

**VOLUME 2 | ISSUE 3****INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH****ANALYSIS OF PROCEDURAL SAFEGUARDS TO VICTIM UNDER  
THE POCSO ACT**

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**ABSTRACT**

The fate of our population is children. The security and wellbeing of the children of our country are integral to the development and success of any country. If the children are not properly groomed by protecting them from any kind of abuse the fate of our future society will be in danger.

And in the world of modernization and globalization, more and more problems occur in this age with different kinds of social issues, one of them is child abuse from sexual assault. The welfare and protection of the children are essential for the bright future of India. However, in India “child abuse” especially “sexual abuse” is humiliating the entire nation. One of the issues that adversely impact the sound development of children is the evil of child sexual abuse. The Ministry of Women and Child Development adopted the introduction of the Protection of Children from Sexual Offences (POCSO) Act, 2012, to effectively handle the grave crimes of sexual abuse and sexual exploitation of children through less unclear and harsher legal requirements. Later, the Protection of Children from Sexual Offenses (Amendment) Bill, 2019, was introduced, which aims to provide for harsher penalties for those who commit sexual crimes against children, including the death penalty in cases of aggravated sexual assault, as well as fines and imprisonment, in order to reduce child pornography. In this article, the author attempted to pen down the Procedural safeguard which is provided under the POCSO Act with some relevant case laws.

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## INTRODUCTION

The POCSO Act, 2012, is much-needed legislation to counter the growing peril of child sexual abuse. The POCSO Act, 2012 was recently amended by the POCSO Amendment Act, 2019 which came into effect on 16th August 2019. The POCSO Act is the landmark legislation for the protection of child rights. It defines a child as anyone under the age of 18 and ensures that all children are protected from sexual assault. This enactment's framework ensures that children are protected from sexual assault, sexual harassment, and pornography. This statute has some unique elements, including child-friendly processes, evidence recording, the establishment of a Special Court, and a rapid trial for cases covered by it. The act also contains provisions for avoiding victimisation, creating a child-friendly environment at all levels of the legal procedure, and emphasising the notion of the child's best interests. It includes child-friendly systems for reporting, recording evidence, investigation, and swift trial of infractions, including trials in camera and without revealing the child's identify through Special Courts. It also directs the Special Court to assess the amount of compensation to be awarded to a sexually abused kid in order for the money to be used for the child's medical care and rehabilitation.

The goal of the Act is to ensure a child's physical, emotional, intellectual, and social development. As a result, the state is expected to take all necessary steps to prevent –

- (a) The inducing or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practises; and
- (c) The exploitation of children in prostitution or other unlawful sexual practises.

As per Article 15 (3) of the Indian Constitution, it is special legislation that makes particular provisions for children; hence, the intent of the special legislative must be considered while applying the provisions of this Act. Several safeguards are included in the Act to protect the interests of abused children. The parents, the investigating agency, the prosecuting agency, and the criminal courts dealing with the situation must all work together to effectively enforce the provisions of this Act.

Any criminal case necessitates the conduct of an investigation. Any criminal case involving a sexual offence, particularly against a minor, necessitates a thorough investigation by the police. Similarly, successful prosecution is a requirement for bringing the matter to a conclusion. A judge who is dealing with a case must be sensitive.

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## ASSISTANCE AND SERVICE OF A SUPPORT PERSON

The POCSO Act recognises that navigating the criminal justice system with a kid and his or her family requires assistance. The "support person" is one of the new help mechanisms created by the Act. The next sections look at the definition of a support person, the role of a support person in the context of a child victim, and the connections between the JJ Act and the POCSO Act.

- The police must notify the Child Welfare Committee within 24 hours of learning of a sexual violation under the POCSO Act, as per Section 19 (6) of the POCSO Act.
- The following child victims are required to appear before the Child Welfare Committee under Rule 4 (3) of the POCSO Rules:
  - a child against whom a sexual offence has been committed, attempted, or is likely to be committed by a person living in the same or shared household with the child;
  - a child living in a child care institution and without parental support; or
  - a child living in a child care institution and without parental support.
  - a child who does not have a home or parental support.
- The Child Welfare Committee must assure the child's safety. For such purposes, the Committee should assess whether the child needs to be removed from the custody of her/his family or shared household or child care institution where the sexual offense occurred. The Committee should conclude such assessment within three days of the child being produced before them [Rule 4 (4) of the POCSO Rules].
- The Child Welfare Committee may also assist a support person to a child victim under the POCSO Act "to assist the child through the process of investigation and trial" [Rule 4 (7) of the POCSO Rules]. The support person may be an individual or an organization working in the field of child rights.
- The child's need for a support person, the consent of the child and child's parents/guardian/person in whom the child has the confidence to such appointment [Rule 4 (7) of the POCSO Rules], and the capacity of the person selected to provide the necessary assistance, are the essential prerequisites for assigning and/or selecting a support person.
- The child and her/ his parents or guardian or the person in whom the child has confidence has the right to seek from the Child Welfare Committee, termination of the

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services of the support person without giving any reasons for the same [Rule 4 (10) of the POCSO Rules].

- It is the responsibility of the support person to maintain confidentiality regarding information of the child; to keep the child and her/his parent/guardian/person in whom the child has confidence updated regarding the proceedings and developments in the case; to inform the child about the role she/he will be required to play in the judicial process; to inform the relevant authorities (police, Special Court, Special Public Prosecutor) about the child's concerns and need for safety, if any; and to provide referral services for counselling, medical treatment, shelter and other needs of the child [Rule 4 (8) of the POCSO Rules].
- A child and his or her parent/guardian/person on whom the child has faith have the right to seek support/assistance from any person or NGO on their own. In that instance, the Child Welfare Committee will not be required to appoint a support person. "Provided that nothing in these Rules shall prevent the child and his parents or guardian or another person in whom the child has trust and confidence from seeking the assistance of any person in the organization for proceedings under the Act" [provision to Rule 4 (7) of the POCSO Rules].

### **IDENTITY OF THE VICTIM NOT TO BE DISCLOSED**

In society, a rape survivor would encounter hostile prejudice and social ostracization. Search victims will have a difficult time finding work, getting married, and reintegrating into society as a normal human being. Because our criminal justice system lacks an adequate witness protection programme, the necessity to shield the victim and conceal her identity is considerably greater.

The terms 'identify of any person' are not defined in the IPC or the CrPC. The printing and dissemination of "the name or any matter which may make known the identity of the individual" is prohibited under section 228A of the IPC. It goes without saying that not only is it illegal to publish the victim's name, but also to reveal any other information that could reveal the victim's identify.<sup>2</sup>

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<sup>2</sup> Nipun Saxena vs Union of India 2019 ALL SCR (Cri) 24.

In the case of *Sangitaben Shaileshbhai Datanta v. State of Gujarat*,<sup>3</sup> the Supreme Court referred to its decision in *State of Punjab v. Ramdev Singh*,<sup>4</sup> wherein following observations were made:

*"True it is, the restriction does not relate to printing or publication of judgment by the High Court or the Supreme Court. But keeping in view the social object of preventing social victimization or ostracism of the victim of a sexual offense for which Section 228-A has been enacted, it would be appropriate that in the judgments, be it of this Court, High Court or lower courts, the name of the victim should not be indicated."*

Also, in *Nipun Saxena vs. Union of India*,<sup>5</sup> the Supreme Court held

*"Section 228- A IPC prohibits the printing or publishing "the name or any matter which may make known the identity of the person". It is obvious that not only the publication of the name of the victim is prohibited but also the disclosure of any other matter which may make known the identity of such a victim."*

Also, a prohibition is made under sub-section (1) of Section 23 of the POCSO Act, which states that no person shall make any report or comment on any child from any form of media, studio, or photographic facilities without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy. Furthermore, according to sub-section 2, no reports in the medium may reveal a child's identify, including his name, residence, portrait, family details, school, and so on. As a result, the aim of Section 23 is quite clear: the victim will not be subjected to any type of publicity that will harm her profession or impair her future. Under Subsection 4 of Section 23 no *mens rea*, culpability, or mala-fide or criminal intent are necessary to commit an infraction. The mere disclosure of the victim child's information will result in a violation of subsection 4 of the Criminal Code.<sup>6</sup>

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<sup>3</sup> 2018 SCC OnLine SC 2300

<sup>4</sup> (2004) 1 SCC 421

<sup>5</sup> (2019) 2 SCC 703

<sup>6</sup> Sudheesh Kumar S.R. vs State of Kerala 2017 ALL MR (Cri) JOURNAL 113.

The identification of the child encompasses not only his or her name, but also the identity of the child's family, school, relatives, neighbourhood, and any other information that reveals his or her identity.<sup>7</sup>

When a child is from a tiny hamlet, merely revealing the village may be in violation of Section 23(2) POCSO because it only requires a person to go to the village and find out who the child is. Even if the house number is not given, any further details about the colony and the area in which the child is living or the school in which the child is studying are enough to easily discover the identity of the child in large cities and metropolises such as Delhi, where the disclosure of the city name alone may not lead to the disclosure of the child's identity.

### **DIRECTIONS ISSUED BY THE HONORABLE SUPREME COURT**

To protect the identity of the victim on various stages of criminal proceedings and even when the victim is dead Honorable Supreme Court has issued certain directions:

1. No one may print or broadcast the victim's name in print, electronic, or social media, or even in a remote manner disclose any facts that could lead to the victim's identification and should make her identify known to the general public.
2. Even with the authorization of the next of kin, the name of the victim or her identity should not be disclosed in cases where the victim is dead or mentally ill, unless circumstances justifying the disclosure of her identity exist, which shall be decided by the competent authority, which is currently the Sessions Judge.
3. Offenses under Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376 DB, or 376E of the IPC, as well as offences under POCSO, are not to be made public.
4. If a victim files an appeal under Section 372 of the Criminal Procedure Code, the victim is not required to reveal his or her identify, and the appeal will be handled in accordance with the law.
5. All documents in which the victim's name is disclosed should be kept in a sealed cover as much as possible, and these documents should be replaced by identical documents in which the victim's name is removed in all records that may be analysed in the public domain.

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<sup>7</sup> Gaya Prasad Pal vs. State of Delhi ALL MR (Cri) JOURNAL 1.

6. All authorities to whom the victim's name is provided by the investigating agency or the court are likewise obligated to keep the victim's name and identity secret and not to reveal it in any way except in the report, which shall be sent in a sealed envelope to the investigating agency or the court.
7. Until the Government acts under section 228A(1)(c) and lays down criteria as per our directions for identifying such social welfare institutions or organisations, an application by the next of kin to authorise the disclosure of the identity of a dead victim or a victim of unsound mind under section 228A(2)(c) of the IPC should be made only to the Sessions Judge concerned.
8. In the instance of juvenile victims under POCSO, the Special Court can only allow their identity to be revealed if it is in the child's best interests.
9. Within one year of today, all states/union territories are required to establish at least one 'one-stop centre' in each district.<sup>8</sup>

## PURPOSE OF ENACTMENT OF SECTION 23

Provisions in the law aimed at protecting the child's identity and shielding her from prying eyes and inquiry could further traumatisise her psychologically, instilling uneasiness and apprehension in the victim's psyche. It's also an effort to safeguard her future, to keep her from being traced, identified, or subjected to unwelcome attention, and to avoid a reputation for such crimes based on the notion that she's easy prey. The investigating agency should ensure that the victim's identity is kept private and not revealed throughout the inquiry or in the charge sheet. If necessary, a second file could be kept in strict secrecy for future reference. The juvenile Justice Care and Protection of Children Act 2015, as well as the POCSO Act, have been enacted to protect children in various climates. These acts place an obligation on not only the court and the police, but also the media and society at large, to protect children from the growing number of criminal offences against children and to take specific actions to prevent sexual exploitation of children to the best of their abilities.

## RECORDING OF STATEMENT OF CHILD VICTIM

### A. PROCEDURE UNDER SECTION 24

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<sup>8</sup> Nipun Saxena vs Union of India 2019 ALL SCR (Cri) 24.

The statement of the child, who is a victim, shall be recorded, at her place of residence by a woman police officer not below the rank of sub-inspector; and the officer shall not be in uniform when recording the statement. The intention and objective of the provision is to ensure that a child who has already been traumatised by the criminal should not be subjected to the recording of statements at the police station by male officers in uniform, causing her further discomfort and mental suffering. However, where the procedure prescribed under section 24 of the POCSO Act is not followed, it cannot be used for the benefit of the accused. However, it cannot be used for the benefit of the accused if the method outlined in section 24 of the POCSO Act is not followed.<sup>9</sup>

### B. DUTY OF PRESIDING OFFICER

When a small child is to depose, the presiding officer can offer toys, sweets and befriend the child before recording the statement. If necessary, the judge can even get out of his robes and wear ordinary clothes and sit along with the child witness before recording statements in such cases. The child must not feel that he or she is in a majestic place. The majesty of the court will not be lowered because the presiding officer gets down from his dice or changes his dress to make the child comfortable. This will enhance the majesty of the law. The quest for truth is more important than majesty and in this process. If the judicial officer has to make a few sacrifices, it should not be a problem. It is not only a part of his job but it is his or her duty to do so.<sup>10</sup>

### C. CHILD SHOULD NOT BE EXPOSED TO ACCUSED

All presiding officers of courts dealing with such offences, including those under the POCSO Act, 2012, have a responsibility to ensure that minors freely provide evidence in court. According to Section 36 of the POCSO Act, the Special Court must guarantee that the child witness is not exposed to the accused in any way during the recording of evidence, while also ensuring that the accused is able to hear the child witness's statement and interact with his attorney. The goal is to protect the youngster from any trauma caused by seeing the individual who has perpetrated a heinous crime against them.

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<sup>9</sup> Damodhar Himtaji Dongre vs. State of Maharashtra 2015 ALL MR (Cri) 4825

<sup>10</sup> Vishnu Kumar Keertan Lal Yadav versus State of Chhattisgarh 2017 ALLMRCRI JOURNAL 527

Where a 6½-year-old child who has been sexually abused, mainly on seeing the offender would be scared of telling the truth, and in a case like one before the court where the parents have sold their owner to the perpetrator of the crime, one cannot even imagine what mental trauma the child should be undergoing. In such a case, the court must first ensure the child's safety and then only the statement should be recorded. If necessary, the statement may be recorded for 3 to 4 hours or on the next day, but the judge must ensure that the child is comfortable and is free of any influence of any side either the parents or the accused, while making the statement.

#### **D. RECALLING OF VICTIM SHOULD NOT BE ALLOWED AS A ROUTINE**

The pain and anguish inflicted by the perpetrator of the crime would be exacerbated by summoning the victim of penetrative sexual assault and continually scrutinising her. Instead of supporting the victim in overcoming their trauma, it may amount to an invasion of her privacy, which would be a violation of her right to a fair trial. As a result, summoning a rape victim to court for questioning should not be done on a regular basis.<sup>11</sup>

#### **E. CHARACTER ASSASSINATION OF VICTIM NOT PERMISSIBLE**

It is now settled law that the character assassination of a victim finds no place in the offense of rape. Section 33 of the POCSO Act specifically lays down that the question of the victim shall be put through the court which shall not permit aggressive questioning on character assassination of the child. Quotes dealing with such matters are required to be sensitive and should prevent further dramatization of the victim who has already suffered emotional upheavals and physical tournament.<sup>12</sup>

#### **F. PROTECTION OF DUMB/ DEAF/ MENTALLY DISABLED WITNESSED**

Section 164 (5-A) of CrPC states that if the maker of the statement is temporarily or permanently, mentally or physically disabled, the statement made by such a person shall be considered as substantive evidence by the trial court and the maker need not be examined – in chief, but can be subjected to cross-examination based on the statement recorded under

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<sup>11</sup> M.Kannan versus state of Tamil Nadu 2017 all MRCR a journal 278

<sup>12</sup> Nar Bahadur Subba vs. state of Sikkim2017 all MRCRI journal 425

section 164 (5-A) of CrPC. This is to save the victim from the embarrassment of explaining to the trial court, repeatedly, how she was sexually assaulted.<sup>13</sup>

When a deaf and dumb witness is being cross-examined, the court must keep in mind that the witness's vocabulary is restricted because he or she communicates using sign language, and it is probable that the witness will not be able to answer or clarify every answer in depth using sign language. The fact that a witness has a restricted sign language vocabulary has no bearing on his or her competence or credibility. The court must exercise control over the cross-examination while considering the witness' ability to answer the question.

The objective of cross-examination is to determine the truth regarding the accusation levelled against an accused individual, and the court has discretion over how the cross-examination is conducted. A party cross-examining a deaf and dumb witness, like any other witness, is obligated to behave within the confines of the law and cannot be allowed to question the witness about anything. The Indian Evidence Act states that a witness's examination and cross-examination must be based on significant facts, but the cross-examination does not have to be limited to the facts that the witness testified to in his examination-in-chief. The goal is that, in addition to pertinent information, facts that impeach the witness's credibility and cast doubt on his creditworthiness can be asked during cross-examination. Nonetheless, the first part of section 138 of the Evidence Act qualifies this power by limiting cross-examination to important facts, even if they were not deposed in the examination in chief. To prevent any abuse and to safeguard a witness from being treated unfairly, the judge must control the cross-examination. Asking questions without legitimate grounds, which are decent and scandalous, or which are meant to offend or disturb the witness is prohibited under Sections 149 to 152 of the Evidence Act.<sup>14</sup>

Where the victim of 5 years old girl was dumb since birth, the accused allegedly took away the victim by luring her for orange fruit and raped her. Medical evidence was shown that there was a forcible sexual assault on the victim with severe genital injuries. FIR was lodged promptly containing names of witnesses and showing their presence at the relevant time.

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<sup>13</sup> Murugasamy versus State of Tamil Nadu 2017 all MRCRI journal 559

<sup>14</sup> Chander Singh VS.State 2017 all MRCRI journal 265

Special teacher of the mentally challenged school at M.D. The Psychiatrist stated that the victim was unable to give an account of events, even by gestures. In that view of the matter, merely because the expression of the victim was blank before the court, would not mean that no incident of sexual assault occurred against her.<sup>15</sup>

The decision of the division bench of Bombay High Court wherein the Court has dealt with the issue as to whether non-recording of sign language is fatal prosthetic trial, the Court had made categorical observation that gestures made by the witness were so perfect that even a layman could understand. Said observations were not disputed by the defence. Gestures were under defence even without the age of the interpreter. Thus, the requirement of section 119 of Evidence Acts, duly complied with. Therefore, it was held that non-recording of sign language is not fatal.<sup>16</sup>

## VICTIM COMPENSATION

Many times due to many times of the case or trial judge may be faced with the situation where it is found that in addition to the punishment, compensation must be directed to be paid. In such situations, the trial court is not helpless. Section 33 (8) of the POCSO Act, 2012 read with Rule seven of the POCSO Rules, 2012 was made precisely for the said purpose. The special judge has the power and therefore must also exercise it, in appropriate cases, to direct payments of compensation as per the victim compensation scheme. The aforesaid provisions are victim-centric. It is the victim-centric purpose of rehabilitation of the victim who has suffered loss or injury as a result of the crime and who requires rehabilitation. The Special Court is required to consider whether or not there is a need for directing payment of compensation by firstly making adequate inquiries and their inquiries reasons. The quantum of compensation must be as prescribed under the provision of the victim compensation scheme. While making the recommendations by the court and while deciding the quantum of compensation payable under the scheme of the ethos of Section 3 (8) of the POCSO Act, 2012, Rule 7 of POCSO Rules, 2012 and section 357 A of CRPC which have direct routes in the concept of victimology always be in its mind.

## CONCLUSION

<sup>15</sup> Arun Gulabrao Ingole versus State of Maharashtra 2016 all MRCRI 4146

<sup>16</sup> State of Maharashtra vs. Ram Charan Sambhaji Karajule 2017 all MR (Cri) 1347

In India, as in many other parts of the world today, child sexual abuse is a significant and widespread problem. Sexual abuse trauma can lead to developmental delays as well as a variety of psychological and emotional issues, which some children and teenagers may never be able to overcome. When sexual assault goes undetected, children are allowed to suffer in silence because they are not provided the defence and therapeutic help that they require.

Socio-cultural and familial chance elements are involved in Child Sexual Abuse. The children are not only exploited for sexual pleasure but even used as a tool in the skin business and as a product of pornography. At such a tender age they scarcely gather any courage to grumble about such sexual attacks which are many times made by their proximate family members. However, the pain and impact of such incidents has devastating mental effects on the child for the remaining life. However, if we talk in a practical sphere of life, such incidents bring a traumatizing effect on the future of not only the child but also the family as well as society. It became very difficult to trust the same society again and to make ourselves believe that this kind of brutal and inhumane behaviour is not going to repeat. To curb all these issues, it is necessary to stringently follow the Act and to impart the general knowledge of the same with reliefs for that.