

**|LAW AUDIENCE JOURNAL|
|VOLUME 1|ISSUE 2|DECEMBER 2018|ISSN (O): 2581-6705|**

|LAW AUDIENCE JOURNAL™|

|VOLUME 1 & ISSUE 2|

|DECEMBER 2018|

|ISSN (O): 2581-6705|

EDITED BY:

LAW AUDIENCE JOURNAL'S

EDITORIAL BOARD

COPYRIGHT © 2018 BY LAW AUDIENCE JOURNAL (ISSN (O): 2581-6705)

All Copyrights are reserved with the Author. But, however, the Author has granted to the Journal (Law Audience Journal), an irrevocable, non-exclusive, royalty-free and transferable license to publish, reproduce, store, transmit, display and distribute it in the Journal or books or in any form and all other media, retrieval systems and other formats now or hereafter known.

No part of this publication may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other non-commercial uses permitted by copyright law.

For permission requests, write to the publisher, subject of the email or letter must be "Permission Required," at the email or postal address given below.

Law Audience Journal,

Mr. Varun Kumar, V.P.O. Gagret, Ward No.5, Tehsil. Ghanari, District. Una, Himachal Pradesh, Pincode: 177201,

Phone: +91-8351033361,

Email: lawjournal@lawaudience.com, info@lawaudience.com,

Website: www.lawaudience.com,

Contact Timings: 10:00 AM to 9:00 PM.

DISCLAIMER:

Law Audience Journal (ISSN (O): 2581-6705) and Its Editorial Board Members do not guarantee that the material published in it is 100 percent reliable. You can rely upon it at your own risk. But, however the Journal and Its Editorial Board Members have taken the proper steps to provide the readers with relevant material. Proper footnotes & references have been given to avoid any copyright or plagiarism issue. Articles published in Volume 1 & Issue 2 are the original work of the authors.

Views or Opinions or Suggestions, expressed or published in the Journal are the personal point of views of the Author(s) or Contributor(s) and the Journal & Its Editorial Board Members are not liable for the same.

While every effort has been made to avoid any mistake or omission, this publication is published online on the condition and understanding that the publisher shall not be liable in any manner to any person by reason of any mistake or omission in this publication or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this work. All disputes subject to the exclusive jurisdiction of Courts, Tribunals and Forums at Himachal Pradesh only.

BREAKING THE SILENCE: POCSO ACT

AUTHORED BY: MR. ASHUTOSH VASISTHA, UNIVERSITY FIVE YEARS LAW
COLLEGE, UNIVERSITY OF RAJASTHAN, JAIPUR

ABSTRACT:

Child Sexual Abuse (CSA) is one of those critical and important issues which requires utmost care because for a developing nation like India where the majority population is of youngsters, heinous crimes under CSA can affect the mental and physical health of the youth adversely and which can lead our country into a very big problem. The competent authorities will always be there for us, all we just need to do is lodge complaint as soon as possible and trust the authorities and co-operate with them to bring down accused on his knees and let him know the repercussions of his act.

The POCSO Act provides less ambiguous and more stringent legal process so that child doesn't fall in the trap of long and dreadful legal process. Although the Act is having all required and important features for the punishment of the accused but then to the rate of acquittal is too high as compared to conviction the reason being is the victim becomes hostile. All the necessary precautions have been laid down in the Act to avoid face to face contact of the child with accused and making the victim more confident.

Keywords: *Utmost, heinous, adversely, competent, ambiguous, stringent, dreadful, hostile.*

INTRODUCTION:

“Safety and security don’t just happen; they are the result of collective consensus and public investment. We owe our children, the most vulnerable citizens in our society, a life free of violence and fear.” ~ Nelson Mandela

In a survey conducted by the Ministry of Women and Children Development across 13 states provided 53% of the children surveyed are the victims of one or other forms of sexual assault in their lifetime.¹ The number of cases registered under Child Sexual Abuse are increasing with a huge number but the rate of convictions are not increasing in fact as per the information provided by Press Information Bureau, Government of India provides that 1, 04,976 cases were registered for Child Sexual Abuse (CSA) but the cases in which conviction was held is 9,310 which is less than 20% of the cases registered.² The reason of acquittal of cases related to Child Sexual Abuse can be either a long drawn legal process or vulnerability of the child towards pressure or due to red-tapeism because of less number of courts.³

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT,

2012:

Since sections of Indian Penal Code, 1860 regarding sexual offences against children was generalized in nature and no specific laws were there to deal with these crimes. So, in order to unusual pendency and procrastination Protection of Children from Sexual Offences Act, 2012 (POCSO) was framed which received presidential assent on 19th June, 2012 and was notified in the official Gazette of India on 20th June, 2018.

The Act provided some special and effective measures to erode these kinds of heinous crimes from society like;

- (1) The death penalty can be given to those convicted for raping a child under the 12 years of age.
- (2) The Act for the first time included sexual assault against male as an offence, earlier laws were applicable only for female children.

¹ <http://vikaspedia.in/education/child-rights/child-protection-1/pocso-e-button-for-children/> accessed on 4th October, 2018.

² <https://indianexpress.com/article/cities/delhi/pocso-a-case-study-delhi-high-court-child-sexual-abuse-cases-4912888/> accessed on 6th October, 2018.

- (3) Online Portal *POSCO E-BOX* scheme was introduced for lodging complains online and within minutes.
- (4) Time limit of 2 months is imposed for the investigation and trial of a case. Furthermore, a time limit of 6 months is imposed for the disposal of the appeal.
- (5) No anticipatory bail could be granted to the accused in case of rape of a child below 16 years of age.
- (6) One Stop Centers will be established for the assistance of the victim in every district of the country.
- (7) The identity of the victim will not be revealed and nobody is allowed to see the proceedings without the permission of the judge.

These are some of the special provisions for the effective and fast trial of the cases under POCSO Act which will help the victim to feel safer and in providing strict punishment of death penalty and life imprisonment to the accused which can be good step to stop the rate of this heinous crime.

Section 2 (d) of the POCSO Act, 2012 defines the ‘child’ as any person below the age of 18 years irrespective of gender. POCSO Act for the first time included the prospective of the male child and now if any male child becomes a victim of sexual assault, sexual harassment, pornography or any other act with sexual intent, he can seek remedy through the court of law for the same. Earlier as there were no provisions related to remedies for sexual abuse against male child this was a serious problem which them to stand in a less advantageous position.

POCSO CELL:

Section 44 of the POCSO Act states that it is the duty of National Commission for Protection of Child Right (NCPCR) and the State Commission to carry on the purpose of this Act and to establish the POSCO Cell in every State which will help in the formation of uniform guidelines for Special courts and special prosecutors and thus solve the purpose of this Act. Rajasthan was the first state which took initiative for the establishment of the cell with the help of Rajasthan State Commission for Protection of Child Rights.

The main reason behind the establishment of Cell is to form guidelines for courts, prosecutors, welfare committees, and health professionals. So, that there is the incorporation of Child-Friendly mechanism with easy and fair trial process and the preparation of Information, Education, and Communication materials is also drafted by the cell. POSCO

Cells are also responsible for imparting general awareness through advertisements, workshops, campaigns, and organizing conferences for the appointment of the Special Public Prosecutors.

POSCO E-BOX:

POSCO E-Box is an online portal launched by the National Commission for Protection of Child Right for filling of complaint against sexual abuse, sexual assault, or any kind of act done with sexual intent. This portal was formed in order to make the legal process of filling complaint child-friendly and to make cut this long drawn legal process which is really not suitable for children to face. It is very easy and convenient enough for anyone irrespective of their living i.e. rural or urban area and there is 100% confidentiality of the information also timely action will be taken surely by the nearby police station. This portal was introduced in order to avoid the face to face contact of the victim with accused so that sexual abuse doesn't affect the psyche of the victim and feeling of depression, anxiety, fear, and all the things which can affect the entire life of the victim adversely.

1 in every 4 kids have been bullied more than once and in total 43% of the kids have fallen prey to cyber bullying, 90% of teens agree that have ignored the cyber bullying while some of the youth has taken a step to stop bullying⁴. As cyberbullying is rampant in the society so POCOSO E-box is also a tool or way through which complaint against cyberbullying can be registered. Cyberbullying normally includes crimes like tagging in inappropriate content, sending vulgar messages, through hacking and stalking account, and through child pornography or threat of child pornography.

RESPONSIBILITY & DUTY OF POLICE AS PER THE POCOSO RULES

2012:

- During the lodging of a complaint it is the duty of the police to provide the name and designation, address and telephone number of the officer who is going to supervise the victim and looking into the matter.

⁴ <https://www.myadvo.in/blog/must-read-what-is-cyber-bullying-or-anti-bullying-laws-in-india/> accessed on 4th October, 2018.

- As per Rule 4 (2) of the said Act, the police shall inform the parents or guardians of the victim about the availability of medical services, amount of compensation that can be provided, and arrest of the offender.
- It is also clearly provided that doctors should not demand legal records or documentation before initiating the medical treatment.⁵
- According to Rule 4 (9), the police shall within 24 hours inform the special court of the support person provided to the child in writing.⁶
- Medical treatment of the female child must be done by a female doctor in front of the person whom child trusts and the victim should not be called repeatedly to testify.
- As soon as process of lodging of complaint in Special Juvenile Police Unit (SJPU) or in any police station is completed the competent authorities must within 24 hours make all the necessary arrangement for rehabilitation, medical examination, food, and shelter of the child and the trusted one of the child.

The competent authorities will always be there for us, all we just need to do is lodge complaint as soon as possible and trust the authorities and co-operate with them to bring down accused on his knees and let him know the repercussions of his act. Despite being active enough if the younger generation will tolerate these kinds of heinous which will not only provide an edge to the person engaging in such acts with sexual intent but will also make our country hollow from inside. The POCSO Act provides less ambiguous and more stringent legal process so that child doesn't fall in the trap of long and dreadful legal process.

After the *Kathua Case*⁷ an amendment has also been introduced in the POCSO Act regarding punishment which makes it clear that the death penalty or life imprisonment could also be given seeing the gravity of the offence.

THE EFFECTIVENESS OF THE ACT:

With the implementation of the POCSO Act, the laws are not only strong enough to provide a quick and comfortable trial or judicial process to the victim but also they help in taking all necessary measures for the rehabilitation and the welfare of the children. The Act clearly provides the definition of the victim and states that any person below the age of 18 is a child

⁵ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4557243/> accessed on 6th October, 2018.

⁶ <http://vikaspedia.in/education/policies-and-schemes/protection-of-children-from-sexual-offences-act/> accessed on 7th October, 2018.

⁷ Asifa Bano V. Sanji Ram, 10th January 2018.

and with the help of this provision for the first time sexual offences against a male child will be dealt with in this Act. Capital punishment or death penalty could also be given to the accused seeing the gravity of the offence which helps in promotion of the fear factor in the general public.

Compensation to the victim would also be provided under this Act and necessary steps will be taken by the concerned authority of the area for the rehabilitation and for providing things of basic necessity like food, clothes, shelter to the child.

POCSO E-BOX scheme has made it more convenient for the victims to lodge a complaint against the offenders of this Act within minutes through online portals by just following a few simple steps. Cyberbullying is increasing day by day and 1 amongst every 4th child has been a victim of cyberbullying, but despite having high knowledge about the internet and technology victims are ignoring and falling prey towards acts which sexual intent. Pornography, nude photos, tagging in inappropriate posts, sending vulgar messages are some of the examples of cyberbullying.

In a research conducted by an NGO in 17 districts and 147 stakeholders reveals that 98% of them agree to the fact that the rate of lodging of cases is increasing after the enactment of the POCSO Act.⁸ Salient features like comfortable medical treatment by lady doctor in front of the person whom victim trusts, at the time of inquiry by the officers they must be dressed as civilians so that child feel comfortable, disposing case within 60 days and making this long dreadful legal process, easy and comfortable for the child plays vital role in the success of this legislation.

CONCLUSION:

Although the Acts is having all required and important features for the punishment of the accused but then to the rate of acquittal is too high as compared to conviction the reason being is the victim becomes hostile. All the necessary precautions have been laid down in the Act to avoid face to face contact of the child with accused and making the victim more confident but even then if things are not falling in the right way the reason can be that the Act requires more strict amendments.

⁸ <https://indianexpress.com/article/cities/mumbai/rise-in-reporting-of-cases-under-pocso-act-study/> accessed on 7th October,2018.

90% of the teens agree that they ignore acts with sexual intent and have learnt to act like mute masses who have learnt to act like a pigeon who closes its eye when a cat is around.⁹ We have to raise our voice and fight against this heinous crime and remove it from the roots of India as sexual abuse directly affects the health of the victim and makes them fall in depression and other medical disorders which is really a threat for our country.

POCSO Act has made long drawn legal process more child-friendly and speedy so that the child doesn't fall into the red-tapeism and unusual procrastination. The Act has changed the position of the victims in the case of child sexual abuse more strong. The Act has made laws for the sexual abuse are more comprehensive and includes various measures which must be taken care of for the welfare of the child and thus the future of our nation.

References:

1. "Anti-bullying laws in India" Bar Association of India, 2015, < <https://www.indianbarassociation.org/wp-content/uploads/2015/11/Anti-bullying-laws-in-India.pdf>>
2. "Parliament passes bill to protect children from sexual abuse". NDTV.
3. <https://www.indiatoday.in/education-today/gk-current-affairs/story/centre-approves-death-penalty-for-rape-of-children-below-12-years-under-pocso-amendment-1>
4. <https://indianexpress.com/article/cities/delhi/pocso-a-case-study-delhi-high-court-child-sexual-abuse-cases-4912888/>
5. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4557243/>

⁹ <https://www.myadvo.in/blog/must-read-what-is-cyber-bullying-or-anti-bullying-laws-in-india/>.