





This case law ready reckoner compiled by Justice Ventures International provides information about judgements pertaining to the POCSO Act for those involved in the prosecution of POCSO crimes. It contains citations to and the ratio decidendi of important POCSO-related cases rendered by the Apex court and various High Courts from across the country. The cases have been categorized by the provisions of the POCSO Act to which they pertain, and an index is provided to facilitate easy navigation through the ready reckoner.

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### Object of the POCSO Act

#### ❖ Alakh Alok Srivastava v. Union of India, (2018) 17 SCC 291

The POCSO Act was legislated to promote the fundamental concepts that the State is empowered to make special provisions for children (under Article 15 of the Constitution) and to direct its policy towards securing that the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected from exploitation and moral and material abandonment (under Article 39(f)). The statement of objects and reasons for the Act are to reduce child abuse and protect children from the offences of sexual assault, sexual harassment and pornography, etc..." The Apex court also issued directions to various state authorities and elaborated on the duties of the High Courts and Special Courts.

### **Chapter 1: PRELIMINARY**

Section 1: Short title, extent and commencement
Section 2: Definitions

### Eera through Manjula Krippendorf v. State (Govt of NCT Delhi) and Ors, (2017) 15 SCC 133

The Supreme Court decided that a reading of the POCSO Act indicates it is gender-neutral and thus to include the perception of mental competence of a victim or mental retardation as a factor would be tantamount to causing violence to the legislation by incorporating certain words to the definition. Saying "age" would cover "mental age" has the potential to create numerous anomalous situations without any guidelines or statutory provisions. The court believed that adding the word "mental" through the interpretative process would not come within the purposed interpretation of the statute and "individual or personal conviction should not be allowed entry to the sphere of interpretation. It has to be gathered from the legislative intention."



### ❖ Re: Exploitation of Children in Orphanages... v. Union of India & Ors, (2014) 2 SCC 193

The Supreme Court directed State governments and Union Territories to register residential child care institutions by the end of the year, noting that the registration process should include the establishment of a database of all children in need of care and protection. The Court noted that this should include the recording of the residential capacity and purpose of the child care institution. The Court also acknowledged that the institutionalization of children is not necessarily the only available option and directed that alternatives to institutionalization be considered, such as foster care and adoption. To that end, the Court requested the juvenile justice committee to consider establishing a secretariat for assistance. The Court further directed States and Union Territories to, among other things, set up inspections of institutions, prepare individual child care plans for all children in care, implement rehabilitation and social re-integration schemes for children leaving care, ensure the training of personnel involved, and conduct social audits.

### Sabari @ Sabarinathan @ Sabarivasan v. The Inspector of Police & others, (2018) 4 MLJ (Crl) 585

The Madras High Court held that "When a girl below 18 years is involved in a relationship with a teenage boy or little over teenage, it is always a question mark as to how such relationship could be defined, though such relationship would be the result of mutual innocence and biological attraction. Such a relationship cannot be construed as an unnatural one or alien to between relationships of opposite sexes..."

"... on a profound consideration of the ground realities, the definition of 'Child' under Section 2(d) of the POCSO Act can be redefined as 16 instead of 18. Any consensual sex after the age of 16 years or bodily contact or allied acts can be excluded from the rigorous provisions of the POCSO Act and such sexual assault, if it is so defined can be tried under more liberal provisions, which can be introduced in the Act itself and in order to distinguish the cases of teenage relationship after 16 years, from the cases of sexual assault on children below 16 years. The Act can be amended to the effect that the age of the offender ought not to be more than five years or more than the consensual victim girl of 16 years or more..."



## Chapter 2: SEXUAL OFFENCES AGAINST CHILDREN

#### A. Penetrative Sexual Assault and Punishment therefor

Section 3: Penetrative sexual assault

Section 4: Punishment for penetrative sexual assault

### ❖ Pintya@Kashinath Kamble v. The State of Maharashtra, Bombay High Court (901) APPEAL No.2722017

The accused didn't penetrate his penis into the prosecutrix's body, but he touched his penis to the vagina of the prosecutrix. The judge didn't punish the accused under section 3 of POCSO Act but under section 18 read with section 6 of the Act and for the offence punishable under Section 511 read with Section 376(2) of the IPC. The length and breadth of the argument by both counsel was mainly on the components which lead to crime. The prosecutor was of the opinion that the accused intended to commit rape, whereas the counsel representing the accused stated that the accused can't be charged on the basis of the mere intention. The conclusion was that penetration is necessary to accuse someone under section 3 and 4 of the Act.

### ❖ Mahesh Sambhaji Chafle v. The state of Maharashtra, 2020 Cri LJ 2169

Appellant had been accused of the offence punishable under Section 4 of the Act. Medical officer's statement was noted which stated "not found any recent tears, stains due to semen, blood, faecal matters around the anus or there was no injury or no mark of violence, yet, he had stated that when he had digitally examined the anus, he had found the tone of the sphincter to be hypotonic." Thus, when the medical evidence supported the victim, and there was nothing in the cross-examination of the victim to discard such evidence or brand it as unbelievable or untrustworthy, then the facts stated were sufficient to conclude that the accused committed the offence. Therefore, the Special Court was justified in holding that the prosecution had proved the guilt of the accused beyond reasonable doubt and proceeded to convict him.



### Sujit v. State of Kerala, 2018 (3) KHC 641

It was held that "consent" of a minor girl is not a valid consent in law. The court also held that the consent of a minor victim is immaterial for the purposes of ascertaining the culpability of the accused while stating that there is a difference between consent and submission. "... Every consent involves submission, but the converse does not follow. A mere act of submission does not involve consent. If there was no voluntary participation in the sexual act, it would not amount to consent. Voluntary participation involves the exercise of intelligence based on the knowledge of its significance and moral quality of the act. Consent cannot be equated to inability to resist or helplessness. Consent is an act of reason accompanied by deliberation. A minor is incapable of thinking rationally and giving any consent..."

### B. Aggravated Penetrative Sexual Assault and Punishment therefor

Section 5: Aggravated Penetrative sexual assault
Section 6: Punishment for aggravated penetrative sexual assault

### ❖ Lanu Akkam v. State of Nagaland 2020 SCC OnLine Gau 3982

The petitioner/accused applied for bail and argued that the right of the petitioner accrued under Section 167 of the CrPC and he had the right to be released on bail. The public prosecutor argued that the petitioner/accused was a very influential person, no less than a Director of a Department and could have a lot of influence on the progress of the case if he was released on bail. The offence, as such, was also heinous in nature and there was a provision which requires that matters pertaining to the POCSO Act to be disposed of within a period of one year. The Court viewed this case very seriously and gave more weight to the submission of the public prosecutor and agreed that offences under the POCSO Act are viewed seriously by the Supreme Court and also the society as a whole due to its frequency. Nevertheless, several steps have and should be taken to see that the menace should be curbed. The Court while rejecting the bail application of the petitioner opined that the instant case was one where the offence alleged was very unpleasant and needed to be tackled with due consideration to ensure the society doesn't lose faith in the administration of justice.



#### Ravi v. The State of Maharashtra, Criminal Appeal Nos. 1488-1489 of 2018

While dismissing the appeal of the appellant and affirming the death sentence the court held that motive is not an explicit requirement under the Indian Penal Code, though motive may be helpful in proving a case with circumstantial evidence, but the case at hand was not entirely based on circumstantial evidence as there were reliable eye-witness depositions that had seen the appellant committing the crime. The court reinforced the grounds on which a death sentence can be commuted as laid down in Bachan Singh and Machhi Singh case, which are mostly in cases of (i) conviction based on circumstantial evidence alone, (ii) failure of the prosecution to discharge its onus re: reformation, (iii) a case of residual doubts, and (iv) where the other peculiar "mitigating" circumstances outweighed the "aggravating" circumstances." The court also referred to the amendments carried out by Parliament in the POCSO Act, 2012 by way of The Protection of Children from Sexual Offences (Amendment) Act, 2019. Significantly, "death sentence" has also been introduced as a penalty for the offence of aggravated penetrative sexual assault on a child below 12 years.

### ❖ Manoharan v. State by Inspector of Police, AIR 2019 SC 3746

The Court reaffirmed the amendment to The Act, vide "The Protection of Children from Sexual Offences (Amendment) Bill, 2019", according to which, whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life. In the case at hand, aggravated penetrative sexual assault was committed on a 10-year-old girl by more than one person. The 10-year-old girl child (who was below 12 years of age) would fall within Section 5 (m) of the POCSO Act. In such circumstances, the Court had no doubt that the trial court and High Court had correctly applied and balanced aggravating circumstances with mitigating circumstances to find that the crime committed was cold-blooded and involved the rape of a minor girl and murder of two children in the most heinous fashion possible.

### \* Ravishankar @ Baba Vishwakarma v. The State of Madhya Pradesh, (2019) AIR 2019 SC 5347

While partly allowing the appeals to the extent of setting aside the death penalty rendered by the Trial Courts and High Court and substituting with life imprisonment, the court stated that the case at hand fell short of the "rarest of rare" cases where the death sentence alone deserved to be awarded to the appellant. The Court said that although a case may be tried under Section 302 of the IPC as a "rarest of the rare" case where the offense results in the victim's death, many such cases may

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actually fall within the ambit of Section 304 (Part II) since the 'intention to kill' may often not be established. The court went on to explain that it would be imprudent to lay down an absolute principle of law that no death sentence can be awarded in a case where conviction is based on circumstantial evidence, for in cases of rape and murder of children, the victims are often unable to resist and, in such cases, it is extremely likely that there would be no ocular witness.

#### C. Sexual Assault and Punishment therefor

Section 7: Sexual assault
Section 8: Punishment for sexual assault

### Niranjan Pramanik @ Telya v. The State of West Bengal, CRA 743 of 2016

The court held that the deposition of the victim can be corroborated by the other prosecution witnesses. Penetration does not need to be proven to show that an offence was committed under Section 7 and punishable under Section 8 of the Act. It is not of utmost importance that the medical evidence show any vaginal injury to prove that the act was committed.

### Sri Asok Das @ Ashoke v. State of Tripura, CRL. A(J) NO.54 OF 2018

The court held that even though there was no evidence of the accused touching the victim's vagina, anus or breast, since the accused had come into contact with the prosecutrix by kissing her and removing her pants, there was enough evidence that the accused had come into contact with the victim with sexual intent. The doctrine of proportionate punishment would have to be implemented to serve justice and the punishment of the accused was reduced.

### ❖ Rajendra v. State, 2020 SCC OnLine Del 724

The court held that pulling down the leggings of a child victim and touching her thighs is evidence of sexual intent and accordingly constitutes an offence of sexual assault under Section 7 of POCSO.



### D. Aggravated Sexual Assault and Punishment therefor

Section 9: Aggravated sexual assault
Section 10: Punishment for aggravated sexual assault

#### Raju Prasad v. State of Sikkim, 2019 Sikkim HC 002

The High Court of Sikkim held that forcibly hugging and kissing a child below 12 years of age amounts to "aggravated sexual assault" under section 9(m) of the POCSO Act, 2012. The act of forcibly kissing and hugging involves physical contact although without penetration. Thus, it is cogent that the said act amounts to sexual assault.

### E. Aggravated Sexual Assault and Punishment therefore

Section 11: Sexual Harassment
Section 12: Punishment for sexual harassment

### ❖ State GNCT Of Delhi v. Baljeet Singh @ Shankey, 2019 SCC OnLine Del 9109

The High Court held that the substantive offence (Section 11) for which punishment is prescribed under Section 12 POCSO has the precondition that an act be done with sexual intent. In this case, there was no such intention against the Respondent prima facie coming forward, so there was no infirmity in the order of the Trial Court in discharging the respondent of the offence punishable under Section 12 POCSO.

#### ❖ State v. Anil, Crl. Revision Petition 1058 of 2019

The High Court held that the victim did not mention any act of sexual assault or sexual intent in her statement so there was no illegality or perversity in the order passed by the learned Trial Judge in discharging the respondent for the offence punishable under sections 354A IPC and Section 12 of the POCSO Act, 2012.



# Chapter 3: USING CHILD FOR PORNOGRAPHIC PURPOSES AND PUNISHMENT THEREFOR

Section 13: Use of child for pornographic purposes

Section 14: Punishment for using child for pornographic purposes

Section 15: Punishment for storage of pornographic material involving child

#### ❖ Fatima A.S v. State of Kerala, 2020 SCC OnLine Ker 2827

The Court held that the video of a mother getting her breasts painted by her minor children to teach them sex education was important but that whether that amounted to the use of the children for the purpose of sexual gratification could be finally decided only after a custodial interrogation of the mother. The Bench further added that the explanation to Section 13 clearly states that the expression of "use a child shall include involving the child through a medium like print, electronic, computer, or any other technology for preparation, production, offering, transmitting, publishing, facilitation and distribution of pornographic material." The court did not find itself in a position to say that no offence under Sections 13, 14 and 15 of the POCSO Act had been committed.



## Chapter 4: ABETMENT OF AND ATTEMPT TO COMMIT AN OFFENCE

### Section 16: Abetment of offence

### Mondi Murali Krishna v. Dumpa Hanisha, Criminal Revision Case No. 1970 of 2017 (MANU/AP/0033/2020)

Ignorance of information regarding a crime will amount to abetment, and the prosecution argued that the accused (Principal) aided the perpetrators in the commission of sexual assault and sexual harassment by his act of illegal omission in not taking any action against accused/ perpetrators, when the said acts of sexual assault and sexual harassment and also the acts of ragging were complained to him by the father of the deceased. The Court held that the accused Principal is also, prima facie, liable for abetment of the said offences under Section 16 of the Act.

### Anuradha Dalmia v. State of Uttarakhand and Ors., Criminal Misc. Application No. 2040 of 2018 (MANU/UC/0256/2019)

The Petitioner being the Principal of the National Institute for The Empowerment of Persons with Intellectual Disabilities at Dehradun was implicated under the POCSO Act for purportedly abetting the offence committed by the main accused in failing to prevent the commission of an offence under POCSO Act. The Court held that where a person aids and abets the perpetrator of a crime at the very time the crime is committed, he is a principal of the second degree and Section 109 applies. But mere failure to prevent the commission of an offence is not by itself an abetment of that offence. Abetment of the offence is some action which precedes the commission of the offence. There cannot be abetment of a thing after action has been taken.

### ❖ Kulwant Singh v. State of Bihar, (2007) 15SCC670

Where a person aids and abets the perpetrator of a crime at the very time the crime is committed, he is a principal of the second degree and Section 109 of IPC (Punishment for Abetment) applies.



### Section 17: Punishment for abetment

### Sunil @Sumit s/o Pralhad Ramteke v. State of Maharashtra, CRI. APPL. No. 655 of 2019

Punishment for abetment where there is no specific provision shall be the same as the punishment for the offence. The POCSO Act specifically provides for the same punishment for an abettor as for the offender.

### Section 18: Punishment for attempt to commit an offence

### ❖ Koppula Venkat Rao v. State of Andhra Pradesh, (2004)3SCC602

The Prosecution stated that the appellant (accused) offered a lift to the prosecutrix, took her to a cattle shed, got on top of her but could not complete the actual intercourse. The Court held that this amounted to an attempt to commit rape. Attempt to commit an offence can be said to begin when the preparations are complete. An attempt to commit an offence is an act, or a series of acts, which leads inevitably to the commission of the offence, unless something, which the doer of the act neither foresaw nor intended, happens to prevent this.



## Chapter 5: PROCEDURE FOR REPORTING OF CASES

Section 19: Reporting of offences

### ❖ Balasaheb Alias Suryakant v. The State of Maharashtra, Criminal Revision Application No. 69 of 2017

"If averments made by the first informant in her FIR as well as in her statements by the victim female child and her colleague, so also averments made by witnesses in other statements recorded by the Investigator u/s 161 of CrPC is perused, then it becomes clear that there is enough material to come to the conclusion that despite having knowledge that the offence punishable under the POCSO Act has been committed in the school, the accused (Director of the Trust), managing the school, has, instead of reporting the matter to the Special Juvenile Police Unit or to the local police, insisted the first informant and the victim's relatives to settle the matter." As per the mandate of Section 19 of the POCSO Act, the accused was enjoined with the duty to report the matter to the police.

### ❖ Kamal Prasad Patade v. State of Chattisgarh & Ors., Writ Petition (Cr) No. 8 of 2016

"The qualifying word in Section 19(1) of the POSCO Act is apprehension regarding an offence is likely to be committed or has knowledge that such an offence under POSCO Act has been committed, he shall provide such information to the Special Juvenile Police Unit or local police. Thus, Section 19(1) of the POSCO Act can be invoked only when the person concerned was having exclusive knowledge of commission of offence under POSCO Act and if the person is in-charge of the institution who fails to report the commission of an offence under sub-section (1) of Section 19 of the POSCO Act in respect of a subordinate under his control, would be liable for prosecution under Section 21(2) of the POSCO Act."



### Section 20: Obligation of media, studio and photographic facilities to report cases

### ❖ Shankar Kisanrao Khade v. State of Maharashtra, (2013) 5 SCC 546

"Media personals, persons in charge of Hotels, lodges, hospitals, clubs, studios, photograph facilities have to duly comply with the provisions of Section 20 of POCSO Act, and provide information to the S.J.P.U., or local police..."

### Section 21: Punishment for failure to report or record a case

### ❖ Shankar Kisanrao Khade v. State of Maharashtra, (2013) 5 SCC 546

Understanding the plight of the victims of POCSO offenses and the difficulties they face in reporting those crimes, the court said "Witnesses of such crimes tend to keep quiet taking shelter of factors including social stigma, and community pressure. Thus, for anybody witnessing and reporting such a crime, a child centric approach should be taken and the information must be kept confidential without casting any stigma on the victim and the family." Furthermore, the court also issued several directions that must be followed by different stakeholders with respect to reporting cases of sexual assault or abuse of a minor.

These directions include that hostels, schools or any other such institution where the incident has taken place must report the same to the nearest Special Juvenile Police Unit (S.J.P.U). Furthermore, it must be ensured that the victim's identity always remains secret. Special care must be taken in cases where the accused is a family member and appropriate actions should be taken by consulting the other female members of the family. The court, while emphasising the seriousness of the crime of purposefully not reporting the commission of sexual abuse faced by a minor, also gave the medical facilities treating the victim the duty to report the witnessing of any sexual abuse case or assault to the JJ Board / SJPU.

Regarding the administrative hurdles, the court directed the state and central governments to make sure that SJPUs are present in all districts and that they work in consultation with the JJ Board to take necessary steps against the perpetrator and protect the victim. Additionally, the said governments are also to take measures provided under Section 43 of the Act to publicize the Act through media and television and spread awareness to the public.



### \* Kamal Prasad Patade v. State of Chattisgarh, Writ Petition (Criminal) No.8/2016

"In the prosecution under Section 21(2) of the POSCO Act, it is necessary for the prosecution to establish first commission of main offence under Sections 4 & 6 of the POSCO Act before making the person liable under Section 21(2) of the POSCO Act as the prosecution has firstly to establish beyond doubt in the jurisdictional criminal court that an offence under Sections 4 & 6 of the POSCO Act has been committed by an accused person and once finding is recorded by jurisdictional criminal court convicting the accused therein for offences under Sections 4 & 6 of the POSCO Act, then to establish the petitioner had exclusive knowledge of such an offence having been committed by the co-accused under POSCO Act and despite such knowledge, he failed to report the matter under Section 19(1) of the POSCO Act to the competent authority including local police station, then only penal provision contained in Section 21(2) of the POSCO Act would attract."

- "...pending establishment of the principal offences against main accused for commission of offences under POSCO Act, the initiation and continuance of prosecution against the petitioner for offence under Section 21(2) of the POSCO Act is nothing but clear abuse of the process of law."
- "...therefore, unless the commission of the principal offences by the main accused for offences under the POSCO Act is established, question of prosecution of the petitioner for non-compliance of Section 19(1) that he has knowledge of commission of offence would not arise."

### Section 22: Punishment for false complaint or false information

### Sujatha Aged 40 Years vs State of Kerala, Crl. MC. No. 3978 of 2018

"The allegation of sexual abuse of child is a matter of very serious concern and one affecting public conscience. POCSO Act provides for very deterrent punishment to the guilty. Hence, a false case of sexual abuse on a child has also to be treated very seriously and any attempt to implicate a person falsely in an offence under the provisions of POCSO Act has also to be seriously dealt with. Any attempt to misuse the provisions of the POCSO Act to settle scores with the opponent need to be nipped in the bud. Legislature in its wisdom has incorporated section 22 in POCSO Act to meet such eventualities."

### N. Chanadramohan v. State, CRL. O.P. No. 21414 of 2019

In this case, the mother of the victim girl lodged a complaint that the father of the victim girl (that is, her husband) had sexually assaulted their own daughter aged about 13 years. The court held that the case shocked the conscience of the Court and that it was unbelievable that the mother, just for the



sake of taking custody of her child, could go to the extent of alleging that her husband was having physical contact with his own daughter. The respondent police were thus directed to immediately proceed against the mother under Section 22 of the POCSO Act for having given a false complaint and take action against her in accordance with law.

### Section 23: Procedure for media

### ❖ Sudheesh Kumar S.R. v. State of Kerala, WP(C.) No. 31378 of 2016 (V)

"...the intention under Sec.23 is very clear that the victim child shall not be exposed to any sort of publication so as to affect her future and damn her career. In my considered opinion, in order to constitute an offence under sub-section (4) of Sec.23, no mens rea, culpability, and malafide or illegal intention is required. Mere publication of the details of the victim child will attract the offence under sub-section (4). Therefore, the thrust of the contention advanced by the petitioner that the petitioner did not have any malafide intention to expose the child, cannot be sustained under law."

### ❖ Rabin Burman v. State of Sikkim, Crl. A. No. 18 of 2016Criminal Case No. 31 of 2001

"The mandate of Section 23 of the POCSO Act, 2012 shall be strictly followed. Any person who contravenes the provisions of sub-section (1) by making any report or present comments on any child from any form of media or studio or photographic facilities without having complete and authentic information, which may have the effect of lowering the child's reputation or infringing upon his privacy shall be prosecuted for contravention thereof under Section 23 (4) of the POCSO Act, 2012. Similarly, if any report in any media discloses the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child, all such persons involved in making such report and disclosure shall be prosecuted for contravention thereof under Section 23 (4) of the POCSO Act, 2012."

"...The Investigating authorities, the media houses and the Courts have a statutory duty to protect this with all their might. The identity of the child not being disclosed is the interest of the child, both as a victim as well as a witness which is sought to be protected by the POCSO Act, 2012. This cannot be compromised."



### Nipun Saxena v Union of India, (2019) 2 SCC 703

"Subsection (1) of Section 23 prohibits any person from filing any report or making any comments on any child in any form, be it written, photographic or graphic without first having complete and authentic information. No person or media can make any comments which may have the effect of lowering the reputation of the child or infringing upon the privacy of the child. Subsection (2) of Section 23 clearly lays down that no report in any media shall disclose identity of a child including name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to the disclosure of the identity of the child. This clearly shows that the intention of the legislature was that the identity of the child should not be disclosed directly or indirectly. The phrase 'any other particulars will have to be given the widest amplitude and cannot be read only ejusdem generis. The intention of the legislature is that the privacy and reputation of the child is not harmed. Therefore, any information which may lead to the disclosure of the identity of the child cannot be revealed by the media. The media has to be not only circumspect but a duty has been cast upon the media to ensure that it does nothing and gives no information which could directly or indirectly lead to the identity of the child being disclosed."

"...In our considered view, the media is not only bound not to disclose the identity of the child but by law is mandated not to disclose any material which can lead to the disclosure of the identity of the child. Any violation of this will be an offence under Section 23(4)."

# Chapter 6: PROCEDURE FOR RECORDING STATEMENT OF THE CHILD

Section 24: Recording of statement of a child

### ❖ Smt. Reenu Saini vs State of Uttarakhand And Others, WP (Cr.) Writ Case No: 159111011 of 20187

"The statement of the victim, if not already recorded, shall only be recorded at her house or at any convenient place, as suggested by family/guardian of the victim."

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"It is further directed that no child, as defined under POCSO Act, shall be called to any police station throughout the State of Uttarakhand for the purpose of recording his/her statement. The identity of the child shall not be disclosed to any person, including social media, print media, electronic media, WhatsApp, Twitter or any other mode, not even in blurred pictures."

### **State vs. Anil, (2014) 4 SCC 69**

"As per sub-section 1 to Section 24 of POCSO Act, statement of child shall be recorded either at the residence of the child or at the place where she/he resides or at a place of her/his choice. The same shall recorded woman police officer far by a as possible. section 4 to Section 24 of POCSO Act says that no child shall be detained in the police station at night for any reason. Combined reading of sub-section 1 and 4 makes clear the intent of legislature that the statement of the child shall not be recorded in the police station and shall be recorded either at her house or at a place where she/he resides or at any place of her/his choice."

### Section 25: Recording of statement of a child by Magistrate

### \* Court on Its Own v. State, Crl. Ref. No. 2/2016

"We find that Section 25 of the legislation has carefully set down the manner in which the statement of a child victim being recorded under Section 164 of the Code of Criminal Procedure, 1973 would be recorded by the Magistrate. Section 25 excludes the requirement under the first proviso of sub-section (1) of Section 164 of the Code so far as it permits the presence of the advocates of the accused. This exclusion in fact emphasizes the importance attached by the legislature to oust any kind of third-party intervention in police investigations involving children."

### Section 26: Additional provisions regarding statement to be recorded

❖ Suganna v. The State, Criminal Petition No. 200016/ 2018



The accused in this case had applied for bail under section 439 of the CrPC. The court while deciding on the same held: "On perusal it is seen that the provision of Section 26 of the POCSO Act relates to the method and manner, in which the statement of the juvenile victim has to be recorded. In no manner, it deals with any offence or punishment and it deals with the procedural aspect of recording of the statement."

### Sunil Ramdas Salve v. The State of Maharashtra, Criminal Appeal No. 420 of 2015

"Though it is observed by the learned trial Judge that the victim was having mild retardation, he found in preliminary examination of the victim, that she was capable of giving the evidence. As seen from the examination-in-chief, the victim has deposed verbally as well as by making signs/gestures, whenever necessary. From the manner in which the victim deposed before the Court, as exhibited from her examination-in-chief as well as the cross-examination, it is quite clear that she was able to understand the questions put to her and give rational answers thereto. She has effectively faced the cross-examination. The learned Counsel for the appellant did not raise any objection before the trial Court on the ground that the victim was not able to answer or understand the questions that were being put to her. In the circumstances, in my view, it was not necessary to resort to the provisions of subsection (3) of Section 26 of the POCSO Act for recording the evidence of the victim."

### ❖ Court on Its Own v. State, Crl. Ref. No. 2/ 2016

"...Vide Section 26(2), the POCSO Act specifically provides that the magistrate (under Section 25) or the police officer (under Section 24) shall record the statement. The Act enables the magistrate or the police officer to take the assistance of a "translator" or an "interpreter". While Section 26(3) enables them, in the case of a child having a mental or physical disability, to 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"."

"...While Section 26(4) of the POCSO Act mandates that "wherever possible", the child's statement is also recorded by audio, video, electronic means". Unfortunately, the statute has failed to prescribe the procedure for recording/storing such evidence including the manner in which the recording is to be preserved and any provisions attaching confidentiality thereto.... It is important to note that Sections 26(1) and 26(2) only enable presence or facilitation of the parents or any other person while a statement is being recorded by either the Magistrate or a police officer. No power is conferred on such persons named therein to record a statement.... It is significant to note that Section 26(3) only enables the



Magistrate or the police officer to take assistance of the special educator or the persons named therein. It does not, in any manner, empower an NGO or a counsellor to record the statement."

### Section 27: Medical examination of a child

### ❖ Smt. Reenu Saini v. State of Uttarakhand And Others, WP (Cr.) Writ Case No: 159111011 of 20187

"...in the cases registered under POCSO Act as well as under Section 376 of I.P.C. or any other sexual offence relating to child/girl, the enquiry/ investigation shall be carried out by a woman police officer, not below the rank of sub-inspector and the victim shall only be examined by a woman doctor, as provided under Section 27 of the POCSO Act."

### ❖ Nipun Saxena v Union of India, WP(C) No. 565 of 2012

"The Police Officer on registration of FIR shall promptly forward the child for immediate emergency medical aid, whenever necessary, and/or for medical examination under section 27 of the Act..."



### **Chapter 7: SPECIAL COURTS**

### Section 28: Designation of Special Courts

### ❖ In Re: Alarming Rise in The Number of Reported Child Rape Incidents, MANU/SCOR/21428/2019

In a series of Orders, the Hon'ble Supreme Court of India directed the Centre and the State to set up an exclusive Special Court for trying POCSO cases in districts with more than a hundred cases registered under the POCSO Act. Moreover, Public Prosecutors must be appointed exclusively under the POCSO Act. The Public Prosecutors must be sensitized in dealing with child sexual abuse survivors. The Chief Justices of every High Court must ensure the setting up of special programs in the Judicial Academy of the State which would train the Special Public Prosecutors in issues of law, child psychology, child behaviour, health issues etc.

- (i) In each district of the country, if there are more than 100 cases under the POCSO Act, an exclusive/designated special Court will be set up, which will try no other offence except those under the POCSO Act.
- (ii) Such Courts will be set up under a Central scheme and will be funded by the Central Government, which fund will not only take care of the appointment of the Presiding Officer, but also the appointments of support persons, Special Public Prosecutors, Court staff and infrastructure including creation of child-friendly environment and vulnerable witness Court rooms, etc.
- (iii) While drawing up the panel(s) of support persons in each district, which should not exceed a reasonable number, keeping in mind the total number of cases to be tried by the special Court SMW (Crl.) 1/2019 3 to be set up in each district, care should be taken to appoint persons who are dedicated to the cause and apart from academic qualifications are oriented towards child rights, sensitive to the needs of a child, and otherwise child friendly. The same standards would also apply in the matter of appointment of Special Public Prosecutors.

#### ❖ Maria Kuttubudin v. State of Maharashtra and Ors., WP 4478 of 2019

The court, in this case, observed that POCSO is a special enactment and brought into force to protect children from exploitation and provide for the establishment of Special Courts for the trial of such offences and matters connected therewith or incidental thereto. Even in the Statement of the POCSO Act, it is specifically provided as "provision for establishment of Special Courts for speedy trial of such offences."



### Rabin Burman vs State of Sikkim, 2017, SLR (2017) SIKKIM 249

The Special Judges manning the Special Courts must keep in mind that the nomenclature "Special Court" has been used to distinguish it from other Courts by some quality peculiar or out of the ordinary. Similarly, the "Special Public Prosecutor" appointed under Section 32 of the POCSO Act must also be conscious of the fact that they have been specially appointed as "Special Public Prosecutors" under the POCSO Act; the word "special" has to be understood in contradiction to the word "general" or "ordinary". It signifies specialisation; the Special Court constituted under the POCSO Act must necessarily be specialised in the understanding, appreciation and effective implementation of the Act. Similarly, the Special Public Prosecutor must also have adequate specialization in the understanding, appreciation and effective implementation of the POCSO Act. That is the only way in which the mandate of the POCSO Act can be successfully fulfilled.

### ❖ In Re: The Registrar (Judicial) Krishnaswami Naidu and Anr. 2017 CriLJ 4519

If the act of the accused is an offence under the POCSO Act and also under the SC & ST Act, the Special Court under the POCSO Act alone shall have jurisdiction to exercise all the powers including the power to remand the accused under Section 167 of the Code, to take cognizance of the offences either on a police report or on a private complaint and to try the offender. The said Special Court shall have jurisdiction to grant all relief to which the victim is entitled under the SC & ST Act.

### Section 29: Presumption as to certain offences

### Noor Aga v. State of Punjab and Anr., 2008 (16) SCC 417

In cases of "Reverse Presumption" wherein the statute requires the accused to prove their innocence, the burden is of a "shifting" nature. It is subject to the establishment of certain precedent conditions upon whose fulfilment it becomes operative. Therefore, the prosecution must first establish the foundational facts upon which the case is built, beyond all reasonable doubt, while for the accused, the burden is only the "preponderance of probability."

### ❖ State of Bihar v. Rajballav Prasad, 2017 (2) SCC 178

The Supreme Court held that individual liberty is not absolute and must be balanced against the collective interest of the community. Section 29 of the POCSO Act stipulates "Presumption as to certain offences" wherein any crime under sections 3, 5, 7, and 9 of the nature of "Penetrative Sexual Assault," "Aggravated Penetrative Sexual Assault," "Sexual Assault" and "Aggravated Sexual Assault" are presumed to have been committed by the accused. Therefore, in certain cases such as under the



POCSO Act, the "innocent until proven guilty" dictum can be reversed to ensure the fairness of a trial. Witnesses often turn hostile out of threat and intimidation. Hence, when considering bail applications, the courts must take into account the likelihood of the accused to tamper with evidence, intimidate witnesses and evade justice.

### ❖ Amol Dhudhram Barsagade v. the State of Maharashtra, Criminal Appeal No. 600/2017

The Bombay High Court held that the Statutory Presumption under Section 29 of the POCSO Act is not absolute. While interpreting Section 29, it is important to prove the foundational facts of the case to save the provision from the vice of unconstitutionality. The presumption becomes operative only if the prosecution can establish the foundational facts. Even after the foundational facts have been established by the prosecution, the burden on the accused is not to rebut the presumption beyond a reasonable doubt. Unlike the prosecution which must prove its case beyond all reasonable doubt, it is sufficient for the accused to cast serious doubt on the veracity of the prosecution's case or bring material on record which renders the prosecution's version highly improbable.

### \* Ramprasad v State of Maharashtra, 2018 (3) AIR 117

The Bombay High Court held that the Statutory Presumption under Section 29 of the POCSO Act is not absolute. The prosecution must establish its case first and its evidence must be examined and admitted. It is only then that the accused needs to rebut the presumption by either cross-examination or leading defence evidence. Even with a reverse presumption, the burden of proof on the prosecution is greater.

### ❖ Sahid Hossain Biswas v. State of West Bengal, 2017 SCC 5023

Under the POCSO Act, the accused is supposed to disprove a fact. In this case, the Calcutta High Court held that since it is trite law to prove the negative of a premise, the premise itself must first be proved. Thus, the prosecution must first propose the foundational facts which can only then be rebutted by the accused. The presumption of guilt under Section 29 does not denote that the prosecution's version of events must be irrevocably accepted without any evidence or proof. The courts are duty-bound to analyse the case in light of special circumstances, such as patent absurdities in the prosecution case and the existence of entrenched enmity between the accused and the victim, in



determining whether the accused has discharged their burden of proof and established their innocence.

#### ❖ Sadhulal Motilal Turra v. State of Maharashtra, 2018 IndLaw MUM 673

The Court cannot simply apply the presumption under Section 29 of the POCSO Act without first establishing the foundational facts which qualify the acts of an accused as an offence under this Act. In this case the trial court relied on the evidence of reprehensible character rather than on the commission of the crime. While Section 29 stipulates "reverse presumption", this presumption is not irrefutable. The Bombay High Court held that the evidence adduced by the prosecution must prove beyond reasonable doubt the foundational facts which are necessary for drawing a presumption under section 29.

#### ❖ Navin Dhaniram Baraiye v. the State of Maharashtra, 2018 (2) AIR 897

In this case, the Bombay High Court held that presumption of guilt requires the establishment of foundational facts. There is a high burden of proof beyond all reasonable doubt on the prosecution to prove its case. In POCSO cases where there is a child witness, reliable statements may be admitted while unreliable statements may be wholly discarded. However, in cases of partly reliable and partly unreliable statements, it would have to be corroborated. Unless the statements can be corroborated, the presumption under section 29 of the POCSO Act will not become operational.

#### ❖ Pandurang Narayan v. the State of Maharashtra, 2019 Indlaw MUM 1428

A feeble attempt at denying the prosecution's case will not absolve the accused of the burden carried under the reverse presumption. Although the onus on the accused is not as high as the one on the prosecution, the burden of "preponderance of probability" is quite high and must be undertaken as a serious endeavour. In the present case, the accused had not stepped in the witness box or attempted to adduce any evidence to prove his innocence. Therefore, the accused in such instances fails to discharge the burden of presumption under Section 29 of the POCSO Act.

#### \* Rahul Sirsat v. state of Maharashtra, 2018 Indlaw MUM 21

The presumption under section 29 of the POCSO Act is rebuttable at the instance of the accused. The accused must be presented with sufficient opportunities to rebut the presumptions being drawn against them. Likewise, appropriate opportunities must be accorded to the victim to prove their case beyond all reasonable doubt. In the present case, the accused was found guilty of aggravated penetrative sexual

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assault under section 5(k) by the trial court. The Bombay High Court ordered a re-trial on account of lack of proof concerning the victim's disability while ordering the release of the accused for the duration of the re-trial.

### ❖ Niranjan v. State, Crl. A. 1271/2019

The victim was sexually assaulted, and the appellant was convicted under Section 376(2) IPC and Section 6 of the POCSO Act. The court held that since the appellant had failed to rebut the presumption set forth in sections 29 and 30 of the POCSO Act, he was convicted of the offences.

### ❖ Arun tanti v. The State of Assam, Crl. A. No. 56(J) of 2017

The learned trial Court held that the victim girl was not of the age to give consent to sexual affairs or to run a marital life in absence of any marriage. The Court observed that the POCSO Act required the accused to rebut the presumption, which he had failed to do, and thus he was convicted.

### ❖ Lakhindra Gogoi v. State of Assam, Crl.A. No. 85(J) of 2016

The Accused had lured the informant's daughter into his house and committed a bad act with her. The Ld. Trial court thus convicted the accused for an offence under section 4 of the POCSO Act, relying on the provisions of section 29 of the POCSO Act that provides for presumption that the accused had committed or abated to commit the offence of penetrative sexual assault unless the contrary was proved. The court held that the accused had not rebutted the presumption in any manner, thus the appeal was dismissed.

### Sanjay Rai v. State of Sikkim, CrL. A. No. 39 of 2017

An appeal was filed against conviction under Section 366 of IPC and Section 4 of POCSO Act. The Court found that the prosecution was able to prove the offence under Section 3(a) POCSO Act while the defence had produced no evidence against the presumption of the offence under Section 29, and thus the conviction was affirmed.



### Section 30: Presumption of culpable mental state

### Ajitkumar Kumarsinh Bhagora v. State of Gujarat, Criminal Appeal Nos. 1110 and 845 of 2017

The court found the evidence of the prosecutrix unreliable, which completely proved the innocence of the accused persons, and the Supreme Court held that the accused must be protected against the possibility of false implication. It further held that the accused can prove he had no culpable mental state as presumed u/s 30 of the POCSO Act. The accused can rely on the materials available in the prosecution evidence. Furthermore, if circumstances appearing in the prosecution case or evidence are such as to give reasonable assurance to the Court that appellant could not have had the knowledge or the required intention, the burden cast on him under Section 30 of the Act would stand discharged.

### ❖ Lakhi Ram Takbi v. State of Sikkim, Crl Appeal No. 15 of 2017

The Court interpreted how the law of presumption is applied and observed that it is evident from section 30 of the POCSO Act that the absence of culpable mental state must be established beyond a reasonable doubt. It is also relevant that the reverse burden of proof is not a preponderance of probability but "beyond reasonable doubt," distinguishing it from rebuttable presumption such as required under Section 304B of the IPC. It further observed that if the facts required to form the basis of a presumption of law exists, the court must draw the statutory conclusion, but such did not preclude the person against whom the presumption was drawn from rebutting it and proving the contrary.

Section 31: Application of Code of Criminal Procedure, 1973 to proceedings before a Special Court

Section 32: Special Public Prosecutor

### ❖ In Re: Alarming Rise in Number of Reported Child Rape Incidents, 2020 SCC 564

In a series of orders, the Hon'ble Supreme Court of India directed the Centre and the State to set up an exclusive Special Court for trying POCSO cases in districts with more than a hundred cases registered under the POCSO Act. Moreover, Public Prosecutors must be appointed exclusively under



the POCSO Act. The Public Prosecutors must be sensitized in dealing with child sexual abuse survivors. The Chief Justices of every High Court must ensure the establishment of special programs in the Judicial Academy of the State to train Special Public Prosecutors in issues of law, child psychology, child behaviour, health issues, etc.

### ❖ State of U.P. v. Johri Mal, 2004 (4) SCC 714

When appointing a government counsel or a public prosecutor, the state must consider the following fundamental principles: (i) good administration of justice, (ii) fulfilling the duty to uphold the rule of law, (iii) its accountability to the public, and (iv) expenditure from the taxpayers' money. Moreover, as long as such an appointment follows a reasonable or fair procedure, it is not amenable to judicial review. The Public Prosecutor must have character, competence and sufficient experience. Such a considerable appointment would be crucial to safeguard the interest of the society.

### ❖ State of Punjab v. Brijeshwar Singh Chahal, (2016) 6 SCC 1

In this case, the Hon'ble Supreme Court of India laid down the role of government counsels. It held that capable advocates are crucial for public interest as well as upholding justice itself. Therefore, the State is obligated to appoint the most competent lawyers. Such appointments must be based on individual merit and must not be affected by extraneous considerations. The appointment evaluation must be on a fair, reasonable, non-discriminatory and objective basis which can be based on any procedure formulated by the Government upholding these key considerations. Furthermore, appointments should be in proportion to the workload in the courts, otherwise there will simply be a waste of taxpayer's money to gain political favours.

### ❖ Aju Mathew v. the State of Kerala, 2018 SCC 4942

The Kerala High Court considered the question of procedure to be followed for the appointment of a public prosecutor under Section 32 of the POCSO Act. The petitioners had challenged the validity of appointment of SPPs under section 24(4) of CrPC in the absence of any specific procedure under section 32 of the POCSO Act. The High Court applied the cases of Johri Mal and Brijeshwar Singh Chahal to hold that the only consideration when appointing a SPP under the POCSO Act is a fair and reasonable appointment. Furthermore, reading section 32 with section 31 of the Act, which applies the provisions of CrPC to the Act, the court held that the appointment, duties and responsibilities of the public prosecutor under Section 32 of the POCSO Act is analogous to that of Public Prosecutors under section 24 of the CrPC. Therefore, until such time as the Central Government issues independent



guidelines and rules for the appointment of Special Public Prosecutors under the POCSO Act, the states may rely on the procedure established under Section 24 of the CrPC.

### ❖ Mani Pushpak Joshi v. State of Uttarakhand, CRLR No. 89 of 2019

The court held that a Public Prosecutor must be fair not only to the Court and to the investigating agencies but to the accused as well. If an accused is entitled to any legitimate benefit during trial the Public Prosecutor should not conceal it. On the contrary, it is the duty of the Public Prosecutor to disclose such to the accused. Even if the defence counsel has overlooked it, the Public Prosecutor has the responsibility of bringing it to the notice of the Court.

### ❖ State of Kerala and Ors v. Saju George and Ors., (2017) CRILJ 1631

An additional designation is given to the Special Public Prosecutor under POCSO Act, in addition to the designation of the Government Advocate-cum-Public Prosecutor, and the court held that Section 32(1) discloses that the State Government shall by notification in Official Gazette appoint Special Public Prosecutors for every Special Court for conducting cases only under the provisions of POCSO Act. It is thus clear that the Special Public Prosecutor should only perform the duties under the act and entrusting them additional duties of Special Public Prosecutor under the POCSO Act runs contrary to sub-section (1) of Section 32.



# Chapter 8: PROCEDURE AND POWER OF SPECIAL COURTS AND RECORDING OF EVIDENCE

Section 33: Procedure and Power of Special Court

### ❖ The minor case through guardian Zareen v. State of NCT of Delhi, W.P. CRL. 798/2015

A reading of Section 33 of the POCSO Act shows that the Special Court has power to grant compensation and there is no outer limit which has been fixed while granting the compensation. This judgment is important because there is no scale of measuring compensation. It is made on a case-by-case basis, based the amount of injury caused or trauma suffered.

### \* Thokchom Premlata Devi v. The State of Manipur and Ors., PIL No.13 of 2015

The Court referred to the judgment of the Hon'ble Supreme Court in Alakh Alok Srivastava v. Union of India, which provided guidelines for the purpose of speedy trial under POCSO and also guided The Registrar General and Registrar (Judl.) to collate all information under POCSO Act and place it before the One-Man Committee so as to take instruction or direction from time to time and monitor the progress of trial in cases falling under POCSO Act. Further, the court directed that special courts dealing with offences under the POCSO Act should strictly follow the procedures laid down under the POCSO Act and avoid granting unnecessary adjournments. The trial should be completed in a time bound manner as specified under the Act.

### ❖ Rambohar Saket v. State of MP, 2019(1) JLJ522

In this case, the Madhya Pradesh High Court gave the following guidelines for trial courts to follow to complete prosecution evidence expeditiously:

- 1. After framing of charges against the accused, issue summons to witnesses.
- 2. If summons are returned unserved, instead of wasting further time with the same process, the next summons must be served through the office of Superintendent of Police to the witnesses.



- 3. If the witnesses are unreachable or summons cannot be served on them, the trial court must skip those witnesses and proceed to the next set of witnesses by issuing summons to them.
- 4. If the remaining witnesses for the prosecution have not been examined on account of the inability of the police to produce them for reasons reflected in the report of the police, the Court must close the case of the prosecution and proceed to the next stage of the case.

### ♦ Bhavanbhai v. State of Gujarat (Gujarat High Court), Cri Appeal 781/2017

The court, while acknowledging the importance of in-camera trials, observed that a bare reading of Section 24(5) and Section 33(7) makes it amply clear that the name and identity of the child is not to be disclosed at any time during investigation or trial and the identity of the child is protected from the public or media. Furthermore, Section 37 provides that the trial is to be conducted in camera which means that the media cannot be present. The entire purpose of the POCSO Act is to ensure that the identity of the child is not disclosed unless the Special Court for reasons to be recorded in writing permits such disclosure. This disclosure can only be made if it is in the interest of the child and not otherwise.

### Nipun Saxena and Anr. v. Union of India and Ors., (2019) 2 SCC 703

Survivors of rape and sexual assault often face ostracism and unwarranted ill treatment from society. It is therefore crucial for the child's mental health to be protected from such treatment. Under section 33(7), the Special Courts must protect the identity of the victims/survivors during the investigation/trial. This includes any information that may reveal the identity of the survivor such as their family's name/school/neighbourhood, etc. Their identity can only be disclosed in furtherance of the child's interests. The media and any person are prohibited from making comments and statements that might damage a child's reputation and privacy.

### ♦ Mondi Murali Krishna v. Dumpa Hanisha Naga Lakshmi and Ors., (2017) MANU/AP/0033/2020

The Special Court is bound and lawfully obligated to take cognizance of a criminal case charging offences under POCSO Act which is reiterated in Section 33 of the act. If a session court is deemed to be a Special court under the Act, the special court is given all the competent authority and powers of a session court for its procedure, code of conduct, punishment, relief and everything relating to the subject matter in course.



### ❖ Deo Kumar Rai v. State of Sikkim, 2018 CriLJ 2607

The High Court of Sikkim held that there is a mandatory duty on the special courts under Section 33(8) of POCSO Act to apply its mind to the question of awarding compensation. Courts should take into consideration certain points, such as the immediate need of financial support, while passing an order for interim or final compensation. Moreover, according to rule 7 of POCSO Rules, 2012 a special court can also order interim compensation if required.

### ❖ Gaya Prasad Pal v. State, 2017 1 JCC 383

The Delhi High Court held that there was a statutory responsibility on the Special Court to ensure that the identity of the child was not disclosed during the investigation or the trial. The court further held that given the nature of offences committed against her by the appellant, the victim was entitled to protection of her identity under section 33(7) of POCSO Act. As a result, the special court was under a duty to ensure that her identity was "not disclosed at any time," which means not even in judgments.

### ❖ Alakh Alok Srivastava v. Union of India, (2018) 17 SCC 291

In this landmark case, the Hon'ble Supreme Court of India issued directions to the High Courts to regulate the functioning of Special Courts established under the POCSO Act. The High Courts are required to issue orders to the Special Courts to finish the matters in a time-bound manner. They are further required to ensure that a child-friendly atmosphere is adopted in the proceedings instituted by the Special Courts. The Presiding Officers of such courts should be sensitized in the matters of child protection and psychological response. In furtherance of the same, the Chief Justices of the High Courts must establish a three-judge or one judge committee to regulate and monitor the progress of trials in these cases. It was held that:

- (i) The High Courts shall ensure that the cases registered under the POCSO Act are tried and disposed of by the Special Courts.
- (ii) The Special Courts, as conceived, be established, if not already done, and be assigned the responsibility to deal with the cases under the POCSO Act.
- (iii) Instructions should be issued to the Special Courts to fast track the cases by not granting unnecessary adjournments and following the procedure laid down in the POCSO Act and thus to complete the trial in a time-bound manner or within a specific time frame under the Act.
- (iv) The Chief Justices of the High Courts are requested to constitute a Committee to monitor the progress of the trials under the POCSO Act.
- (v) The Director General of Police States shall constitute a Special Task Force which shall ensure that the investigation is properly conducted and witnesses are produced on the dates fixed before the trial courts.



#### ❖ Balasaheb v. The State of Maharashtra, CRA 69 of 2017

If an accused is held liable under various offences he should be tried at one time for all offences, otherwise it will defeat the purpose of section 33(5) of POCSO, which provides that the victim child should not be called repeatedly in court and that filing different cases for different offences is against his provision.

### Mondi Murali Krishna v. Dumpa Hanisha Naga Lakshmi & Ors., 2020 (1) ALD(Crl.) 898 (AP)

The Andhra Pradesh High Court directed the special courts to decide cases related to POCSO within six months. The order states that the courts are under legal obligation to take the charge sheet on to the file and take cognizance of the case.

### Sangitaben Shaileshbai Datanta v. State of Gujarat, 2018 CriLJ 3146

The court said that the identity of the victim should not be disclosed in any case, not even by high courts or lower courts. Therefore, all courts should use the word "victim" only. It also prohibits media from disclosing the identity of the victim and identity includes not only her name but also her address, school and family name.

### ❖ Subhash Chandra Rai v. State of Sikkim, 2019(1) PLJR 248

When dealing with POCSO cases the most important consideration is to protect the identity of the child victim. The court noted that it is not just the duty of courts and police to protect the identity but that certain restrictions should be imposed on media and society at large to protect the child, as it is the responsibility of society at large to support the victim and the family through the trauma.

### ❖ Minor Victim No. 1 & 2 v. State and Ors., W.P. (Crl.) 3244/2019

The case law provides a detailed analysis of final compensation and interim compensation under Section 33(8) of POCSO Act & Rule 7 of POCSO Rules. The compensation awarded by the Special Court is to be paid by the State Government from the Victims Compensation Fund (or other schemes or funds established for the purpose of compensating victims under section 357-A of CrPC or any



other laws) and, where such fund or scheme does not exist, by the State Government. The State Government shall pay the compensation ordered by the Special Court within 30 days of receipt of such order.

### Ms. Eera Through Dr. Manjula Krippendorf v. State, Govt. Of Nct of Delhi, 2017

The Hon'ble Supreme Court listed all the prime factors to be considered while awarding compensation to the victim under Rule 7 of POCSO Rules, 2012 and Section 33(8) of POCSO Act, which, when read with Sub-section (2) and (3) of Section 357A of Code of Criminal Procedure, 1973 makes a direction to award compensation to victims after the end of trials and also at the initial stage for rehabilitation.

### \* Rabin Burman v. State of Sikkim, SLR (2017) SIKKIM 249

Section 19(6), 23, 24 r/w Section 33 (7) of the POCSO act safeguards the child from disclosing his identity as well as his parents and guardians to maintain confidentiality and privacy of the child at every stage of the inquiry, investigation and trial. Judges, lawyers, police officers, clerical workers, the media and society must take care not to disclose the identity of the child relating to any offence or the procedure in investigation or trials when conducted. The preamble of the POCSO Act states that safeguarding and protecting the fundamental privacy rights of the child during court procedures and investigation helps to maintain the self-esteem, dignity and peaceful essence of the child.

### ❖ Nipun Saxena v. The Union of India, Writ Petition (C) NO.565 OF 2012 (SC)

In this historical judgement the NALSA Compensation Scheme was made applicable to victims of offences under the POCSO Act. The Court stated that the NALSA Compensation Scheme should function as a guideline to the Special Court for the award of compensation to victims of child sexual abuse under Rule 7 until the Rules are finalized by the Central Government. For more details under the 2018 NALSA Victim Compensation Scheme (click here)

### Nalankilli v. The State (Madras High Court), Crl.OP No.22699 of 2019

This case restates the historical verdict of Nipun Saxena vs Union of India relating to the NALSA compensation scheme and the POCSO specified act and rules and specifies and briefs important points and the objective structure of the provisions relevant to child welfare and compensation. The NALSA compensation scheme under the POCSO Rules, Rule-7 and Section 33(8) of the POCSO Act, provides interim compensation or final compensation, as the case may be.



#### ❖ The Registrar (Judicial) v. Krishnnaswami Naidu & Anr., 2017CriLJ4519

The case reiterates that the POCSO Special Court has all the powers of a Session Court and is legally obliged to take cognizance of all POCSO triable cases once the complaint is lodged, to create a child-friendly environment in the POCSO court, and to apply certain other Special court procedures under Section 33 of the POCSO Act.

### ❖ P.Shanmugavel Raj v. State of Madras, 2014, Criminal Revision Case (MD) No.743 of 2013

In this matter, the court stated that the Special Court under the POCSO Act must follow all the procedures of and function as a Session court under Chapter 18 of CrPC, as mentioned in section 33(9) of the POCSO Act. Thus, a Public Prosecutor must conduct the trial proceeding as laid down in Section 225, as if he is conducting a Session Court trial.

#### Unnikrishnan R. Vs. Sub Inspector of Police, Kurathikadu Police Station and Ors., ILR2018(4) Kerala 964

The court held that the questions and points to be put forward in the re-examination, cross examination, and examination-in-chief of the child must first be stated before the judge before putting such questions to the child and that the atmosphere of the court must be child friendly throughout the trial. The above provisions are stated in sections 33(2) and 33(6) of the POCSO Act.

## Section 34: Procedure in case of commission of offence by child and determination of age by Special Court

#### ❖ State of Sikkim v. Girjaman Rai and Ors, 2019 CriLJ 4247

Issues were raised regarding the proof required to determine the age of a victim in relation to criminal prosecution under POCSO Act. The court held that the date of birth is a question of fact which must be proven with evidence. The allegation of sexual assault coupled with the proof of minority of the



victim puts an accused through the rigours of the POCSO Act, which applies a reverse burden of proof. Therefore, it is vital to prove the minority of the victim. The "best evidence rule" must necessarily be followed when proving the contents of a birth certificate; the birth of a child is known to the parents and therefore the evidence of the parents has been accepted as best evidence if it is supported by unimpeachable documents. Mere production of a birth certificate without authentication by its maker, however, is not enough to prove the age of the victim. The strength of the evidence given will help the Court in determining the age of the victim.

#### Anish Rai v. State of Sikkim, 2018 CriLJ 4193

Even though Rule 12 of the Juvenile Justice (Care and Protection) Rules, 2007 is strictly applicable only to determine the age of a child in conflict with law, the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime. Under the aforesaid provision, the age of a child is ascertained by adopting the first available basis, out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has an overriding effect over an option expressed in a subsequent clause. The highest rated option available would conclusively determine the age of a minor.

#### ❖ Mahadeo v. State of Maharashtra and Ors, 2013 11 SCC 637

The court while determining the age of the prosecutrix referred to a statutory provision contained in the Juvenile Justice (Care and Protection) Rules, 2007, which provides in Rule 12 the procedure to be followed in determining the age of a juvenile.

#### \* Ramprasad v. State of Maharashtra, 2018ALLMR (Cri) 4849

The Bombay High Court observed that under Rule 12(3) of the Juvenile Justice (Care and Protection) Rules, 2007, it is not only the birth certificate issued by a corporation or a municipal authority that can be made the basis for ascertaining the date of birth but also certificates issued by a school attended by the prosecutrix.

### ❖ Nazeer v. State of Uttar Pradesh (Allahabad HC), Criminal Appeal No. 1886 of 2017



The court was of the view that the CrPC, the IPC and POCSO Act do not provide a procedure for determining a victim's age but that Rule 12 of the Juvenile Justice Rules, 2007 framed under Section 67 of the Juvenile Justice Act, 2000 provides a procedure for determining a juvenile's age. In determining a victim's age, primacy shall be given to the date of birth (DoB) mentioned in the matriculation (or equivalent) certificate, and in the absence thereof to the DoB mentioned in the school first attended by the victim. In the absence of both, the entries made by a corporation, a municipal authority, or a panchayat regarding DoB shall be considered. Finally, if none of the aforesaid document containing DoB is available, medical evidence regarding age of victim shall be taken into consideration. Neither mere ocular evidence nor any other document will be considered for determination of age.

#### ❖ Jarnail Singh v. State of Haryana, (2013) 7 SCC 263

The Supreme Court has held that "On the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice Rules, 2007... Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime For, in our view, there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime."

#### ❖ Om Prakash v. State of Rajasthan and Ors., AIR 2012 SC 1608

While a doctor's estimation of age is only an opinion, such opinion if based on scientific medical tests such as ossification and radiological examination will have to be treated as strong evidence having corroborative value when determining the age of the alleged juvenile accused.

#### ❖ Mukarrab v. State of U.P, 2017(1) ACR 147

The Supreme Court has held that "Age determination is essential to find out whether or not the person claiming to be a child is below the cut-off age prescribed for application of the Juvenile Justice Act. [A]s juveniles in conflict with law usually do not have any documentary evidence, age determination, cannot be easily ascertained, especially in borderline cases. Medical examination leaves a margin of about two years on either side even if ossification test of multiple joints is conducted...In the absence of a birth certificate issued soon after birth by the authority concerned, determination of age becomes a very difficult task providing a lot of discretion to the Judges to pick and choose evidence. In different cases, different evidence has been used to determine the age of the accused."



#### ❖ State (GNCT of Delhi) v. Hargovind, 2018, CRL.A. 334/2018

The Special Court has the discretionary power to determine the age of the child/victim, pursuant to Section 34(2) of the POCSO Act, using the criminal procedure laid down in Section 311 of CrPC, 1973 read with Section 165 of the India Evidence Act. Discretionary power means the application of judicial minds.

#### Section 35: Period for recording of evidence of child and disposal of case

#### ♦ Mohiddin v. State of Karnataka, Criminal Petition No.5923/2017

The court observed that it is true as per Section 35(1) of the POCSO Act that the evidence of the child shall be recorded within a period of thirty days by the Special Court taking cognizance of the offence. However, as setting a time period to conclude the trial is within the discretion of the concerned Court, the concerned Court is hereby directed to take up the matter on a day-to-day basis and to conclude the trial as per the mandate under Section 35(2) of POCSO Act without fail. If the trial of the case is not concluded within one year from the date of taking cognizance as per the mandate under Section 35(2) of the Act, the petitioner is at liberty to move the Court.

#### ❖ Lalsuonglien and Ors. v. The State of Manipur (02.08.2019 - Manipur), MANU/MN/0087/2019

The POCSO Act provides for Special Courts that conduct the trial in-camera, without revealing the identity of the child and in a child-friendly manner. Hence, the child may have a parent or other trusted person present at the time of testifying and can call for assistance from an interpreter, special educator, or other professional while giving evidence; further, the child is not to be called repeatedly to testify in Court and may testify through video-link rather than in a courtroom. Above all, the said Act stipulates that a case of child sexual abuse must be disposed of within one year from the date the offence is reported.

Section 36: Child not to see accused at the time of testifying



### ❖ Sakshi and Ors. v. Union of India (UOI) and Ors. (26.05.2004 - SC), MANU/SC/0523/2004

The provisions of sub-section (2) of Section 327 Cr.P.C. shall apply to an inquiry or trial of offences under Sections 354 and 377 IPC, in addition to the offences mentioned in the sub-section.

In holding a trial of child sex abuse or rape:

- (i) a screen or similar arrangement may be made where the victim or witnesses (who may be as vulnerable as the victim) do not see the body or face of the accused;
- (ii) the questions put on cross-examination by the accused, in so far as they relate directly to the incident, should be given in writing to the Presiding Officer of the Court who may put them to the victim or witnesses in a language which is clear and not embarrassing; and
- (iii) a victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as required.

#### ❖ S. Sankara Varman v. State, 2016(3) MLJ (Crl) 764

The High Court of Madras held that section 36(1) of the POCSO Act mandates that a child should not be exposed to the accused when deposing but at the same time, the Accused has the right to remain in a place from where he can hear the statement of the child witness. It does not entitle the accused to excuse himself when the child witness is present and later claim that there has been a violation of Section 36(1). After suffering sexual abuse, the child victim should not be made to suffer further at the hands of the accused during trial.

#### Nipun Saxena and Ors. v. Union of India (UOI) and Ors., MANU/SC/1459/2018

It is imperative to have courts which are child friendly. Section 33(4) of the POCSO Act requires the Special Court to ensure that there is a child-friendly atmosphere in court. Section 36 provides that the child should not see the accused at the time of testifying. This is to ensure that the child does not get frightened upon seeing the alleged perpetrator of the crime. Trials are to be conducted in camera, and thus there is a need to have courts which are specially designed to be child friendly and meet the needs of child victims and the law.

#### Section 37: Trials to be conducted in camera

Rabin Burman v. State of Sikkim, SLR (2017) SIKKIM 249



The Court, while reflecting on in camera trials, observed that the POCSO Act provides vital safeguards to ensure protection of the child's reputation and privacy and to prevent the disclosure of the child's identity during investigation or trial. This is paramount. The role of the Special Court specially constituted under the POCSO Act is not only defined but made special for its effective implementation. The investigating authorities, the media houses and the courts have a statutory duty to protect this with all their might. The identity of the child not being disclosed is in the interest of the child, both as a victim as well as a witness which is sought to be protected by the POCSO Act. This cannot be compromised.

#### ❖ State of Punjab v. Gurmit Singh and Ors, AIR 1996 SC 1393

The court held that the expression that a trial of rape "shall be conducted in camera" casts a duty on the Court to conduct such trials in camera." The Courts are obliged to act in furtherance of the intention expressed.

#### ❖ Court on Its Own Motion v. State of Delhi, 2018 VIIAD (Delhi) 657

The recording of the evidence in trials and other trial proceedings in the POCSO Special court must be done under camera which has to be placed in a manner which is appropriate to the victim or the child, as per the guidelines issued by the Special court. The court further stated the prosecution should appoint an expert to guide the victim/child without any stress and outburst especially while recording evidence.

### Section 38: Assistance of an interpreter or expert while recording evidence of child

#### ❖ Mohinder Kumar v. State of Himachal Pradesh, MANU/HP/1623/2018

The Court was of the view that the assistance of a special educator, expert, or person having knowledge of psychology, mental health and child development could be taken while recording the statement of a mentally challenged person. Section 26(3) clearly provides that the Magistrate while recording the statement of a mentally challenged person can 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 and experience.



#### ❖ Court on Its Own Motion v. State of Delhi, 2018 VIIAD (Delhi) 657

The High Court of Delhi while adverting to the requirement of section 38 of the POCSO Act also referred to rules 3 (5) and 3(9) to be followed with section 38 for the assistance of an expert while recording the evidence of a victim.

### **Chapter 9: MISCELLANEOUS**

#### Section 39: Guidelines for the child to take assistance of the experts, etc.

The Ministry of Women and Child Development, Government of India has issued Model Guidelines under Section 39 of the POCSO Act, for the use of Professionals and Experts under the Act. For more details <u>click here</u>

#### Section 40: Right of child to take assistance of legal practitioner

#### ❖ Lavanya Anirudh Verma v. State of NCT of Delhi, MANU/DE/0649/2017 (Order dated 08.02.2017)

Article 39A of the Constitution of India casts an obligation upon the State to provide free legal aid. Section 40 of POCSO which is in harmony with Article 39A of the Constitution of India recognizes the right of the child to take legal assistance of a legal practitioner. Thus, it casts an obligation on courts to ensure that the child is provided legal aid. POCSO Rules, 2012 also provides that the concerned authority shall inform the child and his parent/guardian of the child's right to legal advice and counsel and the right to be represented by a lawyer, in accordance with Section 40 of the POCSO Act.

#### Section 41: Provisions of Section 3 and 13 not to apply in certain cases

Dr. P. Rajendran v. State, Crl.R.C.No.941 of 2018 & Crl.M.P.No.10884 of 2018 (Order Dated: 26.11.2018)



The court held that the trial Court was correct in rejecting the case of the Petitioner (Accused) to discharge him from the offence under Section 9 (e) of POCSO Act by applying Section 41. Though protection is available to the Petitioner (Accused) under Section 41 of POCSO Act, 2012, being a medical professional, it is not possible to decide the applicability of the said protection at the stage of framing of charge in a discharge application filed by the Accused Doctor. By facing the trial, no prejudice would be caused to the Petitioner (Accused) since it is always available for him to emerge unscathed by establishing his professional credentials and bona fides as claimed by the petitioner himself. At the same time, he cannot shut out the prosecution at the threshold and seek to discharge himself by mechanical application of Section 41 of POCSO Act.

#### Section 42: Alternate punishment

#### ❖ Gaya Prasad Pal @ Mukesh v. State, 2016 SCC Online Del 6214

The court held that the acts committed by the appellant attracted IPC section 376(2), which prescribes a punishment of life imprisonment and a fine, which is higher than the punishment under section 4 of POCSO Act. In these circumstances, section 42 of POCSO Act would come into play and the court is duty bound to punish the offender under section 376(2)(f)(i) and (k) of IPC, which is greater in degree than the punishment under Section 4 of POCSO Act.

#### Section 42A: Act not in derogation of any other law

### ❖ Independent Thought v. Union of India (UOI) and Ors., MANU/SC/1298/2017 (Order dated 11.10.2017)

Section 42 of POCSO makes it clear that where an offence is punishable under both POCSO and the Indian Penal Code, then the offender can be punished under the Act, which provides for more severe punishment. This goes against the traditional concept in criminal jurisprudence that if two punishments are provided, then the benefit of the lower punishment should be given to the offender. The legislature introduced Section 42 of POCSO to protect the interests of the child. Section 42A of POCSO has two parts. The first part provides that the Act is in addition to and not in derogation of any other law. Therefore, the provisions of POCSO are in addition to and not above any other law. However, the second part of Section 42A provides that in case of any inconsistency between the provisions of POCSO and any other law, the provisions of POCSO will prevail. Therefore, POCSO will prevail over Indian Penal Code in general and in particular with respect to Exception 2 to Section 375 of Indian



Penal Code, which makes sexual intercourse or acts of consensual sex of a man with his own "wife" not being under 15 years of age, not an offence.

#### Section 43: Public Awareness about the Act

### ❖ State of Gujarat v. Ashokbhai, Criminal Appeal No. 1153 of 2017 (Order dated 13th June, 2018)

The court reiterated that consensual sex between two minors falls under the POCSO Act and that it is the duty of the Central and the State Governments to spread awareness about this issue in order to create a deterrent effect to teenagers and also adult offenders.

### ❖ In Re: Alarming rise in the number of reported child rape incidents, Suo Moto Writ Petition (Criminal) No. 01/2019 (Order dated 25.07.2019)

- 1. Constitution of Special courts in every district having more than 100 cases under the POCSO Act, which will try no other offence except those under the Act.
- 2. Such Courts, Special PPs and support persons as well the court staff and the infrastructure will be funded by the Central Government.
- 3. A short clip intended to spread awareness should necessarily be screened in every movie hall and be transmitted by various television channels at regular intervals. A child helpline number should also be displayed not only in such clip but also at various other prominent public places, including schools.

#### Sabari @ Sabarinathan @ Sabarivasan v. Inspector of Police & Ors., Criminal Appeal No.490 of 2018

The following suggestions were made in order to carry out the effective implementation of the provisions of POCSO:

- 1. That the District Collectors of all the Districts across Tamil Nadu shall be directed to take necessary steps to create awareness through the District Child Protection Units headed by them.
- 2. That the officers concerned at the Village Level Child Protection Committee and the Block Level Child Protection Committee shall take efforts to create POCSO awareness among the rural masses where a large number of cases are being reported.



- 3. That the Department of Social Defence shall prepare slides and documentary films in relation to POCSO Act and the same shall be given wide publication through electronic media.
- 4. That the Directorate of Information and Public Relation shall direct the press and media to publish the slides, documentary films and advertisements relating to POCSO in all Theatres, TV Channels, Radio, Newspaper and other social networking platforms including Facebook, Twitter, Instagram and online channels like YouTube etc., and printing of pamphlets in order to create widespread awareness among the public and the same shall be done at regular intervals.
- 5. That a tagline shall be made in order to indicate the consequences of POCSO Act and the same shall be displayed in all movies, wherein, the content attracts any offence under POCSO Act.
- 6. That adolescence counselling shall be made compulsory in all the schools and colleges throughout Tamil Nadu including the Government Schools and Colleges to make children aware of the consequences of POCSO.
- 7. That the Education Department shall be directed to appoint Counsellors in Schools and Colleges in order to educate the children about POCSO and take further steps in creating POCSO awareness among School and College children
- 8. That a warning of the attraction of the POCSO Act must be displayed before screening of any film, which has teenage characters suggesting a relationship between boy and girl.

#### Section 44: Monitoring of implementation of the Act

### ❖ Re: Exploitation of Children in the orphanages in the State of Tamil Nadu v. Union of India & Ors., Writ Petition (Criminal) No. 102/2007

- 1. That a "child in need of care and protection" under the JJ Act must be given a wider meaning and that in addition to being children in conflict with law, it must also include victims of sexual abuse, sexual assault or sexual harassment under the POCSO Act and victims of child trafficking. Such children must also be given protection under the provisions of the JJ Act.
- 2. In the implementation of the POCSO Act, the NCPCR and the SCPCR have a vital role to play under section 44 of the POCSO Act.
- 3. These Commissions are under an obligation to take action wherever necessary including approaching the Constitutional Courts wherever necessary. These Commissions are under an obligation to prepare annual reports and if necessary special reports but it has been pointed out that this requirement has hardly been implemented mainly because of a lack of interest that these Commissions have shown in functioning under the statute and also because of the large number of vacancies in these Commissions.
- 4. It is obligatory on the part of the Union Government as well as of the State Governments to ensure that the provisions of laws enacted by Parliament are faithfully and sincerely implemented and the



statutory Commissions constituted under the provisions of the CPCR Act must be allowed to function as independent statutory bodies under the provisions of POCSO as well as the JJ Act.

#### Section 45: Power to make rules

In view of Section 45 of the POCSO Act, the Ministry of Women and Child Development, Government of India has issued POCSO Rules 2020 vide their Notification dated 9th March 2020. For more details <u>click here</u> or see page 48.

Section 46: Power to remove difficulties

None at the time of publication



# Protection of Children from Sexual Offences Rules, 2020

Rule 3: Awareness generation and capacity building

- ❖ Re: Exploitation of Children in the orphanages in the State of Tamil Nadu v. Union of India & Ors., Writ Petition (Criminal) No. 102/2007
  - 1. That the Integrated Child Protection Scheme concerns itself, *inter alia*, with the minimum standards of care in childcare institutions. In a given case, failure to maintain a basic or minimum standard of care can be actionable as negligence.
  - 2. That the training of personnel be given due importance, as untrained or inadequately trained personnel can unwittingly wreak havoc on the lives sexual abuse victims.
- ❖ Xxxx v. State of Tamil Nadu and Ors., Crl. O.P.(MD) No. 11735 of 2014 and MP(MD) Nos. 1 to 8 of 2014 (Decided on: 16.10.2015)/ MANU/ TN/ 4419/ 2015/ 2017ALLMR (Cri) 379
  - 1. Lists detailed suggestions/ guidelines to create awareness among various stakeholders in a POCSO case.
  - The Central Government shall direct all the State Governments to give special training to medical practitioners to deal with and manage victims of child abusers as the medical professionals mostly do not have required training in this regard.
  - 3. Central Government may consider constituting a commission headed by a retired Supreme Court Judge with experts from various fields, namely jurists, psychiatrists (especially child psychiatrists), psychologists, neurologists, academicians, police officers, social workers, child right activists, NGOs working for welfare of children, etc. to collect information and to get views and opinions from various sectors of society about "physical child abuse," as the Central Government in its report stated that there is little research on physical abuse of children in India.



#### State of Gujarat v. Ashokbhai, Criminal Appeal No. 1153 of 2017 (Order dated 13th June, 2018)

The State Government may create awareness about the POCSO Act in schools and colleges to educate the younger generation about the consequences of committing offences under the said law. It further directed the Registry to send a copy of the order to the Chief Secretary, State of Gujarat, Secretary, Home Department, State of Gujarat, Secretary, Higher Education Department, State of Gujarat and Secretary, Women and Child Development Department, Sachivalay, Gandhinagar to take further steps and measures as observed in the judgement.

### ❖ Sabari @ Sabarinathan @ Sabarivasan v. Inspector of Police & Ors., Criminal Appeal No.490 of 2018

The following suggestions were made in order to carry out the effective implementation of the provisions of POCSO:

- 1. That the District Collectors of all the Districts across Tamil Nadu shall be directed to take necessary steps to create awareness through the District Child Protection Units headed by them.
- 2. That the officers concerned at the Village Level Child Protection Committee and the Block Level Child Protection Committee shall take efforts to create POCSO awareness among the rural masses where a large number of cases are being reported.
- 3. That the Department of Social Defence shall prepare slides and documentary films in relation to POCSO Act and the same shall be given wide publication through electronic media.
- 4. That the Directorate of Information and Public Relation shall direct the press and media to publish the slides, documentary films and advertisements relating to POCSO in all Theatres', TV Channels, Radio, Newspaper and other social networking platforms including Facebook, Twitter, Instagram and online channels like YouTube etc., and printing of pamphlets in order to create widespread awareness among the public and the same shall be done at regular intervals.
- 5. That a tagline shall be made in order to indicate the consequences of POCSO Act and the same shall be displayed in all movies, wherein, the content attracts any offence under POCSO Act.
- 6. That adolescence counselling shall be made compulsory in all the schools and colleges throughout Tamil Nadu including the Government Schools and Colleges to make children aware of the consequences of POCSO.
- 7. That the Education Department shall be directed to appoint Counsellors in Schools and Colleges in order to educate the children about POCSO and take further steps in creating POCSO awareness among School and College children.
- 8. That 'warning' of attraction of POCSO Act must be displayed before screening of any film, which has teenage characters suggesting a relationship between boy and girl.



### ❖ Re: Exploitation of Children in the orphanages in the State of Tamil Nadu v. Union of India & Ors., Writ Petition (Criminal) No. 102/2007

The training of personnel as required by the JJ Act and the Model Rules is essential. There are an adequate number of academies that can take up this task including police academies and judicial academies in the States. There are also national level bodies that can assist in this process of training including bodies like the Bureau of Police Research and Training, the National Judicial Academy and others including established NGOs. Wherever possible training modules should be prepared at the earliest.

#### Rule 4: Procedure regarding care and protection of child

#### Bijoy v. State of Bengal, C.R.A. 663 of 2016/2017CriLJ3893/MANU/WB/0140/ 2017

- 1. Detailed directives/guidelines issued to the investigating agencies, prosecutors and the Special Courts so that the provisions of the POCSO Act are followed.
- 2. The compensation payable under the POCSO Act by the State is independent of the compensation which may be directed to be paid by the convict upon conviction under Section 357(2) and (3) of the Code.
- 3. Failure to register First Information Report in respect of offences punishable under sections 4, 6, 7, 10 & 12 of POCSO shall attract criminal liability under section 166-B of the Indian Penal Code as the aforesaid offences are cognate and/or *pari materia* to the Penal Code offences referred to in the said penal provision.

#### Smt. Reenu Saini v. State of Uttarakhand And Others, Writ Petition (Criminal) No. 1591 of 2018

- 1. Detailed directions given to the Director General of Police in the State of Uttarakhand to ensure that all the provisions regarding investigation as laid down in the POCSO Act are followed.
- 2. The statement of the victim shall only be recorded at her house or at any convenient place, as suggested by the family/guardian of the victim. No child, as defined under POCSO Act, shall be



- called to any police station throughout the State of Uttarakhand for the purpose of recording his/her statement.
- 3. The identity of the child shall not be disclosed to any person, including social media, print media, electronic media, WhatsApp, Twitter or any other mode, not even in blurred pictures.
- 4. Henceforth, in cases registered under POCSO Act as well as under Section 376 of IPC or any other sexual offence relating to child/girl, the enquiry/investigation shall be carried out by a woman police officer not below the rank of sub-inspector and the victim shall only be examined by woman doctor, as provided under Section 27 of the POCSO Act.

#### ❖ State of Karnataka v. Shivanna (2014) 8 SCC 913.

In exercise of its powers under Article 142 of the Constitution, the court issued the following interim directions in the form of mandamus to all police stations in charge in the entire country:

- a. Upon receipt of information relating to the commission of rape, the Investigating Officer shall take the victim to any Metropolitan/preferably Judicial Magistrate for the purpose of recording her statement under section 164 Code of Criminal Procedure. A copy of the statement under section 164 Code of Criminal Procedure should be handed over to the Investigating Officer immediately with a specific direction that the contents of such statement under section 164 Code of Criminal Procedure should not be disclosed to any person until the charge sheet/report under section 173 Code of Criminal Procedure is filed.
- b. The Investigating Officer shall as far as possible take the victim to the nearest Lady Metropolitan/preferably Lady Judicial Magistrate.
- c. The Investigating Officer shall record specifically the date and the time at which he learnt about the commission of rape and the date and time at which he took the victim to the Metropolitan/preferably Lady Judicial Magistrate as aforesaid.
- d. If there is any delay exceeding 24 hours in taking the victim to the Magistrate, the Investigating Officer should record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate.
- e. Medical Examination of the victim: Section 164A Code of Criminal Procedure inserted by Act 25 of 2005 in Code of Criminal Procedure imposes an obligation on the part of Investigating Officer to have an immediate medical examination of the victim of the rape.



f. A copy of the report of such medical examination should be immediately handed over to the Magistrate who records the statement of the victim under section 164 Code of Criminal Procedure.

#### Reena Jha & Anr. v. Union of India & Ors., WP (C) 5011/2017

- 1. Practice Directions of the Delhi High Court dated 24<sup>th</sup> September 2019 pertaining to section 439 (1-A) to be followed the District Judges and Session Judges to deal with matters of sexual offenses under sections 376(3), 376-AB, 376-DA and 376-DB of Indian Penal Code.
- 2. The Practice Directions of the Delhi High Court dated 24<sup>th</sup> September 2019 were made applicable to the cases under POCSO Act as well.

### ❖ Miss G (Minor) Through her Mother v. State of NCT, Delhi, Cri. M.C. 1474/2020 (Order dated 13.05.2020)

- 1. The Court directed the Registrar General to circulate the Practice Directions dated 24<sup>th</sup> September 2019 to all the District Judges and Session Judges to deal with matters of sexual offenses under sections 376(3), 376-AB, 376-DA and 376-DB of Indian Penal Code and the courts dealing with cases under the Protection of Children from Sexual Offences Act, 2012.
- 2. Laid down detailed guidelines to ensure that victims/parents/complainants/or their legal representatives are informed before hearing on any bail application moved by the accused.
- 3. Informing a victim is a fundamental precondition to the hearing of any such application.



## Rule 5: Interpreters, translators, special educators, experts and support persons

### ❖ Court on Its Own Motion v. State, CRL. REF. No. 02/2016 (Order dated 4 August, 2018)

- 1. The counselling report/notes of the counsellor (as well as any person or expert recognized under the POCSO Act and Rules of 2012 and the JJ Act) are confidential in nature and the same cannot be made a part of the charge sheet.
- 2. The law allows the investigating agencies to record multiple statements of the victims.
- 3. A seemingly contradictory initial account is not a reason in itself to disbelieve the subsequent accounts by the victims.
- 4. Children do not disclose in one go but do so in a piecemeal manner. To accord the same treatment to a child as one would to an adult would result in grave injustice.

#### Rule 6: Medical aid and care

### State of Rajasthan v. S, D.B. Spl. Appl. Writ No. 1344/2019 (Order dated:1 May, 2020)

The right of a child rape victim to make the reproductive choice of terminating the foetus heavily outweighs the right of the child in womb to be born even where the pregnancy is at an advanced stage. Laid down extensive directions to ensure that the victims of rape who became pregnant by sexual assault are provided timely legal and medical assistance so as to ensure that they can exercise their reproductive choice in terms of the MTP Act. Upon receiving report of pregnancy of a victim of sexual assault, the Medical Officer/ SHO of the police station concerned shall forthwith forward a report thereof to the Secretary, District Legal Service Authority concerned who, in turn, shall approach the victim with a female counsellor and sensitise her and her guardians about the remedies under the MTP Act. In case an application for termination of pregnancy is submitted by the guardian of the victim to the appropriate authority within the stipulated period of 20 weeks as provided by the MTP Act, the same shall be processed forthwith and suitable decision shall be taken thereupon within three days



from the date of submission thereof. In case the threshold of 20 weeks gestation has been crossed, the Secretary, District Legal Services Authority shall assist the victim and her guardians if they so desire for approaching the High Court to file a writ petition seeking direction for termination of pregnancy.

### State of Karnataka v. Manjanna, Appeal (crl.) 1911 of 1996 (Order dated 4 May, 2000)

"Before parting with the case, we wish to put on record our disapproval of the Government hospital doctors, particularly in rural areas, where hospitals are few and far between, to conduct any medical examination of a rape victim unless the case of rape is referred to them by the police. Such a refusal to conduct the medical examination necessarily results in a delay in the ultimate examination of the victim, by which time the evidence of the rape may have been washed away by the complainant herself or be otherwise lost."

#### Rule 7: Legal aid and assistance

#### Lavanya Anirudh Verma vs. State of NCT of Delhi, MANU/DE/0649/2017 (Order dated 08.02.2017)

- 1. Article 39A of the Constitution of India casts an obligation upon the State to provide free legal aid. Section 40 of POCSO which is in harmony with Article 39A of the Constitution of India recognizes the right of the child to take legal assistance of a legal practitioner. Thus, it casts an obligation on Courts to ensure that the child is provided legal aid.
- 2. POCSO Rules, 2012 also provides that the concerned authority shall inform the child and his parent or guardian or other person in whom the child has trust and confidence as to the right of the child to legal advice and counsel and the right to be represented by a lawyer, in accordance with Section 40 of the POCSO Act.

#### Delhi Domestic Working Women's Forum v. Union of India (UOI) and Ors., Writ Petition (Crl.) No. 362 of 1993 (Order dated 19.10.1994)/ (1995)1SCC14

The Court laid down broad parameters for assisting the victims of rape and other sexual assault crimes with respect to the victim's right to legal representation and police's duty to inform the victim about this crucial right, which includes the following:



- 1. The complainants of sexual assault cases should be provided with legal representation. It is important to have the same one who is well-acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in Court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counselling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represent her till the end of the case.
- 2. Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, and thus the guidance and support of a lawyer at this stage and whilst she is being questioned would be of great assistance to her.
- 3. The police should be under a duty to inform the victim of her right to representation before any questions are asked of her and the police report should state that the victim was so informed.
- 4. A list of advocates willing to act in these cases should be kept at the police station for victims who do not have a particular lawyer in mind or whose own lawyer is unavailable.
- 5. The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims are questioned without undue delay, advocates would be authorised to act at the police station before leave of the Court is sought or obtained.

# Rule 9: Compensation

Rule 10: Procedure for imposition of fine and payment thereof

### ❖ Delhi Domestic Working Women's Forum v. Union of India (UOI) and Ors. Writ Petition (Crl.) No. 362 of 1993 (Order dated 19.10.1994)/ (1995)1SCC14

While discussing the issue of compensation, the Court referred to the following passage from "The Oxford Handbook of Criminology" (1994 Ed.) at pages 1237-38 as to the position in England:

"Compensation payable by the offender was introduced in the Criminal Justice Act 1972 which gave the Courts powers to make an ancillary order for compensation in addition to the main penalty in cases where 'injury', loss, or damage' had resulted. The Criminal Justice Act 1982 made it possible for the



first time to make a compensation order as the sole penalty. It also required that in cases where fines and compensation orders were given together, the payment of compensation should take priority over the fine. These developments signified a major shift in penology thinking, reflecting the growing importance attached to restitution and reparation over the more narrowly retributive aims of conventional punishment. The Criminal Justice Act 1928 furthered this shift. It required courts to consider the making of a compensation order in every case of death, injury, loss or damage and, where such an order was not given, imposed a duty on the court to give reasons for not doing so. It also extended the range of injuries eligible for compensation. These new requirements mean that if the court fails to make a compensation order it must furnish reasons. Where reasons are given, the victim may apply for these to be subject to judicial review."

#### ❖ Nipun Saxena v. The Union of India, Writ Petition (C) NO.565 OF 2012 (SC)

- 1. The Compensation Scheme for Women victims/Survivors of sexual assault and Other crimes, 2018, drafted by the National Legal Services Authority of India which became operational from 2nd October 2018 was made applicable to victims under the POCSO Act as well, due to the absence of specific rules on the procedure governing Victim Compensation under the POCSO Act.
- 2. The said Scheme lays down a detailed procedure for an application seeking compensation, the procedure and recovery of the same and also sets out the role of the Legal Services Authority.

For more details under the 2018 NALSA Victim Compensation Scheme click here

#### Bijoy v. State of Bengal, C.R.A. 663 of 2016/2017CriLJ3893/MANU/WB/0140/ 2017

- 1. That a conjoint reading of section 33(8) of the Act along with Rule with regard to compensation makes it amply clear that the power of the Special Court to award interim/final compensation is not restricted to the terms of the Victim Compensation Fund promulgated by the State but rather the Court can award a reasonable amount in light of the parameters laid down in the aforesaid Rules to assist a child victim.
- 2. That it shall be open to the Special Court in appropriate cases to grant compensation over and above the limit proposed under the scheme.



### ♦ Mother Minor Victim No. 1 & 2 v. State and Ors., W.P. (Crl.) 3244/2019 (Order dated: 15.06.2020)/ MANU/DE/1240/2020

In view of the express provisions of Section 33(8) of the POCSO Act and Rule 7 of the POCSO Rules, the duty to award compensation has been conferred on the Special Court and therefore it is incumbent on the Special Court to pass necessary orders for compensation/ interim compensation in appropriate cases. It is not open for the Special Court to delegate said power and direct the concerned Legal Services Authority to examine any claim for compensation payable to a minor victim of an offense. Although Sub Rule (1) of Rule 7 of the said Rules (and Sub-rule (1) of Rule 9 of the POCSO Rules) does not indicate that multiple applications for interim compensation can be made, since the said provision for compensation is a beneficial provision, the same must be interpreted liberally. This Court is of the view that since there is no express bar on granting interim compensation more than once, an application for further interim compensation can be considered by the trial court provided there are sufficient grounds for seeking further interim compensation.

#### Rule 11: Reporting of pornographic material involving a child

### Pramanshi & Ors v. Union of India & Ors, WP (C) 2624/2018 (Order dated 11 January, 2019)

The Court called for a status report from the Delhi Police on the measures adopted to monitor online crimes against women. It was reported that the Ministry of Home Affairs, Government of India has developed a centralized online reporting portal (www.cyberpolice.gov.in) for dealing with complaints concerning child pornography, rape, and gang rape, among others. The Cyber Crime Cell of the Delhi Police has been designated as the Nodal Cyber Crime Cell to deal with such complaints. The Cyber Crime Cell ensures prompt blocking/removal of the contents circulated on the internet.

### ❖ In Re Prajwala Letter Dated 18.2.2015 Videos of Sexual Violence and Recommendations, Suo Moto Writ Petition (Criminal) No. 3/2015

The Supreme Court directed CBI to investigate all cases of rape videos in circulation and initiated drawing up of "Standard Operating Procedure" for cyber-police portal handling complaints involving child pornography-child sexual abuse material, rape/gang rape, and obscene contents.



#### Rule 12: Monitoring of implementation of the Act

# ❖ Aju Mathew & Others v. The State of Kerala Represented by Its Secretary, Home Dept, Government, Secretariat, Thiruvananthapuram & Ors., WP(C). No. 22255 of 2017 (03.11.2017)

It was held that the POCSO Rules confer certain functions on the Commission for Protection of Child Rights. One such function is to monitor the appointment of a public prosecutor by the State Government. Although the Commissions do not have a say in the matter of appointment or removal, they do have to monitor the appointment of Special Public Prosecutors under the Act. In other words, it is the duty of the Commission to see that duly qualified Public Prosecutors are appointed without any break in order to handle the matters in the Special Courts under the POCSO Act.

### ❖ Re: Exploitation of Children in the orphanages in the State of Tamil Nadu v. Union of India & Ors., Writ Petition (Criminal) No. 102/2007

- 1. A "child in need of care and protection" must be given a wider meaning and in addition to children in conflict with law, it must also include victims of sexual abuse, sexual assault, or sexual harassment under the POCSO Act, who are victims of child trafficking. Such children must also be given protection under the provisions of the JJ Act.
- 2. In the implementation of the POCSO Act, the NCPCR and the SCPCR have a vital role to play under section 44 of the POCSO Act.
- 3. These Commissions are under an obligation to take action wherever necessary including approaching the Constitutional Courts wherever necessary. These Commissions are under an obligation to prepare annual reports and if necessary special reports but this requirement has hardly been implemented, mainly due to a lack of interest that these Commissions have shown in functioning under the statute and also because of the large number of vacancies in these Commissions.
- 4. It is obligatory on the part of the Union Government as well as the State Governments to ensure that the laws enacted by Parliament are faithfully implemented and the statutory Commissions constituted under the provisions of the CPCR Act are allowed to function as independent statutory bodies under the provisions of the said Act as well as the JJ Act.



### Rule 13: Repeal

None at the time of publication



### **LIST OF CASES**

- Ag v. Shiv Kumar Yadav and Anr., Criminal Appeal Nos.1187-1188 of 2015 (Order dated 10.09.2015): (click here)
- Ajitkumar Kumarsinh Bhagora v. State of Gujarat, Criminal Appeal Nos. 1110 and 845 of 2017: (click here)
- Aju Mathew & Others v. The State of Kerala Represented by Its Secretary, Home Dept, Government, Secretariat, Thiruvananthapuram & Ors., WP(C). No. 22255 of 2017: (click here)
- Aju Mathew v. the State of Kerala, 2018 SCC 4942: (click here)
- Alakh Alok Srivastava v. Union of India, (2018) 17 SCC 291 (click here)
- Amol Dhudhram Barsagade v. the State of Maharashtra, Criminal Appeal No. 600 OF 2017
   (BHC): (click here)
- Anish Rai v. State of Sikkim, 2018 CriLJ 4193: (click here)
- Anuradha Dalmia v.. State of Uttarakhand and Ors. (IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL), Criminal Misc. Application No. 2040 of 2018 (MANU/UC/0256/2019): (click here)
- Arun tanti v. The State of Assam, Crl. A. No. 56(J) of 2017
- Balasaheb v the State of Maharashtra, CRA 69 of 2017: (click here)
- Bhavanbhai . State of Gujarat (Gujarat High Court), Cri Appeal 781/2017
- Bijoy v. State of Bengal, C.R.A. 663 of 2016/ 2017CriLJ3893/ MANU/WB/0140/2017: (click here)
- Court on Its Own Motion v. State of Delhi, 2018 VIIAD (Delhi) 657: (click here)
- Court on Its Own v. State, Crl. Ref. No. 2/2016: (click here)



- Delhi Domestic Working Women's Forum v. Union of India (UOI) and Ors., Writ Petition
   (Crl.) No. 362 of 1993 (Order dated 19.10.1994)/ (1995)1SCC14, (click here)
- Deo Kumar Rai v. State of Sikkim, 2018 CriLJ 2607: (click here)
- Dr.P. Rajendran v. State, Crl.R.C.No.941 of 2018 & Crl.M.P.No.10884 of 2018 (Order Dated: 26.11.2018): (click here)
- Eera through Manjula Krippendorf v. State (Govt of NCT Delhi) and Ors, (2017) 15 SCC
   133: (click here)
- Fatima A.S v. State of Kerala, 2020 SCC OnLine Ker 2827: (click here)
- Gaya Prasad Pal v. State, 2017 1 JCC 383: (click here)
- In Re, Prajwala Letter Dated 18.2.2015 Videos of Sexual Violence and Recommendations, Suo Moto Writ Petition (Criminal) No.3 / 2015: (click here)
- In Re: Alarming Rise in The Number of Reported Child Rape Incidents, Suo Moto Writ Petition (Criminal) No. 01/2019: (click here)
- In Re: The Registrar (Judicial) Krishnnaswami Naidu & Anr. 2017CriLJ4519: (click here)
- Independent Thought v. Union of India (2017) 10 SCC 800: (click here)
- Jarnail Singh v. State of Haryana, (2013) 7 SCC 263: (click here)
- Kamal Prasad Patade v. State of Chattisgarh & Ors., Writ Petition (Cr) No. 8 of 2016: (click here)
- Koppula Venkat Rao v. State of Andhra Pradesh, (2004)3SCC602: (click here)
- Kulwant Singh v. State of Bihar, (2007)15SCC670: (click here)
- Lakhi Ram Takbi v. State of Sikkim, Crl Appeal No. 15 of 2017: (click here)
- Lakhindra Gogoi v. State of Assam, Crl.A. No. 85(J) of 2016: (click here)
- Lalsuonglien and Ors. v. The State of Manipur, MANU/MN/0087/2019: (click here)
- Lavanya Anirudh Verma vs. State of NCT of Delhi, MANU/DE/0649/2017 (Order dated 08.02.2017): (click here)
- Mahadeo v. State of Maharashtra and Ors, 2013 11 SCC 637: (click here)



- Mani Pushpak Joshi v. State of Uttarakhand, CRLR No. 89 of 2019: (click here)
- Manoharan v. State by Inspector of Police, AIR 2019 SC 3746: (click here)
- Maria Kuttubudin v. State of Maharashtra and ors, WP 4478 of 2019: (click here)
- Minor Victim No. 1 & 2 v. Respondent: State and Ors, W.P. (Crl.) 3244/2019, (click here)
- Miss G (Minor) Through her Mother Vs. State of NCT, Delhi, Cri. M.C. 1474/2020 (Order dated 13.05.2020): (click here)
- Mohiddin v. State of Karnataka, Criminal Petition No.5923/2017: (click here)
- Mohinder Kumar v. State of Himachal Pradesh, MANU/HP/1623/2018: (click here)
- Mondi Murali Krishna v. Dumpa Hanisha Naga Lakshmi and Ors. ,
   2017MANU/AP/0033/2020 (click here)
- Mondi Murali Krishna v. Dumpa Hanisha, (HIGH COURT OF ANDHRA PRADESH AT AMARAVATI), Criminal Revision Case No. 1970 of 2017 (MANU/AP/0033/2020): (click here)
- Mother Minor Victim No. 1 & 2 v. State and Ors., W.P. (Crl.) 3244/2019 (Order dated: 15.06.2020)/ MANU/DE/1240/2020: (click here)
- Mukarrab v. State of U.P, 2017(1)ACR 147: (click here)
- N. Chanadramohan v. State, CRL. O.P. No. 21414 of 2019: (click here)
- Nalankilli v. The State (Madras High Court), Crl.OP No.22699 of 2019: (click here)
- Navin Dhaniram Baraiye v. the State of Maharashtra, 2018 (2) AIR 897: (click here)
- Nazeer v. State of Uttar Pradesh (Allahabad HC), Criminal Appeal No. 1886 of 2017: (click here)
- Nipun Saxena v. Union of India, (2019) 2 SCC 703: (click here)
- Nipun Saxena v. The Union of India, Writ Petition (C) NO.565 OF 2012 (SC), (click here)
- Niranjan Pramanik @ Telya v. The State of West Bengal, CRA 743 of 2016: (click here)
- Niranjan v. State, Crl. A. 1271/2019: (click here)



- Noor Aga v. State of Punjab and Anr. 2008 (16) SCC 417: (click here)
- Om Prakash v. State of Rajasthan and Ors., Citation: AIR 2012 SC 1608: (click here)
- P.Shanmugavel Raj v. State of Madras, Criminal Revision Case (MD) No.743 of 2013: (click here)
- Pandurang Narayan v. the State of Maharashtra, 2019 Indlaw MUM 1428: (click here)
- Rabin Burman v. State of Sikkim, Crl. A. No. 18 of 2016Criminal Case No. 31 of 2001: (click here)
- Rabin Burman v. State of Sikkim, 2017, SLR (2017) SIKKIM 249 : (click here)
- Rahul Sirsat v. state of Maharashtra, 2018 Indlaw MUM 21: (click here)
- Rajendra v. State, 2020 SCC OnLine Del 724: (click here)
- Raju Prasad v. State of Sikkim: 2019 Sikkim HC 002: (click here)
- Rambohar Saket v. State of MP, 2019(1)JLJ522 (click here)
- Ramprasad v. State of Maharashtra, 2018 (3) AIR 117: (click here)
- Ravi v. The State of Maharashtra, CRIMINAL APPEAL NOS. 1488-1489 OF 2018: (click here)
- Ravishankar @ Baba Vishwakarma v. The State of Madhya, (2019) AIR 2019 SC 5347: (click here)
- Re: Exploitation of Children in Orphanages v. Union of India & Ors, (2014) 2 SCC 193: (click here)
- Re: Exploitation of Children in the orphanages in the State of Tamil Nadu v. Union of India
   & Ors., Writ Petition (Criminal) No. 102/2007: (click here)
- Reena Jha & Anr. v. Union of India & Ors., WP (C) 5011/2017:(click here)
- S. Sankara Varman v. State, 2016(3)MLJ(Crl)764: (click here)
- Sabari @ Sabarinathan @ Sabarivasan v. The Inspector of Police & others (2018) 4 MLJ
   (Crl) 585: (click here)
- Sadhulal Motilal Turra v. State of Maharashtra, 2018 IndLaw MUM 673: (click here)



- Sahid Hossain Biswas v. State of West Bengal, 2017 SCC 5023: (click here)
- Sakshi and Ors. v. Union of India (UOI) and Ors., MANU/SC/0523/2004: (click here)
- Sangitaben Shaileshbai Datanta v. State of Gujarat 2018 CriLJ 3146:(click here)
- Sanjay Rai v. State of Sikkim, CrL. A. No. 39 of 2017: (click here)
- Satish Kumar Jayanti Lal Dabgar v. State of Gujarat (2015) 7 SCC 359 : (2015) 3 SCC (Cri)
   108: (click here)
- Shankar Kisanrao Khade v. State of Maharashtra, (2013) 5 SCC 546: (click here)
- Smt. Reenu Saini v. State of Uttarakhand And Others, WP (Cr.)Writ Case No: 159111011 of 20187: (click here)
- Smt. Reenu Saini v. State of Uttarakhand And Others, Writ Petition (Criminal) No. 1591 of 2018 (Order dated 29th August, 2018): (click here)
- Sri Asok Das @ Ashoke v. State Of Tripura, CRL. A(J) NO.54 OF 2018: (click here)
- State (GNCT of Delhi) v. Hargovind, CRL.A. 334/2018: (click here)
- State GNCT Of Delhi v. Baljeet Singh @ Shankey on 11 July, 2019, 2019 SCC OnLine Del 9109: (click here)
- State of Bihar v. Rajballav Prasad (2017) 2 SCC 178: (2017) 1 SCC (Cri) 678: (click here)
- State of Gujarat v. Ashokbhai, Criminal Appeal No. 1153 of 2017: (click here)
- State of Karnataka v. Manjanna, Appeal (crl.) 1911 of 1996 (Order dated 4 May, 2000): (click here)
- State of Kerala and Ors v. Saju George and Ors., (2017) CRILJ 1631: (click here)
- State of Punjab v. Brijeshwar Singh Chahal, (2016) 6 SCC 1: (click here)
- State of Punjab v. Gurmit Singh and Ors, AIR 1996 SC 1393: (click here)
- State of Rajasthan v. S, D.B. Spl. Appl. Writ No. 1344/2019 (Order dated:1 May, 2020) (click here)
- State of Sikkim v. Girjaman Rai and Ors, 2019 CriLJ 4247: (click here)



- State of U.P. v. Johri Mal, 2004 (4) SCC 714: (click here)
- State v. Anil, Crl. Revision Petition 1058 of 2019: (click here)
- State v. Anil, (2014) 4 SCC 69: (click here)
- Subhash Chandra rai v. State of Sikkim, Citation: 2019(1) PLJR 248: (click here)
- Sudheesh Kumar.S.R v. State of Kerala, WP(C.) No. 31378 of 2016 (V): (click here)
- Suganna v. The State, CRIMINAL PETITION No.200016/2018: (click here)
- Sujatha Aged 40 Years v. State of Kerala, Crl. MC. No. 3978 of 2018: (click here)
- Sujit v. State of Kerala. 2018 (3) KHC 641: (click here)
- State of Karnataka v. Shivanna (2014) 8 SCC 913 (click here)
- Sunil @ Sumit S/O Pralhad Ramteke v. State of Maharashtra, CRI. APPL NO. 655 OF 2019 (Order dated 21 January, 2020): (click here)
- Sunil Ramdas Salve v. The State Of Maharashtra, Criminal Appeal No. 420 of 2015: (click here)
- The minor case through guardian Zareen v. State of NCT of Delhi, W.P. CRL. 798/2015: (click here)
- The Registrar (Judicial) v. Krishnnaswami Naidu & Anr., 2017CriLJ4519: (click here)
- Thokchom Premlata Devi v. The State of Manipur and Ors., PIL No.13 of 2015: (click here)
- Unnikrishnan R. v. Sub Inspector of Police, Kurathikadu Police Station and Ors. 2018,
   ILR2018(4) Kerala 964: (click here)
- Xxxx v. State of Tamil Nadu and Ors., Crl. O.P.(MD) No. 11735 of 2014 and MP(MD) Nos. 1 to 8 of 2014 (Decided on: 16.10.2015)/ MANU/TN/4419/2015/2017ALLMR(Cri)379: (click here)

#### **REFERENCES:**

https://indiankanoon.org/



- https://www.manupatrafast.com/
- https://www.scconline.com/
- https://www.casemine.com/
- https://www.childhelp.org/child-abuse-statistics/
- https://www.india.com/viral/child-abuse-in-india-5-shocking-facts-revealed-by-the-unicef-125712/
- <a href="https://www.ndtv.com/india-news/important-facts-about-pocso-and-protecting-childrens-identity-1839397">https://www.ndtv.com/india-news/important-facts-about-pocso-and-protecting-childrens-identity-1839397</a>
- <a href="https://www.savethechildren.in/resource-centre/articles/recent-statistics-of-child-abuse">https://www.savethechildren.in/resource-centre/articles/recent-statistics-of-child-abuse</a>
- https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6177170/
- https://www.cry.org/statistics-on-children
- <a href="https://www.unicef.org/protection/statistics.html">https://www.unicef.org/protection/statistics.html</a>
- https://www.researchgate.net/publication/271951215 Child Sexual Abuse in India Current Is sues and Research
- https://www.who.int/news-room/fact-sheets/detail/violence-against-children
- https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4311357/
- https://data.unicef.org/topic/child-protection/violence/sexual-violence/
- https://journalistsresource.org/studies/government/criminal-justice/global-prevalence-childsexual-abuse/
- https://www.bingedaily.in/article/child-pornography-statistics-are-shocking-with-25-000-cases-in-5-months
- https://www.statista.com/statistics/1097691/india-number-of-child-pornography-offences-by-leading-state-2018/
- <a href="https://news.un.org/en/story/2018/10/1022152">https://news.un.org/en/story/2018/10/1022152</a>
- https://www.indiatoday.in/india/story/109-children-sexually-abused-every-day-india-2018-1636160-2020-01-12
- https://www.reuters.com/article/us-india-rape-factbox/statistics-on-rape-in-india-and-some-well-known-cases-idUSKBN1YA0UV
- https://www.d2l.org/wp-content/uploads/2017/01/all statistics 20150619.pdf
- https://www.ywca.org/wp-content/uploads/WWV-CSA-Fact-Sheet-Final.pdf
- https://www.jurist.org/commentary/2020/05/mayank-tiwari-posco-act/