

## **THE ROLE OF JUDICIARY TOWARDS CHILDREN UNDER THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCE ACT, 2012**

---

Mr.Ashok Paul Batra, Research Scholar,  
University Institute of Law, Desh Bhagat University, Mandi Gobindgarh (Pb.)

&Dr. Inderpreet Kaur, Associate Professor,  
University Institute of Law, Desh Bhagat University, Mandi Gobindgarh (Pb.)

### **Abstract**

Plethora's of laws are available for the protection of children but time and again new laws have been enacted by parliament for the sake of Children exclusively. It reveals the importance of children in the society. It is also mandate from Constitution that special laws and protection can be given to the children under Article 15 as well as Directive Principles of State Policy. State is also bound to make the policies for children absolutely. Children are the future of every country. Without growth of children no society can grow properly. Children are part of vulnerable group of the society. Due to their innocence, they are easily targeted by the criminals. Even sometimes shrewd criminals used them as means to commit crimes as they know that they are exempted from the purview of crime under Indian Penal Code. It has been presumed that the children are not enough mature to understand the consequences of any crime even he does not know the meaning of crime as such. Even laws ponder the innocent nature of Child and not put the criminal liability on them under section 82 and 83. Our Indian judiciary is also vigilant towards the protection of children. Number of judgments and guidelines has been issued by them for children specially but all are like *brutum fulmen*. In this paper the authors have made an attempt to analyze the role of judiciary towards children with special reference to POCSO Act, 2012.

**Keywords:** Children, Judiciary, Judges, Sexual offences, Punishment

## **PROLOGUE**

In a civilized society, the biggest social stigma attached to a society is child abuse. A child can be abused physically, sexually or mentally. It can be in the form of injury, neglect or negligent treatment, blaming, forced sexual stimulation and activity, incest exploitation and sexual abuse. Child abuse can take place in homes, schools, orphanages, residential care facilities, on the streets, in the workplace, in prisons and in places of detention. Violence in any form has a very deep impact on the overall development of the child. The health, survival, growth, and dignity of the victimized child are really or potentially harmed.<sup>1</sup>

According to the National Crime Record Bureau, the data shows that there is a sharp rise in crimes against children on a year on year basis. Unlike most other crimes, heinous crimes against children are often reported less. This is majorly because even if the child confides in someone, the facts are often covered under the fear of family reputation and social stigma. Child abuse is a violation of the basic human rights of a child. Data is as follows:


**Table 1.1- No of Crimes against Children**

Year	No of Cases
2018	141769
2019	148090
2020	128531

Source- Crime in India 2020, National Crime Record Bureau

Violence against children is widespread and remains an unfortunate reality for millions of children from all socio-economic groups in India. Both girls and boys in India face early marriage, domestic abuse, sexual violence, violence at home and in school, trafficking, online violence, child labour and bullying. All forms of violence, abuse and exploitation have long-lasting consequences on children's lives. Slowly

---

<sup>1</sup>Retrieved from: <https://www.ncbi.nlm.nih.gov/books/NBK565852/> visited on 20-7-2022  
© 2022 by The Author(s).  ISSN: 1307-1637 International journal of economic perspectives is licensed under a Creative Commons Attribution 4.0 International License.

*Corresponding author:* Mr.Ashok Paul Batra & Dr. Inderpreet Kaur

*Submitted: 27 Jan 2022, Revised: 09 February 2022, Accepted: 18 February 2022, Published: 31 March 2022*

India is becoming increasingly aware of violence against children, especially sexual abuse. The Government of India ratified the United Nations General Assembly's Convention on the Rights of the Child on December 11, 1992. The Convention puts forth a set of guidelines that all State Parties must adhere to in order to protect the best interests of children.<sup>2</sup>

## **CONSTITUTIONAL PROVISIONS**

The State is given the authority to establish specific provisions for children under Article 15 of the Constitution, among other things. In addition, according to Article 39, the State must focus its policies in particular on preventing child maltreatment during their formative years, safeguarding their youth from exploitation, and ensuring that they have the resources necessary to grow up in a healthy way with freedom and dignity.<sup>3</sup>

The legislature, in its wisdom, determined that it was essential for the child's normal development that everyone uphold and respect the child's right to privacy and confidentiality at all times, including during all phases of a legal proceeding involving the child.<sup>4</sup> Therefore, even a cursory examination of the provisions of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act),<sup>5</sup> hereinafter referred to as POCSO Act, regarding the role of the court would demonstrate that the goal of the act's enactment can be achieved if the courts apply their judicial minds to the POCSO Act's provisions regarding their role.

The statement of objects and reasons regarding the enactment and further Amendments of the POCSO Act also depict that the courts have major role to play for


---

<sup>2</sup> Available at <https://sites.google.com/site/keralamedicolegalsociety/home-1/important-laws-and-rules/pcasa-act-2012-1/html> visited on 2-7-2022

<sup>3</sup> Available at: [https://www.livelaw.in/pdf\\_upload/baila469982020-396602.pdf](https://www.livelaw.in/pdf_upload/baila469982020-396602.pdf) visited on 2-7-2022

<sup>4</sup> Available at: <https://sites.google.com/site/keralamedicolegalsociety/home-1/important-laws-and-rules/pcasa-act-2012-1/html> visited on 2-7-2022

<sup>5</sup> Available at: <https://indiankanoon.org/doc/67334206/> visited on 5-7-2022

© 2022 by The Author(s).  ISSN: 1307-1637 International journal of economic perspectives is licensed under a Creative Commons Attribution 4.0 International License.

*Corresponding author:* Mr.Ashok Paul Batra & Dr. Inderpreet Kaur

implementation of the provisions of the POCSO Act. Para 4 of the Objects and Reasons provides as follows:-

*“It is, therefore, proposed to enact a self contained comprehensive legislation inter alia to provide for protection of children from the offences of sexual assault, sexual harassment, and pornography with due regard for safeguarding the interest and well being of the child at every stage of the judicial process, incorporating child-friendly procedures for reporting, recording of evidence, investigation and trial of offences and provision for establishment of Special Courts for speedy trial of such offences.”<sup>6</sup>*

## **ROLE OF JUDICIARY**


Since 2019, throughout India, there 1023 Fast Track courts have been established and out of 1023, 389 deals with POCSO cases exclusively. Judiciary is playing vibrant role towards the children now a days. Kathua case in April 2018, major changes have been done in rape laws. In 2021, one case comes before Bombay High Court which is also famous as “skin to skin contact case”<sup>7</sup>. It was headed by Justice Pushpa Ganedwala, This case related to molestation. If there is groping with clothes is also considered as molestation as per section 7<sup>8</sup> of POCSO Act. The intention must be there is enough to constitute an offence. It is not imperative that contact should be direct. Thus in this case, it was held that regardless of whether the molestation took place over or beneath clothing, the crime of sexual assault was proven to have occurred because it was unmistakably proved that the accused pressed the victim's breast.

---

<sup>6</sup> Available at: [https://www.livelaw.in/pdf\\_upload/baila469982020-396602.pdf](https://www.livelaw.in/pdf_upload/baila469982020-396602.pdf) visited on 5-7-2022

<sup>7</sup> Satish Ragde v. State of Maharashtra, 2021

<sup>8</sup> “Whoever with sexual intent touches.....”

© 2022 by The Author(s).  ISSN: 1307-1637 International journal of economic perspectives is licensed under a Creative Commons Attribution 4.0 International License.

*Corresponding author:* Mr.Ashok Paul Batra & Dr. Inderpreet Kaur

*Submitted: 27 Jan 2022, Revised: 09 February 2022, Accepted: 18 February 2022, Published: 31 March 2022*

In the pronouncement **Shankar Kisanrao Khade vs. State of Maharashtra**,<sup>9</sup> the Hon'ble mandates whenever we deal with an issue of child abuse, we must apply the best interest child standard, since best interest of the child is paramount and not the interest of perpetrator of the crime. Our approach must be child centric. Complaints received from any quarter, of course, have to be kept confidential without casting any stigma on the child and family members. But, if the tormentor is the family member himself, he shall scot free. Proper and sufficient safeguards also have to be given to the persons who come forward to report such incidents to the police or to the Juvenile Justice Board.

Sometimes it happens at times that the offence against the child has been committed by another child. The police and court are faced with the situation how to deal with it. According to Section 34 of the POCSO Act, a child who violates the POCSO Act would be dealt with in accordance with the rules of the Juvenile Justice (Care and Protection of Children) Act, 2000. If there is any doubt as to whether a person is a child during any proceeding before the Special Court, the Special Court shall make the determination after ascertaining the person's age and shall record in writing its findings.


The authors are of the opinion that the court in such situation may take the help of the provisions of Section 14 and 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000, which provisions are very important and mandatory in nature.<sup>10</sup> The help of these provisions must be taken by the court dealing with the case as expeditiously as possible otherwise the purpose may be defeated. It has been found by **Hon'ble Gujarat High Court in Navinbhai Bijalbhai Dharmani (Dalit) vs. State of Gujarat**<sup>11</sup> that the preliminary investigation into a heinous offence under

---

<sup>9</sup> 2013 (6) Scale 277

<sup>10</sup> [https://bprd.nic.in/WriteReadData/News/book\\_child-protection1.pdf](https://bprd.nic.in/WriteReadData/News/book_child-protection1.pdf) visited on 21-7-2022

<sup>11</sup> (2020) 3 GujLH 339

© 2022 by The Author(s).  ISSN: 1307-1637 International journal of economic perspectives is licensed under a Creative Commons Attribution 4.0 International License.

*Corresponding author:* Mr.Ashok Paul Batra & Dr. Inderpreet Kaur

*Submitted: 27 Jan 2022, Revised: 09 February 2022, Accepted: 18 February 2022, Published: 31 March 2022*

Section 15 must be completed within three months of the child's initial presentation to the JJB.<sup>12</sup> The grievances of the Applicant of said case were noted in para 13.5 of the judgment, which is extracted as below:-

13.5 The grievance of the Applicant – CCL is that if the preliminary assessment is carried out at the relevant point of time i.e. within the prescribed time limit, the findings of the report of the psychologist would have been different. That the reasons for result of different finding are

- (i) Age at 17.-19 of any young boy is fast growing age.
- (ii) Mental ability and physical capacity also develop at a high rate.
- (iii) Ability to understand the consequences is grown up at large extent.


The delay in conducting preliminary assessment causes prejudice to the Applicant – CCL. It is also argued that the JJB has to conduct the preliminary assessment within three months, which is a mandatory provision.

Regarding the recording of the victim's statement pursuant to Section 25 of the POCSO Act, the magistrate shall, despite any provision to the contrary in Section 164 of the Code of Criminal Procedure 1973, record the statement as uttered by the child:As long as the restrictions in the first proviso to subsection (1) of section 164 of the Code do not prohibit the attendance of the accused's attorney in this situation, they do not apply.

(2) Upon the final report being submitted by the police under Section 173 of that Code, the Magistrate shall provide a copy of the document required under Section 207 of the Code to the child and his parents or his representative.

---

<sup>12</sup>Section 14(3) of the JJ Act 2015

© 2022 by The Author(s).  ISSN: 1307-1637 International journal of economic perspectives is licensed under a Creative Commons Attribution 4.0 International License.

*Corresponding author:* Mr.Ashok Paul Batra & Dr. Inderpreet Kaur

*Submitted: 27 Jan 2022, Revised: 09 February 2022, Accepted: 18 February 2022, Published: 31 March 2022*


**Additional provisions regarding statement to be recorded. -**

1. The Magistrate or the police officer, as the case may be, shall record the statement as spoken by the child in the presence of the parents of the child or any other person in whom the child has trust or confidence.
2. Wherever necessary, the Magistrate or the police officer, as the case may be, may take the assistance of a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, while recording the statement of the child.
3. The Magistrate or the police officer, as the case may be, may, in the case of a child having a mental or physical disability, seek the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed, to record the statement of the child.
4. Wherever possible, the Magistrate or the police officer, as the case may be, shall ensure that the statement of the child is also recorded by audio-video electronic means.<sup>13</sup>

During the common procedure and working of the courts, it is found that some Magistrates record the statement of the child either in English or any language of their own diction to express what the child has said. This modification in approach by the Magistrate carries a risk of changing the very originality of the statement as it was given by the child. Sometimes Magistrates may feel that language used by a child in his statement is not a perfect form of language or it is rather a slang than being the standardized form of the language. So in order to bring the level of sophistication in the statements, the Magistrates are lured to edit the syntax of the sentences used by the child. They also use standardized synonyms for the specific words used by the child in his statement. This change of syntax and the words may sometime help the

---

<sup>13</sup> [https://bprd.nic.in/WriteReadData/News/book\\_child-protection1.pdf](https://bprd.nic.in/WriteReadData/News/book_child-protection1.pdf) visited on 21-7-2022

© 2022 by The Author(s).  ISSN: 1307-1637 International journal of economic perspectives is licensed under a Creative Commons Attribution 4.0 International License.

*Corresponding author:* Mr.Ashok Paul Batra & Dr. Inderpreet Kaur

*Submitted: 27 Jan 2022, Revised: 09 February 2022, Accepted: 18 February 2022, Published: 31 March 2022*



defence to take a stand that the statement was a modification from the original statement and that the original statement was not available on record and that this modified statement, as recorded by the Magistrate, is an improved version of the description given by the child.

Hon'ble Supreme Court in **R. Shaji vs. State of Kerala**<sup>14</sup>summed up the entire law on this point.According to Section 26(2), whenever there is a language barrier, a magistrate or police officer may use a translation or interpreter to help them understand the child's statement. In such a situation the translator or the interpreter must be having such qualification and experience as are necessary for translating or interpreting the statement of the child correctly and properly.

If child is found suffering from any mental or physical disability, may be an acute or a chronic one, then in that case the Magistrate or the police officer may seek assistance of a special educator or any other person who is acquainted with such manner of communication as it is required to be established.<sup>15</sup>


Similarly, under Section 26(4) of the Act, the Magistrate or the police officer would ensure the recording of such statement of a child through audio-video electronic means. The purpose of this provision is to record the statement in a fully comprehensive manner. Sometimes when the child makes his statement, he makes some gestures, body postures or other non-verbal expressions. But when these statements are recorded in words these gestures, body postures or non-verbal expressions may not find a proper description in the recording of the statement of the child by the Magistrate or the police officer.

The POCSO Act provides that the Special Court constituted under the Act shall deal with the report under Section 173 of the Code of Criminal Procedure without

---

<sup>14</sup>(2013) 14 SCC-266

<sup>15</sup>Section 26(3) of POCSO Act, 2012

© 2022 by The Author(s).  ISSN: 1307-1637 International journal of economic perspectives is licensed under a Creative Commons Attribution 4.0 International License.

*Corresponding author:* Mr.Ashok Paul Batra & Dr. Inderpreet Kaur

*Submitted: 27 Jan 2022, Revised: 09 February 2022, Accepted: 18 February 2022, Published: 31 March 2022*



accused being committed to it for trial.<sup>16</sup>The POCSO Act further mandates and provides the procedure to be followed while recording the evidence, it would be expedient for the purpose of reference, the provisions of Section of the Act may be summarized as below.


While recording examination-in-chief, cross-examination, or re-examination of the child, the Special Public Prosecutor, or as the case may be, the attorney of accused shall convey the questions to be presented to the child to the Special Court, which shall then put those questions to the child. The Special Court has the authority to give the youngster numerous breaks during the trial if it deems them essential. By allowing a family member, guardian, friend, or relative whom the child has trust or confidence in to be present in court, the Special Court shall create a child-friendly environment.

The Special Court will make sure the child is not called to testify in court repeatedly. The Special Court must ensure that the child's dignity is upheld throughout the trial by forbidding aggressive questioning or character assassination of the minor. The Special Court must make sure that the child's identity is never revealed during an investigation or trial. However, the Special Court may allow such disclosure for specific, documented reasons if it believes it will be in the child's best interests.

The POCSO Act also stipulates that the Special Court must record the child's testimony within 30 days of the date it took cognizance of the offence and must conclude the trial, inasmuch as is reasonably possible, within a year from the date it did so. The POCSO Act further specifies that the child shall not view the offender when giving a statement. The Special Court has a responsibility to make sure that the child is not in any way exposed to the accused at the time of recording the evidence while also making sure that the accused is able to hear the child's statement and interact with his attorney. It gives the Special Court the authority to record a child's statement via video conference, single-vision mirrors, curtains, or any other similar technology.

---

<sup>16</sup> <https://sites.google.com/site/keralamedicolegalsociety/home-1/important-laws-and-rules/pcasa-act-2012-1/chapter-6-procedures-for-recording-statement-of-the-child> visited on 23-7-2022

© 2022 by The Author(s).  ISSN: 1307-1637 International journal of economic perspectives is licensed under a Creative Commons Attribution 4.0 International License.

*Corresponding author:* Mr.Ashok Paul Batra & Dr. Inderpreet Kaur

*Submitted:* 27 Jan 2022, *Revised:* 09 February 2022, *Accepted:* 18 February 2022, *Published:* 31 March 2022

While relying upon the pronouncement<sup>17</sup> Court on its own, The writers seek to summaries the article for the reader's convenience. The trial judge may permit, if thought desirable, for the child giving testimony to be accompanied by a social worker or other sympathetic, independent, or neutral adult in whom the child has confidence.

Make sure that the cross-examination questions are not intended to humiliate or confuse rape and sexual abuse victims. Insofar as they directly pertain to the offence, questions to be asked during cross examination on behalf of the accused should be submitted in writing to the court's presiding officer so that they may be asked of the victim or witnesses in a way that is both understandable and not embarrassing. The presiding judge should closely oversee the questioning and cross-examining of a child witness to prevent any harassment or intimidation of the child witness.


The court has a responsibility to determine the truth and advance the interests of justice. The courts must participate in the trial and not just serve as stenographers who record the testimony of the witnesses. The judge is responsible for keeping an eye on the proceedings to ensure that nothing irrelevant is unnecessarily added to the record. Even if the prosecutor makes mistakes in some areas, the court can efficiently manage the proceedings to achieve its ultimate goal of discovering the truth.

The prosecuting agency must have been negligent in its duties, and the court must be aware of these grave risks. The judge must use the extensive authority granted by sections 165 of the Evidence Act and 311 of the Cr.P.C. to elicit all required materials by actively participating in the evidence gathering process if the prosecuting agency fails to act with indifference or an air of distance.

The court should make sure that none of the parties involved in the case— including the prosecutrix, witnesses, counsels permit the elements of the crime to be concealed as a result of their discomfort or concerns. The court should ensure that

---

<sup>17</sup>2007 (4) JCC 2680; Motion vs. State & Anr, Sakshi vs. Union of India, Sudesh Jakhu vs. K.C.J. & Ors, Zahira Habibulla H. Sheikh & Anr. vs State of Gujarat & Ors

© 2022 by The Author(s).  ISSN: 1307-1637 International journal of economic perspectives is licensed under a Creative Commons Attribution 4.0 International License.

*Corresponding author:* Mr. Ashok Paul Batra & Dr. Inderpreet Kaur

*Submitted: 27 Jan 2022, Revised: 09 February 2022, Accepted: 18 February 2022, Published: 31 March 2022*

there is no use of aggressive, sarcastic language or a grueling or sexually explicit examination or cross examination of the victim or child witness. The court should take strong action to stifle any attempts to use specifics and/or illustrations of criminal conduct that would traumatize the victim or a young witness and influence their testimony. The court must make sure that neither someone in the courtroom nor the record of the proceedings introduces any profane language.

A child witness may utilize gestures to elicit comprehensive testimony. The courts are required to carefully record such an explanation or description in writing. When testifying in court, a child witness or victim of child abuse or rape should be given enough breaks as needed. Wherever possible, trials involving sexual assaults on women should be heard by female judges, and steps should be made to ensure that the courtroom's staff is also of the same gender. The judge must be fair, kind, and ensure that the vulnerable victim's dignity is protected. Gender bias shouldn't be shown during the proceedings. Neither the primary nor the cross examination should be able to make the witness feel inferior.

## **CONCLUDE**

The above mentioned discussion leads to conclude that no doubt, law was prevalent in the earlier times regarding the crime against children even including sexual offences is already there but was found inadequate to provide justice to the victim and being signatory to the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, the Parliament of India enacted the POCSO Act in 2012. The authors are of the opinion that the law is available, but it suffers because of the improper implementation of the provisions of law. If the police, the prosecution and the courts take the responsibility in adopting the provisions of law and diligently discharge their duties imposed upon them by the POCSO Act, the purpose of its enactment and objects can be secured. This is the need of the hour as

**Mr.Ashok Paul Batra & Dr. Inderpreet Kaur (March 2022). THE ROLE OF JUDICIARY TOWARDS CHILDREN UNDER THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCE ACT, 2012**

*International Journal of Economic Perspectives*, 16(3), 205-216  
Retrieved from <https://ijeponline.org/index.php/journal>

children are assets of every country. They require special protection due to their innocence anyone can play with their emotions and life easily.

**References:**

1. Kaur, I, “Gender Justice- A Fairy Tale” *Journal of Education: Rabindra Bharati University*, Vol. XXIV, No: (V), 2021
2. Pallai, P.S.A, *Criminal Law*, Lexis Nexis, 14th Edition, 2019
3. *Protection of Children from Sexual Offences Act, 2012*