity to children to develop in a healthy manner and their childhood and youth are protected against exploitation. The Act has defined “sexual offences” in an extremely broad way. It has also prescribed special child-friendly measures for investigations and trials and provides for the child’s safe custody.

Gender-Neutral Law

POCSO has defined child as “any person” who is below 18 years of age, it has deliberately been kept as gender neutral as it provides legal framework to every sexually abused child victims. The act does not disintegrate between perpetrators of child sexual abuse on gender grounds and there are cases where courts have convicted women for such instances.

Not reporting abuse is an offence

This is most debatable and one of the most flagship feature of this act as it has made mandatory and an obligation to report under Section 19. It requires every person who suspects or has knowledge of any sexual offence being committed against a child to report it to the offence being committed against child to report it to the local police or the Special Juvenile Police Unit. Any person who has not reported against the sexual abuse is also likely to be punished with imprisonment and fine under Section 21 of the Act.

No prescribed time limit for reporting abuse

POCSO Act has ensured that no time limit should be there as the trauma with which they have been, they need time to voice complaints and to immediately voice the complaint is practically impossible in majority of the instances. Hence, the victim can report of the offence even after years of abuse. In countries like USA there is a prescribed time limit to voice the complaint against sexual abuse but Indians need time and if the barrier will their of time limit then the person who is intending to raise their voice in future will not be possible. POSCO is keeping hands open at whatever, in whichever stage justice is given.

Victim’s identity will be kept confident

POCSO Act, Section 23 prohibits disclosure of victim’s identity on any media

platform; it will only be disclosed when permitted by special courts established under the act. If section 23 is violated then it can attract punishments no matter if it is made in good faith. New Obligations under POCSO Rules Many changes have taken in POCSO Rules. The three chief takeaways from the POCSO rules for any organization dealing with children in India are-

- (i) Any institution housing children, or coming in frequent contact with them, is required to conduct a periodic police verification and background check of every employee who is contacting with the children.
- (ii) These institutions must impart regular training to sensitize its employees on child safety and protection.
- (iii) It has to adopt a child protection policy based on the principle of zero tolerance of violence against children. This policy should be in consonance with the child protection policy of the State government in which organization operates. These are the steps taken under POCSO Act but India's high judiciary has actively implied POCSO Act which has been reflected in many of their judgments.

JUDGEMENTS RELATED TO POCSO ACT

Following are the judgments that have been passed by higher judiciary for the protection of child rights under POCSO Act:-

- (a) **Jarnail Singh vs. State of Haryana:** The Supreme Court held that sufficient proof to determine the age of a child, who is the victim of crime, is the extract of the admission register from the school which was first attended by the victim.
- (b) **State of Karnataka vs. Shivanna:** The POCSO Act 2012 does not require every statement to be recorded but Supreme Court ruled that every statement under Section 164 of Criminal Procedure Code, 1973 be recorded. The statement of the victim against whom offences have been cited. The statement should be recorded as soon as the commission is brought to the attention of police. Supreme Court observed that the investigating officer should be present before the victim and a lady magistrate should be there within 24 hours while statements are recorded.
- (c) **Gaya Prasad Pal Mukesh vs. State:** In this case it was held that a person cannot be convicted twice because of the same offence. Protecting the rights of a child under POCSO Act, Penetrative Sexual Assault will also be considered as rape. The Supreme Court ruled that if the same person committed the offence, then the offence that is more severe will be considered for punishment. In this case POCSO Act was applied at the very grassroots level by the judiciary.
- (d) **Balaji Sarjerao Kamble vs. State of Maharashtra :** In this case Bombay High Court observed that if the victim is not able to provide to date of crime then that is in no means mean that the evidence can be discarded. The child that was raped was roughly between 6 to 8 years

and remembering everything exactly at such a raw age is practically not possible. The culprit was punished with 7 years of imprisonment and a fine of 5000/-. This case is a landmark judgment as the child was young and unable to provide the exact details. This judgment proved the Judiciary's proactive role for the protection of child rights.

- (e) *Nipun Saxena vs. Union of India*: In this case the Supreme Court understood the problems that the child faces if their identity gets revealed. This judgment clearly mentions that victim's name will not be made public by any media source. All the papers that have victim's identity will be sealed. This judgment also requested the States and Union Territories to set up at least "One Stop Culture" which can help every child in every aspect. To establish this "One Stop Centre" Supreme Court gave one year's time to every State.
- (f) *Alakh Alok Srivastava vs. Union of India and Others*: In this case Supreme Court laid down the guidelines that have to be followed by the Special Courts while trying the cases under POCSO act; this has been passed as the judgments so that speedy trial takes place. The guidelines that were laid had the following points:-
 - (i) The High Court that are responsible for the cases under POCSO Act are heard and are decided by the special courts, the officials are trained in child protection and psychologically they are **able to handle** children.
 - (ii) If there is no special court for the cases related to POCSO, then a speedy court should be constituted and given the role of dealing with matters brought under POCSO Act.
 - (iii) The trial should be completed within the prescribed. The chief justices of each high court have been asked to frame a committee of three judges, to control and supervise the progress of POCSO Act cases. A Special Task force will be formed by the Director General of Police of each State so that proper investigation takes place of the cases that are registered under the POCSO Act Each State high court must take the necessary efforts to create a child-friendly environment, so that children feel comfortable and they are not threatened and the spirit of Act is upheld. This judgments of this case further marked a history as with this case the vigilance and the work criteria of POCSO increased and they become more answerable to the children and more rights and quick justice was ensured.
- (g) *Attorney General for India vs. Satish and Another*: In this decision Bombay High Court ruled that grabbing a child's breast without making skin to skin contact will also be part molestation under the POCSO Act. This case was one of the most controversial case as this case was challenged and was re-approached the Supreme Court and apex court also ruled that the judgments are not only interpretation but it also restricts prevention of act. The main objective is to mark

prevent from causing harm to children. These judgments have been passed in consonance of POCSO Act, and judgments fully highlight, how the protection is very significant because in the hands of judiciary things have been so conveniently implied. Speedy trials will further enhance the implementation of POCSO Act.

The POSCO Act deals with sexual offences against children, through Article 15 of the Indian Constitution the parliament is empowered to make laws for the benefit of women and children. Article 39 of the Constitution casts an obligation on the State to frame policies to secure children of tender age against abuse, For this reason POCSO was enacted. It was further amended in 2019. Despite these efforts there is a lot of pressure to hold onto the offences related to children.

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