

**Inaugural Speech On Effective Implementation of Protection of Children  
from Sexual Offences Act and Rules, 2012**

**Introduction:**

Children are the most innocent members of a society. They are also the ones, who are burdened with the task of paving the way for the future. A society that cannot provide adequate protection to its children is on the brink of peril. They are rightly called the “*supremely important national asset*”.<sup>1</sup> India is home to almost 19 percent of the world's children. More than one third of the country's population, around 440 million, is below 18 years.<sup>2</sup> Thus, in the Indian context, it becomes even more important to protect the rights of children. As the Supreme Court in **Lakshmikant Pandey v. Union of India** has itself observed,

“The child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, into fullness of physical and vital energy and the utmost breadth, depth and height of its

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<sup>1</sup>National Policy for Children, 1974,. <http://wcd.nic.in/childreport/npc2013dtd29042013.pdf>

<sup>2</sup> Study on Child Abuse India, 2007, Ministry of Women and Child Development, <http://wcd.nic.in/childabuse.pdf>.

emotional, intellectual and spiritual being; otherwise there cannot be a healthy growth of the nation.”<sup>3</sup>

While the popular perception in India was that child abuse in any form is either non-existent, or at best has a negligible presence, this was shattered by a survey carried out by the Ministry of Child and Women Development in 2007. It was revealed that out of the 2211 children surveyed, a staggering 42 % had faced some form of sexual abuse.<sup>4</sup> Child Sexual Abuse is defined as, “*the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or that violates the laws or social taboos of society.*”<sup>5</sup> Further, it was revealed, that boys were infact more susceptible to sexual abuse, with 48% boys and 39% girls facing abuse. It was also revealed that in most of the cases the offender was known to the child.<sup>6</sup> Not just that, even the Hon’ble Supreme Court

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<sup>3</sup> (1984) 2 SCC 244 at para 6.

<sup>4</sup> Supra note 2.

<sup>5</sup> [http://www.who.int/violence\\_injury\\_prevention/resources/publications/en/guidelines\\_chap7.pdf](http://www.who.int/violence_injury_prevention/resources/publications/en/guidelines_chap7.pdf)

<sup>6</sup> Supra note 2.

has observed in **Bachpan Bachao Andolan v. Union of India** that 35% of the commercial workers in India are below the age of 18.<sup>7</sup>

**Pre Act: IPC:**

Before the The Protection of Children from Sexual Offences Act, 2012 [hereinafter “POCSO, 2012”] was enacted, there existed no laws to deal exclusively with the issue of Child Sexual Abuse. Such cases were tried to be dealt with the existing provisions in the Indian Penal Code, which were highly inadequate to deal with the issue. Generally, the sections invoked in such cases were:

Section 293 – Sale, etc., of obscene objects to young person.

Section 354 – Assault or criminal force to woman with intent to outrage her modesty.

Section 366A – Procuration of minor girl.

Section 366B – Importation of girl from foreign country.

Section 372 – Selling minor for purposes of prostitution, etc.

Section 373 – Buying minor for purposes of prostitution, etc.

Section 375 – Rape.

Section 377- Unnatural Offences.

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<sup>7</sup> (2011) 5 SCC 1 at para 31.

However, there were several problems. These sections were not adequate to deal with the issue, as the three sections which were invoked in the commission of an sexual abuse viz s. 354, 375 and s. 377 as the case may be, were not child centric. These were provisions for adults, extended by default to the children as no sections existed to cover them. As far as the question of rape was considered, for example, only the cases where penile penetration had occurred could be covered within the ambit. As far as oral or penetration with an object was concerned, it was tried to be brought within the ambit of unnatural offences under s. 377, which runs thus:

“Unnatural Offences: Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with 152[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

Further, there also existed the provisions of “outraging the modesty of a woman” (s. 354, IPC,

“Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”).

The courts however, had trouble in interpreting the term “modesty of a woman”, with the then Chief Justice, A.K Sarkar in the dissenting opinion in the case of **State of Punjab v. Major Singh**, going so far as to express that

“the question that remains to be decided is, whether a reasonable man would think that the female child on whom the offence was committed had modesty which the respondent intended to outrage by his act or knew it to be the likely result of it. I do not think a reasonable man would say that a female child of seven and a half months is possessed of womanly modesty. If she had not, there could be no question of the respondent having intended to outrage her modesty or having known that his act was likely to have that result.”<sup>8</sup>

The majority opinion however was that even a young girl has modesty, which can be outraged. Justice Bachawat opined that:

“The essence of a woman’s modesty is her sex. The modesty of an adult female is writ large on her body. Young or old, intelligent or imbecile, the woman possesses modesty capable of being outraged. Whoever uses criminal force to her with the intent to outrage her modesty commits an offence punishable under s. 354. The culpable intention of the accused is the crux of the matter. The reaction of the woman is relevant, but its absence is not decisive.”<sup>9</sup>

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<sup>8</sup> AIR 1967 SC 63 at para 8.

<sup>9</sup> AIR 1967 SC 63 at para 16.

The Hon'ble Supreme Court in the case of **Raju Pandurang Mahale v. State of Maharashtra** has also held, as far as the interpretation of the term "modesty" is concerned that:

"The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty is an attribute associated with female human beings as a class. It is a virtue that attaches to a female owing to her sex."<sup>10</sup>

The problem however still remained that as far as female children were concerned, while penile penetration was covered within the ambit of s. 375 (Rape), which warranted a minimum punishment of 7 years, in case of non-penile penetration, the punishment was only three years, as under s. 354, IPC.

Further, there was no section under which the non-penetrative acts could be brought under, as far as boys were concerned, thus leading to discrimination between male and female children. In the Anchorage Shelter Homes case, children residing in shelter homes were being sexually exploited. The Hon'ble Supreme Court held in the case of **Childline India Foundation v. Allan John Waters** that:

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<sup>10</sup>(2004) 4 SCC 371 at para 12.

“Children are the greatest gift to humanity. The sexual abuse of children is one of the most heinous crimes. It is an appalling violation of their trust, an ugly breach of our commitment to protect the innocent. There are special safeguards in the Constitution that apply specifically to children. The Constitution has envisaged a happy and healthy childhood for children that is free from abuse and exploitation.”<sup>11</sup>

The court also observed that

“DPSP provide that the policy of protection of children with a self imposing direction towards securing the health and strength of workers, particularly to see that children of tender years are not abused, nor are they forced by economic necessity to enter into avocations unsuited to their strengths”.<sup>12</sup>

But despite taking into account the totality of the circumstances, they were sent to prison for only three and six years respectively.<sup>13</sup>

The problem with the Indian context is that such “unnatural offences” are considered as “aberrations”. This is more so when the accused is an educated or

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11 (2011) 6 SCC 261 at para 57.

12 Ibid, para 60.

13 ibid, at para 60.

cultured individual, as was the case in **Chitaranjan Das v. State of U.P**<sup>14</sup> In a case [**Raju, v. State of Haryana**] where the accused, who committed an unnatural offence upon a female of nine years, which implies sexual perversity, who was 20 years old at time of commission of the offence, was spared a long sentence, as it might have an "adverse effect". Instead, he was directed to be kept in an environment of an institution of confinement for some period to enable him to ponder and brood over his perversity and learn to live in a well-organised society.<sup>15</sup>

This is in sharp contrast to the stand adopted by the Hon'ble Supreme Court as far as cases of rape of minor girls are concerned. In the case of **Rajendra Prahladrao Wasnik v. State of Maharashtra**<sup>16</sup>, a person was accused of brutally raping and murdering a three-year-old child and the court while awarding him the death sentence observed that,

"The pain and agony that he must have caused to the deceased minor girl is beyond the imagination and is the limit of viciousness."<sup>17</sup>

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14(1974) 4 SCC 454 at para 1.

151998 CriLJ 2587 (P&H) at para 22.

16 (2012) 4 SCC 37.



The court has also held in the case of **State v. Poolamalu Raju**, that

“the sentencing court must hear the loud cry for justice by the society and more particularly, in cases of heinous crimes or rape of innocent helpless children of the victim of the crime and respond by imposing a proper sentence.”<sup>18</sup>

A sentence of six months imprisonment on an accused of raping a six-year-old girl is too short a term of imprisonment to meet the ends of justice considering the beastliness of the crime as was observed in the case of **Ram Krishan Aggarwala v. State of Orissa**<sup>19</sup> When the offence of rape is proved, that too on girls of very tender age and innocent behavior, the sentence of imprisonment should be imposed with severity, as was held in the case of **State of Rajasthan v. Ram Narain**.<sup>20</sup>

Also, when the accuse, raped a 12 year old girl, the HC was not justified in awarding sentence of three years saying that the offence took place 10 years ago,

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<sup>17</sup> Ibid, at para 35.

<sup>18</sup> (2000) 7 SCC 75 at para 9.

<sup>19</sup>(1976) 2 SCC 177 at para 5.

<sup>20</sup>(1996) 8 SCC 64 at para 7.

and the prosecutrix might have settled in life as was observed in the case of **Kamal Kishore v. State of H.P.** <sup>21</sup> Sentencing him to only three years amounts to sending him on a picnic as was observed by the High Court of Madhya Pradesh in the case of **Imratlal v. State of Madhya Pradesh.** <sup>22</sup> Sentence of death was also justified in a case of rape and murder of a 16 year old girl in the case of **Molai v. State of Madhya Pradesh**, who was preparing for her tenth class board exam when a guard sent by her father committed rape upon her.<sup>23</sup>

Thus, even for the judiciary, “rape” in the traditional sense of the term has always been a “higher” or in that sense a more “unpardonable offence”, which deserves a higher penalty than the other “random” cases of 354 or 377.

As far as the other sections are concerned, then in the case of **Ajay Goswami v. Union of India**, it was observed that:

“sale, letting, hiring, distributing, exhibiting, circulating of obscene books and objects of young persons under the age of twenty years also constitutes a

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21(2000) 4 SCC 502 at para 25.

22 1987 CrLJ 557 MP at para 11.

23(1999) 9 SCC 581 at para 36.

penal offence under Sections 292 and 293 of the Indian Penal Code and is punishable on first conviction with imprisonment of either description for a term which may extend to two thousand rupees and in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to seven years, and also with fine which may extend to five thousand rupees.”<sup>24</sup>

s. 366 of the Indian Penal Code was another section invoked in such cases:

“Kidnapping, abducting or inducing woman to compel her marriage, etc. - Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid.”<sup>25</sup>

This section was analysed in the case of **Tarkeshwar Sahu v. State of Bihar**<sup>26</sup>

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242007 1 SCC 143, at para 23.

25 S. 366, Indian Penal Code.

“The essential ingredient of the offence punishable under Section 366 IPC is that when a person has forcibly taken a minor girl with the intention as specified in that section, then the offence is clearly made out. In the instant case, the appellant at about 1.30 a.m. has forcibly taken the prosecutor/victim to his Gumti with the intention of committing illicit intercourse then the offence committed by the appellant would fall within the four fore corners of Section 366 IPC. In our considered view, the essential ingredients of the offence punishable under Section 366 IPC are clearly present in this case.”<sup>27</sup>

It was finally in the case of **Sakshi v. Union of India (1999)**<sup>28</sup> that the attention of the Supreme Court was drawn to the inadequacies in the existing laws as far as matters relating to sexual abuse of children were concerned. The court had held that the 156<sup>th</sup> Law Commission Report did not deal adequately with the issue, and held that

“Keeping in view, the rise in crime and the growing menace of sexual abuse of child, we consider it appropriate to once again request the Law

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26 (2006) 8 SCC 560.

27 Ibid, at para 30.

28 (1999) 6 SCC 591 at para 1.

Commission to examine the issues submitted by the petitioners and examine the feasibility of making recommendations for amendment of the Indian Penal Code or deal with the same in any other manner so as to plug the loopholes.”<sup>29</sup>

The 156<sup>th</sup> Law Commission Report stated that:

“Sexual child abuse may be committed in various forms such as sexual intercourse, carnal intercourse and sexual assaults. The cases involving penile penetration into vagina are covered under s. 375 IPC. If there is any case of penile/ oral penetration into, then it is covered s. 377, which takes care of the unnatural offences. If acts such as penetration of finger or any inanimate object into the vagina are committed against a woman or a female child, the provisions of s. 354 of the IPC, and as regards a male child, the provisions regarding Hurt or criminal force or assault as the case may be would be attracted. A distinction has to be naturally maintained between sexual assault under 354, sexual offences under 375 and unnatural offences. It may not be appropriate to bring all the cases under the ambit of “rape” which is a more distinct offence, with a definite connotation. It is needless to mention that any attempt to commit any of these offences is also punishable by virtue of s. 511 IPC. Therefore, any changes to the law may not be necessary.”<sup>30</sup>

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29 Ibid, at para 6.

30 Law Commission of India, 156<sup>th</sup> Report, para 9.59, <<http://lawcommissionofindia.nic.in/101-169/Report156Voll.pdf>>

In furtherance of the order passed in the case of **Sakshi**, the Law Commission of India came out with the 172<sup>nd</sup> Report on Review of Rape Laws.

It recommended that the definition of "rape" be replaced with definition of definition of "sexual assault".

"Not only women but young boys, are being increasingly subjected to forced sexual assaults. Forced sexual assault causes no less trauma and psychological damage to a boy than to a girl subjected to such offence. Boys and girls both are being subjected to oral sexual intercourse too."<sup>31</sup>

It was also recommended that:

"It is also necessary to include under this new definition (sexual assault) not only penile penetration but also penetration by any other part of the body (like finger or toe) or by any other object. Explanation to section 375 has also been substituted by us to say that penetration to any extent whatsoever shall be deemed to be penetration for the purpose of this section. This is so provided for the reason that in the case of children, penetration is rarely complete - for physical reasons."<sup>32</sup>

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31 Law Commission of India, 172nd Report, para 3.1. <  
<http://www.lawcommissionofindia.nic.in/rapelaws.htm> >

32 Law Commission of India, 172nd Report, para 3.1. <  
<http://www.lawcommissionofindia.nic.in/rapelaws.htm> >

In the case of **Sakshi v. Union of India (2004)**<sup>33</sup> it was held that

“It is rather surprising that the legislature while incorporating s. 327(2) by the amendment of 1983 failed to take notice of offences under s. 354 and 377 IPC. Deposition of the victims under s. 354 and 377 can at times be very embarrassing for them...The mere sight of the accused; can send the victim in a shock. Thus, they may not be able to give full details of the case, which may result in a miscarriage of justice.”<sup>34</sup>

Thus, it was ordered that s. 327(2) to apply to 354 and 377 also. And in holding the trial of child sex abuse or rape, a screen or some other arrangement maybe made where the victim does not see the accused, the language of the questions should be clear and not embarrassing, the victim should be given as many breaks between the testimony as required.<sup>35</sup>

It was in this case itself, as far back as 2004 that the court had lamented on the absence of any specific issue on the subject:

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33 (2004) 5 SCC 518.

34 *ibid*, at para 30-32.

35 *Ibid*, at para 34.

“The cases of child sexual abuse and rape are increasing at an alarming speed and appropriate legislation in this regard is therefore urgently required. We hope that the parliament will give some serious attention to it.”<sup>36</sup>

The Supreme Court also observed in the case of **Madan Gopal Kakkad vs Naval Dubey** :

“With deep concern, we may point out that though all sexual assaults on female children are not reported and do not come to light yet there is an alarming and shocking increase of sexual offences committed on children. This is due to the reasons that children are ignorant of the act of rape and are not able to offer resistance and become easy prey for lusty brutes who display the unscrupulous, deceitful and insidious art of luring female children and young girls. Therefore, such offenders who are menace to the civilized society should be mercilessly and inexorably punished in the severest terms”.<sup>37</sup>

Further, apart from the sentencing and the offences, what was difficult was even the procedure, and the demands made by the judiciary in the name of justice.

The SC laying the controversy of corroboration to rest, held finally in the case of

**State of Kerala v. Kurissum Antony** that :

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<sup>36</sup> Ibid, at para 35.

<sup>37</sup> (1992) 3 SCC 204 at para 57.



“To insist on corroboration except in the rarest of rare cases is to equate one who is a victim of lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to the injury. Why should the evidence of a girl or the woman who complains of rape or sexual assault be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion.”<sup>38</sup>

**POCSO come to the Rescue:**

**The Protection of Sexual Offences Against Children Act, 2012 [referred to as POCSO, 2012, hereinafter]** received the assent of the President on the June 19<sup>th</sup>, 2012. The object of the act is:

“to protect children from the offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto”<sup>39</sup>

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<sup>38</sup> (2007 1 SCC 627) at para 8.

<sup>39</sup> Statement of Objects and Reasons, POCSO, 2012.

This act defines a child as any person below the age of 18 years.<sup>40</sup> The unique feature of this act is that it classifies the sexual offences against children into five categories namely, "aggravated penetrative sexual assault", "aggravated sexual assault" and "penetrative sexual assault", "sexual assault" and "sexual harassment".

Penetrative Sexual Assault is said to have occurred when a person either penetrates his penis, or any object or applies his mouth into the vagina, mouth, urethra or anus of a child, or makes the child to do so with any other person, or manipulates any part of the body of the child to cause penetration.<sup>41</sup> This is punishable with an imprisonment of not less than seven years, but which may extend to life.<sup>42</sup>

The section on Aggravated Penetrative Sexual Assault is very exhaustive. It is said to have occurred when a police officer, or a member of the armed forces or a public servant or a person on the management or staff of a jail or a hospital or an educational institution commits penetrative sexual assault on a child in the course

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40 Ibid, s.2(d).

41 Ibid, s. 3(a-d).

42 Ibid, s.4.

of his duties, or within that institution as the case may be. It also includes person who commits gang penetrative sexual assault on that child, or commits assault using deadly weapons, fire, heated or corrosive substance or causes grievous bodily hurt or injury to the sexual organs of the child. It also includes penetrative sexual assault which physically incapacities the child, or in case of a female, makes her pregnant, or inflicts the child with HIV or any other life threatening disease, or commits assault on the child repeatedly, or on a child below twelve years of age. It also includes instances when a relative commits penetrative sexual assault on the child, or does it knowing that the child is pregnant, or commits it and attempts to murder the child, or commits in the course of communal violence, or commits it and makes the child strip in public.<sup>43</sup> This offence is punishable with imprisonment that shall be not less than ten years, and may extend to life also.<sup>44</sup>

The offence of Sexual Assault is committed when a person with sexual intent touches or makes the child touch the vagina, penis, anus or breast or any other

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<sup>43</sup> s. 5 (a-u), POCSO, 2012.

<sup>44</sup> Ibid, s. 6.

sexual act, without penetration.<sup>45</sup> This is punishable with imprisonment of not less than three years, which may extend to five years.<sup>46</sup>

Aggravated sexual assault has the same heads as under aggravated penetrative sexual assault<sup>47</sup>, and this is punishable with imprisonment of not less than five years, but which may extend to seven years.<sup>48</sup>

Sexual Harassment is defined in the Act as when a person with a sexual intent utters any word or makes any gesture, or shows any object for pornographic purposes or repeatedly follows or watches a child either directly or through any other means.<sup>49</sup> This is punishable with imprisonment of upto three years.<sup>50</sup> This act

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45 Ibid, s. 7.

46 Ibid, s. 8.

47 Ibid, s. 9(a-u).

48 Ibid, s. 10.

49 S. 11, POCSO, 2012.

50 Ibid, s. 12.

also makes it an offence to use a child for pornographic purposes, which is punishable from three years imprisonment upto life, depending on what form of the five sexual assaults took place on the child.<sup>51</sup>

The POCSO act also lists down the punishment for abetment or attempt to commit an offence. In case of abetment, the punishment is the same as is for the commission of the offence, and for the attempt, it is one-half of the imprisonment period prescribed.<sup>52</sup>

Apart from listing offences regarding Child Sexual Abuse, this act also strives to lay down a child friendly procedure during the entire judicial process, an aspect, which was crucially missing in the Pre POCSO days. The Act prescribes that the statement of the child must be recorded at his place of residence, and that the accused must not come in contact with the child at any point of time, and that the statement must be recorded in the presence of the parents of the child or any other person in whom he reposes trust and confidence.<sup>53</sup> The medical examination also,

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<sup>51</sup> Ibid, s. 14.

<sup>52</sup> Ibid, s. 16-18.

in case of a female must be conducted by a woman doctor, and in the presence of the person in whom the child reposes trust.<sup>54</sup>

The Act presumes the existence of the culpable state of mind, and it is upon the accused to prove that he did not possess the mental state with respect to the act as charged as an offence.<sup>55</sup> Further, Special Courts have been set up, for the purposes of providing speedy trial.<sup>56</sup> The procedure of the courts have been made child friendly, so that breaks are allowed between the deposition, and that no aggressive questioning is done, and that the identity of the child is not disclosed during the trial, and that the trial has to be held in camera.<sup>57</sup> Further, For speedy trial, the Act provides for the evidence of the child to be recorded within a period of 30 days. In addition, the Special Court is to complete the trial within a period of one year, as far as possible.<sup>58</sup>

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54 Ibid, s. 27.

55 Ibid, s.30.

56 Ibid, s. 28.

57 S. 33, 37 POCSO.

58 S. Ibid, s.35.

In addition to this, the Act also makes it mandatory for the media houses and hotels and lodges, to compulsorily report the cases of abuse that come to their knowledge, failing which the person can be sentenced to a period of six months.<sup>59</sup>

The **Protection of Children from Sexual Offences Rules, 2012**, were passed by the Central Government on 14<sup>th</sup> November, 2012. This provides that the District Child Protection unit has to maintain a register of all the translators and interpreters in the area.<sup>60</sup> These rules also lay down the procedure for the working of the Special Juvenile Police Units.<sup>61</sup> Emergency medical care must also be provided to the children, keeping in mind their privacy.<sup>62</sup> And the responsibility for monitoring the implementation of the Act has been on the NCPCR and the SCPCRs.<sup>63</sup> The rules also lay down that Compensation must be awarded by the Special Courts to the child in cases where it deems fit. Various criteria have also been listed down for

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59 Ibid, s. 21.

60 Rule 3, Protection of Children from Sexual Offences Rules, 2012.

61 Ibid, Rule 4.

62 Ibid, Rule 5.

63 Ibid, Rule 6.

the determination of the compensation including the extent of the injury, and whether the child has become pregnant , or been infected with HIV and what his economic status is , and whether he/she is in need of rehabilitation.<sup>64</sup>

In the case of **Shankar Kisanrao Khande v. State of Maharashtra**, it was observed that:

“In large numbers of cases, children are abused by persons known to them or who have influence over them. Criminal Courts in this country are galore with cases where children are abused by adults addicted to alcohol, drugs, depression, marital discord etc. Preventive aspects have seldom been given importance or taken care of. Penal laws focus more on situations after commission of offences like violence, abuse, exploitation of the children. Some adult members of family including parents choose not to report such crimes to the police on the plea that it was for the sake of protecting the child from social stigma and it would also do more harm to the victim. Sexual abuse can be in any form like sexually molesting or assaulting a child or allowing a child to be sexually molested or assaulted or encouraging, inducing or forcing the child to be used for the sexual gratification of another person, using a child or deliberately exposing a child to sexual activities or pornography or procuring or allowing a child to be procured for commercial exploitation and so on.”<sup>65</sup>

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64 Ibid, Rule 7.

65 MANU/SC/0476/2013 at paras 50-51.



The court further went on to direct that strict compliance must be met with s. 23 of the Act, and that the persons in charge of educational institutions, shelter homes, or any place where children are housed, must take special care to report the cases of child sexual abuse to the nearest police station, as well as directing the media to strictly comply with s. 23 as well.<sup>66</sup> In a case on exploitation of children in orphanage in the State of Tamil Nadu <sup>67</sup>, the Supreme Court directed the different states to tell the court as to the status of the implementation of the Act in their state.

**Justice Verma Committee Report:**

Chapter 7 of the Justice Verma Committee Report dealt with the issue of Child Sexual Abuse. In the opinion of the committee, the fact the number of missing children in India is so high goes to show that the police officers are negligent in preventing the trafficking in children, and “that the victims of trafficking are easy prey to sexual violence at the hands of bad characters with, at times, the help of conniving policemen.” The Committee further went on to observe that for the political executive as well the bureaucracy, the issue of protection of children from sexual abuse holds a very low priority. Also, these children require a high level of rehabilitation, and there is no data from the side of the government to show that there is adequate rehabilitation taking place in the juvenile justice homes. The

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<sup>66</sup> Ibid, at para 55.

<sup>67</sup> MANU/SC/0343/2013

Committee also mentioned the story of a Children's Shelter Home in Rohtak, whereby shocking instances of child sexual abuse as well as neglect had come to light. The Committee also gave the example of the Nithari case, in which the police was unwilling to register the missing complaint of the children filed by the parents, thinking that the parents themselves had sold the children.

In light of the above, the committee recommended that there must be gender sensitization right from the level of school, and that for this purpose, the curriculum of the schools must include a subject called "Social Sciences: Practical Application". Further, the committee was of the view that offences like voyeurism and eve teasing are considered minor offences, and that if they are checked, then the commission of the "major" offences can be prevented. The committee also identified the issue of male ego, or the "maleculture", wherein rape is not just that, it is the conquest of a woman, or of a man when his loved one is raped in his presence, by subjugating the woman to rape and sexual assault.

### **International Perspective:**

International Conventions and treaties have enacted provisions regarding protection of children in sexual offences. India ratified the Convention on the Rights of the Child in 1992.

Article 19 describes the child's right to protection from abuse, and Article 34 describes the child's right to protection from sexual abuse in particular.

Apart from the aforesaid convention there is plethora of laws

1. Hague Convention on the Protection of Children, 1996.
2. Rome Statute of the International Criminal Court, 1998
3. ILO Convention 182 on the Worst Forms of Child Labour, 1999
4. Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, 2000
5. Optional Protocol on the Involvement of Children in Armed Conflicts, 2000
6. UN Convention on Transnational Organized Crime, 2000
7. UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, 2000

Apart from the above mentioned legal instruments there are monitoring mechanisms set up by international bodies:

1. Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, 1990
2. Security Council Resolutions 1261 and 1314, 2000

### 3. Office of the High Commissioner for Human Rights

Article 51(c) of the Constitution of India mandates the state to abide by International obligations and treaties to which the country is signatory.<sup>68</sup> This was also reinforced by *Vishaka vs. State of Rajasthan*.<sup>69</sup> Although India ratified the Convention of Protection of Child Rights in 1992 India dragged its feet to enact a separate law to protect children from sexual offences till last year 2012.

Child sexual abuse and exploitation is a global problem and a serious violation of the human dignity of child victims. It is a problem that is hard to quantify due in part to the many forms the problem takes, though estimates indicate that the rate is 1.5-3 times higher among girl children. The term "child sexual abuse" encompasses the practice of physically or psychologically coercing children to participate in activities, commonly with a parent or caregiver, for the purpose of sexual gratification; the commercial sexual exploitation of children, including pornography and prostitution; sexual assault as a tool of political oppression, genocide and as a weapon of war by hostile, friendly and even neutral parties; and cultural practices including female genital mutilation, virginity exams, and early and forced marriages.

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<sup>68</sup> Article 51(c) of the Constitution of India.

<sup>69</sup> AIR 1997 SCC 3011.

The International Labor Organization (ILO) has condemned the commercial sexual exploitation of children as one of the worst forms of child labor.

### **1. Child Pornography**

Child pornography is the visual representation of children engaged in sexually explicit activities. The material itself is exploitative, as is the conduct which led to its creation. In addition, child pornography is often used to legitimize and encourage children to participate in sexual activities with pedophiles or as the objects of more child pornography. It is estimated that somewhere between 80 and 100 percent of those who purchase child pornography also engage in sexual activity with children.<sup>70</sup>

### **2. Child Prostitution:**

Child prostitutes perform sexual activities for the explicit purpose of securing material compensation for themselves or others. Traffickers and pimps prey on girl children who are particularly vulnerable due to gender inequality, poverty, and financial, political and military crises, among other factors. More than two million children are forced into the \$10-billion-a-year global sex industry. The problem is especially alarming in Asian countries. According to the UN more than 800,000

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<sup>70</sup>Timofey A. Saytarly, *Fighting Child Pornography* (2005) available at [http://www.crime-research.org/library/Saytarly\\_nov.html](http://www.crime-research.org/library/Saytarly_nov.html). See also, Levesque at 65.

children in Thailand, 400,000 in India and 20,000 in the Philippines are involved in sex tourism, which attracts clients from across the globe.<sup>71</sup>

### 3. Virginitv Exams

The practice of imposed virginitv testing involves the intrusive examination of a girl child for the purpose of determining whether she has retained her virginitv. Although parents and school officials may conduct examinations acting alone, they are usually conducted in conjunction with a doctor, police officer or other state actor. This state involvement and parental condonation has made it difficult to obtain reliable data on the prevalence of the problem. Nonetheless, girl children in India, South Africa, Turkey and Palestine continue to report being subject to the physical and emotional trauma of such examinations. Virginitv exams are a violent attack on a girl child's right to privacy and physical integrity and are therefore a violation of Article 16 of the CRC which mandates that states parties shall protect children from "arbitrary or unlawful interference with ... privacy... [or] attacks on ... honour and reputation." The Convention also prohibits virginitv exams under Article 37, as they are a form of cruel, inhuman or degrading treatment of girl children.

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<sup>71</sup>ECPAT-USA, *The Commercial Sexual Exploitation of Children: An Overview* (2003) available at <http://www.ecpatusa.org/background.asp>.

#### **4. Child Marriages:**

Included under the umbrella term “child marriage,” are a number of different practices in which at least one of the parties is under the age of 18. It refers to marriages that are physically forced, or arranged with or without consent between parties of like age or where one party is considerably older than the child bride. UNICEF estimates that 36 percent of 20- to 24-year-old women worldwide were married or in union before the age of 18 and the number is significantly higher in areas where the practice is especially prevalent, including an estimated 77 percent in Nigeria and 65 percent in India.<sup>72s</sup>

#### **Conclusion:**

From the above, it can be seen that the POCSO is indeed a welcome step on part of the legislature, to finally step up, and take cognizance of the fact that child sexual abuse is unfortunately a grim reality of our society, how much ever it may be denied. The fact that it happens behind closed doors, and that in most cases the perpetrator is known to the child does not help matters either. That is why most of these cases go unreported. Until now, in the absence of any special legislation on

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<sup>72</sup>International Women’s Health Coalition, *IWHC Factsheet: Child Marriage* (2004) available at <http://www.iwhc.org/resources/childmarriagefacts.cfm>.

the issue, the accused was often let off with a lesser sentence, especially when the assault was non penetrative in nature, more so when it was on a male child.

The exhaustive provisions of the POCSO will definitely go a long way in ensuring the safety of the children of India, so that they can go about living their lives freely, and spending the best days of their lives in a carefree manner, and not check over their shoulder constantly, for a pedophile to be lurking around, who after robbing them off their innocence, by virtue of the lacunae of the legal system, has the last laugh.

Now all that needs to be done is to ensure that the POCSO is implemented in its true letter and spirit, and for this, all the functionaries and bodies responsible, like the NCPCPR, SCPCR, the District Child Protection Unit, the Juvenile Child Protection Unit, the local police as well as the head of the educational institutions as well as other institutions where children are housed, need to work together, to ensure that the children of India get what they deserve, a safe childhood.