

The Protection of Children from Sexual Offences Act, 2012

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The Protection of Children from Sexual Offences Act, 2012¹

[Act 32 of 2012]

[19th June, 2012]

An Act to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto

Whereas clause (3) of Article 15 of the Constitution, inter alia, empowers the State to make special provisions for children;

And whereas, the Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, which has prescribed a set of standards to be followed by all State parties in securing the best interests of the child;

And whereas it is necessary for the proper development of the child that his or her right to privacy and confidentiality be protected and respected by every person by all means and through all stages of a judicial process involving the child;

And whereas it is imperative that the law operates in a manner that the best interest and well being of the child are regarded as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child;

And whereas the State parties to the Convention on the Rights of the Child are required to undertake all appropriate national, bilateral and multilateral measures to prevent—

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) the exploitative use of children in prostitution or other unlawful sexual practices;
- (c) the exploitative use of children in pornographic performances and materials;

And whereas sexual exploitation and sexual abuse of children are heinous crimes and need to be effectively addressed.

Be it enacted by Parliament in the Sixty-third Year of the Republic of India as follows—

Statement of Objects and Reasons.—Article 15 of the Constitution, inter alia, confers upon the State powers to make special provision for children. Further, Article 39, inter alia, provides that

1. Received the assent of the President on June 19, 2012 and published in the Gazette of India, Extra., Part II, Section 1, dated 20th June, 2012, pp. 1-14, No. 34.

the State shall in particular direct its policy towards securing that the tender age of children are not abused and their childhood and youth are protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity.

2. The United Nations Convention on the Rights of Children, ratified by India on 11th December, 1992, requires the State Parties to undertake all appropriate national, bilateral and multilateral measures to prevent (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; and (c) the exploitative use of children in pornographic performances and materials.

3. The data collected by the National Crime Records Bureau shows that there has been increase in cases of sexual offences against children. This is corroborated by the 'Study on Child Abuse: India 2007' conducted by the Ministry of Women and Child Development. Moreover, sexual offences against children are not adequately addressed by the extant laws. A large number such offences are neither specifically provided for nor are they adequately penalised. The interests of the child, both as a victim as well as a witness, need to be protected. It is felt that offences against children need to be defined explicitly and countered through commensurate penalties as an effective deterrence.

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

5. The Bill would contribute to enforcement of the right of all children to safety, security and protection from sexual abuse and exploitation.

6. The notes on clauses explain in detail the various provisions contained in the Bill.

7. The Bill seeks to achieve the above objectives.

Statement of Objects and Reasons of Amendment Act 22 of 2018.—Recent incidents of rape and gang rape on women under the age of sixteen years and twelve years have shaken the conscience of the entire Nation. Therefore, the offences of rape and gang rape on women under the age of sixteen years and twelve years required effective deterrence through legal provisions of more stringent punishment. Some of the incidents in recent years have been marked by increased brutality and violence perpetrated on minor girls. This has fueled demands from various sections of the society to make the penal provisions more stringent and effective, immediate arrest of the accused and ensure speedy trial in such cases.

2. As the Parliament was not in session and immediate action was required to be taken in this regard to make necessary amendments in the Indian Penal Code, 1872, the Code of Criminal Procedure, 1973 and the Protection of Children from Sexual Offences Act, 2012, the President promulgated the Criminal Law (Amendment) Ordinance, 2018 on 21st April, 2018.

3. It is, therefore, proposed to introduce the Criminal Law (Amendment) Bill, 2018 to replace the Criminal Law (Amendment) Ordinance, 2018, which, inter alia, provides for—

- (a) punishment for the offence of rape from the minimum imprisonment of seven years to ten years, which is extendable to imprisonment for life;
- (b) punishment for the offence of rape on a woman under sixteen years of age shall be rigorous imprisonment for a term not less than twenty years but may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and shall also be liable to fine;
- (c) punishment for the offence of rape on a woman under twelve years of age shall be rigorous imprisonment for a term not less than twenty years but may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and with fine or with death;

- (d) punishment for the offence of gang rape on a woman under sixteen years of age shall be imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and with fine;
- (e) punishment for the offence of gang rape on a woman under twelve years of age shall be imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and with fine or with death;
- (f) investigation in relation to all rape cases shall be completed within a period of two months from the date on which the information recorded by the officer-in-charge of the police station;
- (g) completion of inquiry or trial relating to the offence of rape, within a period of two months;
- (h) dispose of an appeal against a conviction or a acquittal in rape cases within a period of six months from the date of filing of the appeal;
- (i) the provisions of anticipatory bail shall not be applicable in cases of rape or gang rape of woman under sixteen and twelve years of age;
- (j) consequential amendments in the Indian Penal Code, Indian Evidence Act, 1872, the Code of Criminal Procedure, 1973 and the Protection of Children from Sexual Offences Act, 2012 relating to the cases of rape, gang rape of the woman below the age of sixteen years, twelve years, repeat offenders, to extend the applicability of compulsory registration of FIRs, fine imposed to be paid to victim, facilitate better recording of evidence and protect the dignity of rape survivor and treatment free of cost in hospitals.

4. The Bill seeks to achieve the above objectives.

Statement of Objects and Reasons of Amendment Act 25 of 2019.—The Protection of Children from Sexual Offences Act, 2012 (the said Act) has been enacted to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto.

2. The said Act is gender neutral and regards the best interests and welfare of the child as a matter of paramount importance at every stage so as to ensure the healthy physical, emotional, intellectual and social development of the child.

3. However, in the recent past incidences of child sexual abuse cases demonstrating the inhumane mind-set of the abusers, who have been barbaric in their approach towards young victims, is rising in the country. Children are becoming easy prey because of their tender age, physical vulnerabilities and inexperience of life and society. The unequal balance of power leading to the gruesome act may also detriment the mind of the child to believe that might is right and reported studies establish that children who have been victims of sexual violence in their childhood become more abusive later in their life. The report of the National Crime Records Bureau for the year 2016 indicate increase in the number of cases registered under the said Act from 44.7 per cent in 2013 over 2012 and 178.6 per cent in 2014 over 2013 and no decline in the number of cases thereafter.

4. The Supreme Court, in the matter of *Machhi Singh v. State of Punjab* [1983 (3) SCC 470], held that when the community feels that for the sake of self-preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so in rarest of rare cases when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The same analogy has been reiterated by the Supreme Court in the matter of *Devender Pal Singh v. State (NCT of Delhi)* [AIR 2002 SC 1661] wherein it was held that when the collective conscience of the community is so shocked, the court must award death sentence.

5. In the above backdrop, as there is a strong need to take stringent measures to deter the rising trend of child sex abuse in the country, the proposed amendments to the said Act make provisions for

enhancement of punishments for various offences so as to deter the perpetrators and ensure safety, security and dignified childhood for a child. It also empowers the Central Government to make rules for the manner of deleting or destroying or reporting about pornographic material in any form involving a child to the designated authority.

6. The Protection of Children from Sexual Offences (Amendment) Bill, 2019, for the aforementioned purpose, which was introduced and pending consideration and passing in the Lok Sabha, lapsed on the dissolution of the Sixteenth Lok Sabha. Hence, the present Bill.

7. The Bill seeks to achieve the above objectives.

CASE LAW ► Applicability.—Rights of children can be contained in three Acts, namely, Commissions for Protection of Child Rights Act, 2005, Right of Children to Free and Compulsory Education Act, 2009 and Protection of Children from Sexual Offences Act, 2012 r/w Juvenile Justice (Care and Protection of Children) Act, 2000, are fully implemented, *Exploitation of Children in Orphanages, In re*, (2014) 2 SCC 193.

Protection of Children from Sexual Offences Act, 2012 is a Special Act and shall prevail over IPC to the extent of inconsistency, *Independent Thought v. Union of India*, (2017) 10 SCC 800.

► **Interpretation.**—Section 375 Exception 2 should be interpreted harmoniously and purposively with pro-girl child legislations such as Protection of Women from Domestic Violence Act, 2005, Prohibition of Child Marriage Act, 2006, Protection of Children from Sexual Offences Act, 2012 and Juvenile Justice (Care and Protection of Children) Act, 2015. So interpreted, instead of striking down Exception 2 it should be read down in consonance with the spirit of these legislations. By doing so, Court would not be creating a new offence which is beyond its jurisdiction, *Independent Thought v. Union of India*, (2017) 10 SCC 800.

► **Object and nature.**—POCSO Act is gender neutral and applies to all children, *Nipun Saxena v. Union of India*, (2019) 2 SCC 703.

► **Object of POCSO Act.**—This Act is a special legislation for children for their development in a healthy manner under conditions of freedom and dignity and protection against exploitation, child abuse, sexual assault, sexual harassment and pornography, etc. It is a gender neutral legislation. It directs the State to take various steps at many levels so that the child is protected and the trial is appropriately conducted, *Alakh Alok Srivastava v. Union of India*, (2018) 17 SCC 291.

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Protection of Children from Sexual Offences Act, 2012.

(2) It extends to the whole of India ²[* * *].

(3) It shall come into force on such date³ as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—(1) In this Act, unless the context otherwise requires—

(a) “aggravated penetrative sexual assault” has the same meaning as assigned to it in Section 5;

2. The words “except the State of Jammu and Kashmir” omitted by Act 34 of 2019, Ss. 95 & 96 and Sch. V (w.e.f. 31-10-2019).

3. Enforced w.e.f. 14-11-2012 [Vide Noti. No. S.O. 2705(E), dated November 9, 2012].

- (b) “aggravated sexual assault” has the same meaning as assigned to it in Section 9;
- (c) “armed forces or security forces” means armed forces of the Union or security forces or police forces, as specified in the Schedule;
- (d) “child” means any person below the age of eighteen years;
- ⁴[(da) “child pornography” means any visual depiction of sexually explicit conduct involving a child which include photograph, video, digital or computer generated image indistinguishable from an actual child, and image created, adapted, or modified, but appear to depict a child;]
- (e) “domestic relationship” shall have the same meaning as assigned to it in clause (f) of Section 2 of the Protection of Women from Domestic Violence Act, 2005 (43 of 2005);
- (f) “penetrative sexual assault” has the same meaning as assigned to it in Section 3;
- (g) “prescribed” means prescribed by rules made under this Act;
- (h) “religious institution” shall have the same meaning as assigned to it in the Religious Institutions (Prevention of Misuse) Act, 1988 (41 of 1988);
- (i) “sexual assault” has the same meaning as assigned to it in Section 7;
- (j) “sexual harassment” has the same meaning as assigned to it in Section 11;
- (k) “shared household” means a household where the person charged with the offence lives or has lived at any time in a domestic relationship with the child;
- (l) “Special Court” means a court designated as such under Section 28;
- (m) “Special Public Prosecutor” means a Public Prosecutor appointed under Section 32.

(2) The words and expressions used herein and not defined but defined in the Indian Penal Code (45 of 1860), the Code of Criminal Procedure, 1973 (2 of 1974), ⁵[the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016)] and the Information Technology Act, 2000 (21 of 2000) shall have the meanings respectively assigned to them in the said Codes or the Acts.

CASE LAW ► Definition of child.—“Child” means any person below 18 years of age. Departure from chronological age on basis of maturity of understanding/mental age of child not permissible. Provisions under IPC are on different basis and foundation. Legislature despite having intent in its Statement of Objects and Reasons and long preamble to POCSO Act, thought it wise to define term “age” which not only mentions “child” but also adds words “below age of 18 years”. POCSO Act has identified minors and protected them by prescribing statutory age which has nexus with legal eligibility to give consent. Parliament has felt it appropriate that definition of term “age” by chronological or biological age to be safest yardstick than referring to person having mental retardation which may be due to the fact that standards of mental retardation are different which require determination by expert body and degrees are also different. Parliament has not included “mental age” which was within legislative domain. In such situation, to include

4. Ins. by Act 25 of 2019, S. 2(a) (w.e.f. 16-8-2019).

5. Subs. for “the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000)” by Act 25 of 2019, S. 2(b) (w.e.f. 16-8-2019).

perception of mental competence of victim or mental retardation as factor would tantamount to causing violence to legislation which is impermissible, *Eera v. State (NCT of Delhi)*, (2017) 15 SCC 133.

Concept of mental age, cannot be read in by court. Object of legislation is to provide remedy for malady while legislative intent relates to meaning from exposition of remedy as enacted. When two constructions are reasonably possible, preference should be given to one which helps carry out beneficent purpose of Act, without unduly expanding scope of provision. Further, courts while construing provision must ascertain intention of legislature, since it is an accepted principle that legislature expresses itself with use of correct words and in absence of any ambiguity or resultant consequence does not lead to any absurdity, no other interpretation tool may be looked for in name of creativity. On other hand, purposive construction is adopted in view of text and context of legislation especially while enacting social welfare legislations and in such cases courts should have broad attitude and supply word, if necessary. However, courts can take aid of *casus omisus* only in case of clear necessity which should be discerned from four corners of statute. It cannot be ready tool in hands of Judge to assume role of creative constructionist personality. Held, definition of “child” in Section 2(1)(d), POCSO Act, 2012 which mean any person below 18 years of age, cannot embrace in its connotive expanse “mental age” of person since stretching words “age” and “years” would be encroaching upon legislative function. Addition of word “mental” cannot come within purposive construction since it tantamounts to causing violence to legislation by incorporating words to definition and encroaching upon legislative function, which is impermissible. Respect for dignity of person has its own pedestal but that conception cannot be subsumed and integrated into definition where provision is clear and unambiguous and does not admit of any other interpretation, *Eera v. State (NCT of Delhi)*, (2017) 15 SCC 133.

► **Child in need of care and protection.**—Definition of “child in need of care and protection”, under Section 14(2) of Juvenile Justice Act is not exhaustive and should be given a broader and purposeful interpretation. Beneficial legislation or social welfare legislation require a liberal rather than a literal interpretation. Said definition, held, is illustrative and benefits envisaged for children in need of care and protection should be extended to all such children in fact requiring State care and protection. Thus, a child in conflict with law must also include victims of sexual abuse/assault/harassment under Protection of Children from Sexual Offences Act, 2012 (POCSO) Act as also victims of child trafficking, *Exploitation of Children in Orphanages, In re*, (2017) 7 SCC 578 : (2017) 4 SCC (Cri) 95.

CHAPTER II

SEXUAL OFFENCES AGAINST CHILDREN

A.—*Penetrative Sexual Assault and Punishment therefor*

3. Penetrative sexual assault.—A person is said to commit “penetrative sexual assault” if—

- (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
- (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

- (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

CASE LAW ► Grant of bail.—General presumption of innocence of accused is not applicable to cases where there is contrary statutory presumption of his guilt such as when prosecuted under Sections 3, 5, 7 and 9 of POCSO Act, 2012. Prime consideration is fair trial for which witnesses must feel protected for free, frank and fearless deposition. Chances of accused fleeing from justice or tampering with evidence/trial if released on bail must be carefully assessed. Court should adopt a liberal approach and properly balance individual liberty and possibility of accused interdicting fair trial if released on bail, which is a social or public interest. Social interest should outweigh personal interest, *State of Bihar v. Rajballav Prasad*, (2017) 2 SCC 178 : (2017) 1 SCC (Cri) 678.

4. Punishment for penetrative sexual assault.—⁶[(1)] Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than ⁷[ten years] but which may extend to imprisonment for life, and shall also be liable to fine.

⁸[(2)] Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine.

(3) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.]

CASE LAW ► Irrelevance of consent.—In a heinous and abhorrent crime of sexual assault if consent of minor is treated as mitigating circumstance, it may lead to disastrous consequences particularly in view of Protection of Children from Sexual Offences Act, 2012, *Satish Kumar Jayanti Lal Dabgar v. State of Gujarat*, (2015) 7 SCC 359 : (2015) 3 SCC (Cri) 108.

B.—Aggravated Penetrative Sexual Assault and Punishment therefor

5. Aggravated penetrative sexual assault.—(a) Whoever, being a police officer, commits penetrative sexual assault on a child—

- (i) within the limits of the police station or premises at which he is appointed; or
- (ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or
- (iii) in the course of his duties or otherwise; or
- (iv) where he is known as, or identified as, a police officer; or

(b) whoever being a member of the armed forces or security forces commits penetrative sexual assault on a child—

- (i) within the limits of the area to which the person is deployed; or
- (ii) in any areas under the command of the forces or armed forces; or
- (iii) in the course of his duties or otherwise; or

6. Renumbered by Act 25 of 2019, S. 3 (w.e.f. 16-8-2019).

7. Subs. for "seven years" by Act 25 of 2019, S. 3(a) (w.e.f. 16-8-2019).

8. Ins. by Act 25 of 2019, S. 3(b) (w.e.f. 16-8-2019).

(iv) where the said person is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits penetrative sexual assault on a child; or

(d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or

(e) whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution; or

(g) whoever commits gang penetrative sexual assault on a child.

Explanation.—When a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

(h) whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

(j) whoever commits penetrative sexual assault on a child, which—

(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (b) of Section 2 of the Mental Health Act, 1987 (14 of 1987) or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; ⁹[* * *]

(ii) in the case of female child, makes the child pregnant as a consequence of sexual assault;

(iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; ¹⁰[* * *]

¹¹[(iv) causes death of the child; or]

(k) whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or

9. The word "or" omitted by Act 25 of 2019, S. 4(I)(A) (w.e.f. 16-8-2019).

10. The word "or" omitted by Act 25 of 2019, S. 4(I)(B) (w.e.f. 16-8-2019).

11. *Ins.* by Act 25 of 2019, S. 4(I)(C) (w.e.f. 16-8-2019).

(l) whoever commits penetrative sexual assault on the child more than once or repeatedly; or

(m) whoever commits penetrative sexual assault on a child below twelve years; or

(n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or

(o) whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or

(p) whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or

(q) whoever commits penetrative sexual assault on a child knowing the child is pregnant; or

(r) whoever commits penetrative sexual assault on a child and attempts to murder the child; or

(s) whoever commits penetrative sexual assault on a child in the course of¹²[communal or sectarian violence or during any natural calamity or in similar situations]; or

(t) whoever commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or

(u) whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated penetrative sexual assault.

¹³**6. Punishment for aggravated penetrative sexual assault.**—(1) 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, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine, or with death.

(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.]

C.—Sexual Assault and Punishment therefor

7. Sexual assault.—Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast

12. Subs. for "communal or sectarian violence" by Act 25 of 2019, S. 4(II) (w.e.f. 16-8-2019).

13. Subs. by Act 25 of 2019, S. 5 (w.e.f. 16-8-2019). Prior to substitution it read as:

"6. *Punishment for aggravated penetrative sexual assault.*—Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine."

of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

CASE LAW ▶ Conviction on sole testimony of victim.—Where testimony of victim is found reliable and trustworthy, conviction on basis of her sole testimony is permissible, *Ganesan v. State*, (2020) 10 SCC 573.

▶ **“Sexual assault” — Meaning and Ingredients.**—Expressions “touches” or “touch” in first part of Section 7, and, “physical contact” in second part of Section 7, cannot be construed as “skin-to-skin” contact. The most important ingredient for constituting offence of “sexual assault” under Section 7 is “sexual intent” and not “skin-to-skin” contact. Crucially, neither Section 7 nor any other provision of the POCSO Act even remotely suggests that “direct” physical contact unimpeded by clothing is essential for an offence to be committed. Both direct and indirect contact with sexual intent, come within the umbrage of “sexual assault” as defined in Section 7. Furthermore, expression “assault” in Section 7 of the POCSO Act has a meaning entirely removed from the definition of “assault” in Section 351 IPC. Emphasis and intent of Section 7 is to address the felt social need of outlawing behaviour driven by sexual intent i.e. that the offending behaviour (whether by direct or indirect contact as explained above), should be motivated with sexual intent. The very object of enacting the POCSO Act is to protect children from sexual abuse. Hence, the key is the proscription of behaviour driven by sexual intent, and not the nature of the “touch” or “contact”. Hence, held, offence of “sexual assault” under Section 7 can be made out even in the absence of skin-to-skin contact. Restricting the interpretation of the words “touch” or “physical contact” to “skin-to-skin contact” would not only be a narrow and pedantic interpretation of the provision contained in Section 7 of the POCSO Act, but it would lead to an absurd interpretation of the said provision. The very object of enacting the POCSO Act is to protect the children from sexual abuse. If such a narrow interpretation is accepted, it would lead to a very detrimental situation, frustrating the very object of the Act, inasmuch as in that case, to give a few instances, touching the sexual or non-sexual parts of the body of a child with gloves, condoms, sheets or with cloth, though done with sexual intent would not amount to offence of sexual assault under Section 7 of the POCSO Act, *Attorney General v. Satish*, (2022) 5 SCC 545.

8. Punishment for sexual assault.—Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

D. - Aggravated Sexual Assault and Punishment therefor

9. Aggravated sexual assault.—(a) Whoever, being a police officer, commits sexual assault on a child—

- (i) within the limits of the police station or premises where he is appointed; or
- (ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or
- (iii) in the course of his duties or otherwise; or
- (iv) where he is known as, or identified as a police officer; or

(b) whoever, being a member of the armed forces or security forces, commits sexual assault on a child—

- (i) within the limits of the area to which the person is deployed; or
- (ii) in any areas under the command of the security or armed forces; or

- (iii) in the course of his duties or otherwise; or
- (iv) where he is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits sexual assault on a child; or

(d) whoever being on the management or on the staff of a jail, or remand home or protection home or observation home, or other place of custody or care and protection established by or under any law for the time being in force commits sexual assault on a child being inmate of such jail or remand home or protection home or observation home or other place of custody or care and protection; or

(e) whoever being on the management or staff of a hospital, whether Government or private, commits sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution or religious institution, commits sexual assault on a child in that institution; or

(g) whoever commits gang sexual assault on a child.

Explanation.—When a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

(h) whoever commits sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) whoever commits sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

(j) whoever commits sexual assault on a child, which—

(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (1) of Section 2 of the Mental Health Act, 1987 (14 of 1987) or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or

(ii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or

(k) whoever, taking advantage of a child's mental or physical disability, commits sexual assault on the child; or

(l) whoever commits sexual assault on the child more than once or repeatedly; or

(m) whoever commits sexual assault on a child below twelve years; or

(n) whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or shared household with the child, commits sexual assault on such child; or

(o) whoever, being in the ownership or management or staff, of any institution providing services to the child, commits sexual assault on the child in such institution; or

(p) whoever, being in a position of trust or authority of a child, commits sexual assault on the child in an institution or home of the child or anywhere else; or

(q) whoever commits sexual assault on a child knowing the child is pregnant; or

(r) whoever commits sexual assault on a child and attempts to murder the child; or

(s) whoever commits sexual assault on a child in the course of ¹⁴[communal or sectarian violence or during any natural calamity or in any similar situations]; or

(t) whoever commits sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or

(u) whoever commits sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated sexual assault.

¹⁵[(v) whoever persuades, induces, entices or coerces a child to get administered or administers or direct anyone to administer, help in getting administered any drug or hormone or any chemical substance, to a child with the intent that such child attains early sexual maturity;]

10. Punishment for aggravated sexual assault.—Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

E.—Sexual Harassment and Punishment therefor

11. Sexual harassment.—A person is said to commit sexual harassment upon a child when such person with sexual intent—

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

(ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or

(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or

(vi) entices a child for pornographic purposes or gives gratification therefor.

14. *Subs.* for “communal or sectarian violence” by Act 25 of 2019, S. 6(i) (w.e.f. 16-8-2019).

15. *Ins.* by Act 25 of 2019, S. 6(ii) (w.e.f. 16-8-2019).

Explanation.—Any question which involves “sexual intent” shall be a question of fact.

12. Punishment for sexual harassment.—Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

CHAPTER III

USING CHILD FOR PORNOGRAPHIC PURPOSES AND PUNISHMENT THEREFOR

13. Use of child for pornographic purposes.—Whoever, uses a child in any form of media (including programme or advertisement telecast by television channels or internet or any other electronic form or printed form, whether or not such programme or advertisement is intended for personal use or for distribution), for the purposes of sexual gratification, which includes—

- (a) representation of the sexual organs of a child;
- (b) usage of a child engaged in real or simulated sexual acts (with or without penetration);
- (c) the indecent or obscene representation of a child,

shall be guilty of the offence of using a child for pornographic purposes.

Explanation.—For the purposes of this section, the expression “use a child” shall include involving a child through any medium like print, electronic, computer or any other technology for preparation, production, offering, transmitting, publishing, facilitation and distribution of the pornographic material.

CASE LAW ▶ Steps to present websites showing child pornography.—Direction to take steps to try and contain the menace of websites showing child pornography, especially of children between 14 to 18 years, *Kamlesh Vaswani v. Union of India*, (2014) 6 SCC 705.

¹⁶**[14. Punishment for using child for pornographic purposes.**—(1) Whoever uses a child or children for pornographic purposes shall be punished with

16. Subs. by Act 25 of 2019, S. 7 (w.e.f. 16-8-2019). Prior to substitution it read as:

“14. *Punishment for using child for pornographic purposes.*—(1) Whoever, uses a child or children for pornographic purposes shall be punished with imprisonment of either description which may extend to five years and shall also be liable to fine and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also be liable to fine.

(2) If the person using the child for pornographic purposes commits an offence referred to in Section 3, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(3) If the person using the child for pornographic purposes commits an offence referred to in Section 5, by directly participating in pornographic acts, he shall be punished with rigorous imprisonment for life and shall also be liable to fine.

(4) If the person using the child for pornographic purposes commits an offence referred to in Section 7, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than six years but which may extend to eight years, and shall also be liable to fine.

(5) If the person using the child for pornographic purposes commits an offence referred to in Section 9, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than eight years but which may extend to ten years, and shall also be liable to fine.”

imprisonment for a term which shall not be less than five years and shall also be liable to fine, and in the event of second or subsequent conviction with imprisonment for a term which shall not be less than seven years and also be liable to fine.

(2) Whoever using a child or children for pornographic purposes under sub-section (1), commits an offence referred to in Section 3 or Section 5 or Section 7 or Section 9 by directly participating in such pornographic acts, shall be punished for the said offences also under Section 4, Section 6, Section 8 and Section 10, respectively, in addition to the punishment provided in sub-section (1).]

¹⁷[**15. Punishment for storage of pornographic material involving child.**—(1) Any person, who stores or possesses pornographic material in any form involving a child, but fails to delete or destroy or report the same to the designated authority, as may be prescribed, with an intention to share or transmit child pornography, shall be liable to fine not less than five thousand rupees, and in the event of second or subsequent offence, with fine which shall not be less than ten thousand rupees.

(2) Any person, who stores or possesses pornographic material in any form involving a child for transmitting or propagating or displaying or distributing in any manner at any time except for the purpose of reporting, as may be prescribed, or for use as evidence in court, shall be punished with imprisonment of either description which may extend to three years, or with fine, or with both.

(3) Any person, who stores or possesses pornographic material in any form involving a child for commercial purpose shall be punished on the first conviction with imprisonment of either description which shall not be less than three years which may extend to five years, or with fine, or with both, and in the event of second or subsequent conviction, with imprisonment of either description which shall not be less than five years which may extend to seven years and shall also be liable to fine.]

CHAPTER IV

ABETMENT OF AND ATTEMPT TO COMMIT AN OFFENCE

16. Abetment of an offence.—A person abets an offence, who—

First.—Instigates any person to do that offence; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that offence, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that offence; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that offence.

Explanation I.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact, which he is bound to disclose, voluntarily causes

17. *Subs.* by Act 25 of 2019, S. 8 (w.e.f. 16-8-2019). Prior to substitution it read as:

“15. *Punishment for storage of pornographic material involving child.*—Any person, who stores, for commercial purposes any pornographic material in any form involving a child shall be punished with imprisonment of either description which may extend to three years or with fine or with both.”

or procures, or attempts to cause or procure a thing to be done, is said to instigate the doing of that offence.

Explanation II.—Whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Explanation III.—Whoever employ, harbours, receives or transports a child, by means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position, vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of any offence under this Act, is said to aid the doing of that act.

17. Punishment for abetment.—Whoever abets any offence under this Act, if the act abetted is committed in consequence of the abetment, shall be punished with punishment provided for that offence.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy or with the aid, which constitutes the abetment.

18. Punishment for attempt to commit an offence.—Whoever attempts to commit any offence punishable under this Act or to cause such an offence to be committed, and in such attempt, does any act towards the commission of the offence, shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence or with fine or with both.

CHAPTER V

PROCEDURE FOR REPORTING OF CASES

19. Reporting of offences.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to,—

- (a) the Special Juvenile Police Unit; or
- (b) the local police.

(2) Every report given under sub-section (1) shall be—

- (a) ascribed an entry number and recorded in writing;
- (b) be read over to the informant;
- (c) shall be entered in a book to be kept by the Police Unit.

(3) Where the report under sub-section (1) is given by a child, the same shall be recorded under sub-section (2) in a simple language so that the child understands contents being recorded.

(4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same.

(5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection (including admitting the child into shelter home or to the nearest hospital) within twenty-four hours of the report, as may be prescribed.

(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.

(7) No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub-section (1).

CASE LAW ► Reporting sexual abuse against children.—An approach that is in the best interest of child should be adopted for reporting of offences of sexual abuse against children. Though penal laws are concerned with commission of offences, preventive measures should be taken by all concerned so that children do not become victim of sexual assault by unstable and immoral adults. Various stakeholders like persons in charge where children are housed (especially institutions which house children with intellectual disability), directed to report cases of sexual assault on children with utmost secrecy to the nearest SJPU or local police. Media personnel, persons in charge of hotels, lodges, hospitals, clubs, studios and photograph facilities directed to comply with Section 20, 2012 Act. The manner in which various child welfare organizations and NGOs should deal with complaints of sexual assault on children, clarified. State and Central Government directed to constitute SJPUs in all districts if not already constituted and give wide publicity to provisions of 2012 Act. *Shankar Kisanrao Khade v. State of Maharashtra*, (2013) 5 SCC 546.

Negligence of police regarding not filing charge-sheet for sodomy though medical evidence clearly indicated offence under Section 377 is strongly deprecated. *Shankar Kisanrao Khade v. State of Maharashtra*, (2013) 5 SCC 546.

► **“Knowledge” of offence(s).**—In this case there were allegations against appellant-accused were that they had knowledge that offence under 2012 Act was committed and, therefore, they were required to provide the information to relevant authorities which they failed to do. It was held that knowledge requirement foisted on appellants cannot be that they ought to have deduced from circumstances that an offence was committed. There was no evidence to implicate appellants. Evidence should be such which should at least indicate grave suspicion. Mere likelihood of suspicion cannot be the reason to charge a person for an offence. Accordingly, proceedings against appellants quashed, *Tessy Jose v. State of Kerala*, (2018) 18 SCC 292.

20. Obligation of media, studio and photographic facilities to report cases.—Any personnel of the media or hotel or lodge or hospital or club or studio or photographic facilities, by whatever name called, irrespective of the number of

persons employed therein, shall, on coming across any material or object which is sexually exploitative of the child (including pornographic, sexually-related or making obscene representation of a child or children) through the use of any medium, shall provide such information to the Special Juvenile Police Unit, or to the local police, as the case may be.

21. Punishment for failure to report or record a case.—(1) Any person, who fails to report the commission of an offence under sub-section (1) of Section 19 or Section 20 or who fails to record such offence under sub-section (2) of Section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

(2) Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of Section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.

(3) The provisions of sub-section (1) shall not apply to a child under this Act.

CASE LAW ► Duty of citizens.—A disturbing trend in our society is, non-reporting of sexual assaults on minor children. There is a duty cast on every citizen of this country if they witness or come to know of any act of sexual assault or abuse on a minor child to report the same to the police or to the Juvenile Justice Board. They cannot keep mum so as to screen the culprit from legal punishment. Non-reporting of such crime is a serious crime, punishable under Section 21 of PCSO Act, 2012. *Shankar Kisanrao Khade v. State of Maharashtra*, (2013) 5 SCC 546.

22. Punishment for false complaint or false information.—(1) Any person, who makes false complaint or provides false information against any person, in respect of an offence committed under Sections 3, 5, 7 and Section 9, solely with the intention to humiliate, extort or threaten or defame him, shall be punished with imprisonment for a term which may extend to six months or with fine or with both.

(2) Where a false complaint has been made or false information has been provided by a child, no punishment shall be imposed on such child.

(3) Whoever, not being a child, makes a false complaint or provides false information against a child, knowing it to be false, thereby victimising such child in any of the offences under this Act, shall be punished with imprisonment which may extend to one year or with fine or with both.

23. Procedure for media.—(1) No person shall make 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 his reputation or infringing upon his privacy.

(2) No reports in any media shall disclose, 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:

Provided that for reasons to be recorded in writing, the Special Court, competent to try the case under the Act, may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

(3) The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omissions of his employee.

(4) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be liable to be punished with imprisonment of either description for a period which shall not be less than six months but which may extend to one year or with fine or with both.

CASE LAW ▶ Sexual Abuse and Rape of Minor Girls in Shelter Homes/Child Homes.—Repeated interrogation, questioning, visiting/interviewing of victims regarding incident by officials and journalist is hardly conducive for the welfare and well-being of minor victims of sexual abuse and rape in Shelter Homes/Child Homes. Media must be restrained from publishing images of victims even in morphed or blurred form. Media directed to keep interests of victims in mind while dissemination of news. Process to be followed by investigating agencies dealing with case, set out. Various Authorities/Institutions directed to submit reports, for further directions, *Sampurna Behura v. Union of India*, (2018) 9 SCC 555.

▶ Restrictions on media.—Considering relevant provisions of POCSO Act and intention of legislature to protect the privacy and reputation of a child victim, held, media cannot disclose any material/information which may lead to disclosure of identity of a child victim. Any violation in this regard will amount to an offence under Section 23(4) of POCSO Act, *Nipun Saxena v. Union of India*, (2019) 2 SCC 703.

CHAPTER VI

PROCEDURES FOR RECORDING STATEMENT OF THE CHILD

24. Recording of statement of a child.—(1) The statement of the child shall be recorded at the residence of the child or at a place where he usually resides or at the place of his choice and as far as practicable by a woman police officer not below the rank of sub-inspector.

(2) The police officer while recording the statement of the child shall not be in uniform.

(3) The police officer making the investigation, shall, while examining the child, ensure that at no point of time the child come in the contact in any way with the accused.

(4) No child shall be detained in the police station in the night for any reason.

(5) The police officer shall ensure that the identity of the child is protected from the public media, unless otherwise directed by the Special Court in the interest of the child.

25. Recording of statement of a child by Magistrate.—(1) If the statement of the child is being recorded under Section 164 of the Code of Criminal Procedure, 1973 (2 of 1974) (herein referred to as the Code), the Magistrate recording such statement shall, notwithstanding anything contained therein, record the statement as spoken by the child:

Provided that the provisions contained in the first proviso to sub-section (1) of Section 164 of the Code shall, so far it permits the presence of the advocate of the accused shall not apply in this case.

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

26. Additional provisions regarding statement to be recorded.—(1) The Magistrate or the police officer, as the case may be, shall record the statement as spoken by the child in the presence of the parents of the child or any other person in whom the child has trust or confidence.

(2) Wherever necessary, the Magistrate or the police officer, as the case may be, may take the assistance of a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, while recording the statement of the child.

(3) The Magistrate or the police officer, as the case may be, may, in the case of a child having a mental or physical disability, seek the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed, to record the statement of the child.

(4) Wherever possible, the Magistrate or the police officer, as the case may be, shall ensure that the statement of the child is also recorded by audio-video electronic means.

27. Medical examination of a child.—(1) The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offences under this Act, be conducted in accordance with Section 164-A of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.

(3) The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.

(4) Where, in case the parent of the child or other person referred to in sub-section (3) cannot be present, for any reason, during the medical examination of the child, the medical examination shall be conducted in the presence of a woman nominated by the head of the medical institution.

CHAPTER VII SPECIAL COURTS

28. Designation of Special Courts.—(1) For the purposes of providing a speedy trial, the State Government shall in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, designate for each district, a Court of Session to be a Special Court to try the offences under the Act:

Provided that if a Court of Session is notified as a children's court under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) or a Special Court designated for similar purposes under any other law for the time being in force, then, such court shall be deemed to be a Special Court under this section.

(2) While trying an offence under this Act, a Special Court shall also try an offence [other than the offence referred to in sub-section (1)], with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(3) The Special Court constituted under this Act, notwithstanding anything in the Information Technology Act, 2000 (21 of 2000), shall have jurisdiction to try offences under Section 67-B of that Act in so far as it relates to publication or transmission of sexually explicit material depicting children in any act, or conduct or manner or facilitates abuse of children online.

29. Presumption as to certain offences.—Where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.

30. Presumption of culpable mental state.—(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation.—In this section, “culpable mental state” includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

31. Application of Code of Criminal Procedure, 1973 to proceedings before a Special Court.—Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.

32. Special Public Prosecutors.—(1) The State Government shall, by notification in the Official Gazette, appoint a Special Public Prosecutor for every Special Court for conducting cases only under the provisions of this Act.

(2) A person shall be eligible to be appointed as a Special Public Prosecutor under sub-section (1) only if he had been in practice for not less than seven years as an advocate.

(3) Every person appointed as a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of Section 2 of the Code of Criminal Procedure, 1973 (2 of 1974) and provision of that Code shall have effect accordingly.

CHAPTER VIII

PROCEDURE AND POWERS OF SPECIAL COURTS AND RECORDING OF EVIDENCE

CASE LAW ► Child-friendly court.—Trials under the Protection of Children from Sexual Offences Act, 2012 and trials for sexual offences under the Penal Code and other similar laws require to be conducted with a high degree of sensitivity, care and empathy for the victim. It is often said that the experience in our courts of a juvenile accused of an offence or the victim of a sexual offence is traumatic. The court needs to have some compassion towards them—even juveniles in conflict with law, since they are entitled to the presumption of innocence and establishing child-friendly courts, and vulnerable witness courts is perhaps one manner in which the justice delivery system can respond to ease their pain and suffering. Hence, High Courts directed to establish child-friendly courts, *Sampurna Behura v. Union of India*, (2018) 4 SCC 433.

33. Procedure and powers of Special Court.—(1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.

(2) The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.

(3) The Special Court may, if it considers necessary, permit frequent breaks for the child during the trial.

(4) The Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court.

(5) The Special Court shall ensure that the child is not called repeatedly to testify in the court.

(6) The Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial.

(7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial:

Provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

Explanation.—For the purposes of this sub-section, the identity of the child shall include the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed.

(8) In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.

(9) Subject to the provisions of this Act, a Special Court shall, for the purpose of the trial of any offence under this Act, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, and as far as may be, in accordance with the procedure specified in the Code of Criminal Procedure, 1973 (2 of 1974) for trial before a Court of Session.

CASE LAW ► Compensation to victim.—Special Court has power on its own or on application filed by or on behalf of child to pass interim order for grant of compensation to meet immediate needs of child for relief or rehabilitation at any stage after registration of FIR or to recommend award of compensation where accused is convicted, or where case ends in acquittal or discharge or accused is not traced or identified and where child has suffered loss or injury, taking into consideration all relevant factors. Such compensation to be paid by State Government, *Eera v. State (NCT of Delhi)*, (2017) 15 SCC 133.

► **Child victims of sexual offences.**—Bar as to disclosure of name and identity of child victims of sexual offences, under POCSO Act applies even to dead victims, *Nipun Saxena v. Union of India*, (2019) 2 SCC 703.

34. Procedure in case of commission of offence by child and determination of age by Special Court.—(1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of ¹⁸[the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016)].

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.

(3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person.

CASE LAW ► Interpretation/Construction.—Section 34 of the POCSO Act is the substantive provision which empowers the Special Judge to determine the age of the person whether he is a Juvenile or an adult person and that particular person has to be tried before the Juvenile Justice Board or before the Special Court. Sub-clause (2) of Section 34 clearly indicates that if any question arises in a proceeding before the Special Court, whether the person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person. In this provision stress has to be given to the words - “for satisfying itself” and how this satisfaction can be arrived at by the court has to be tested by other surrounding circumstances like oral and documentary evidence placed before the court and also the relevant rules under the law for the time being in force, *Siddu v. State*, 2016 SCC OnLine Kar 8347 : ILR 2016 KAR 4205.

35. Period for recording of evidence of child and disposal of case.—(1) The evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court.

18. *Subs.* for “the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000)” by Act 25 of 2019, S. 9 (w.e.f. 16-8-2019).

(2) The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.

36. Child not to see accused at the time of testifying.—(1) The Special Court shall ensure that the child is not exposed in any way to the accused at the time of recording of the evidence, while at the same time ensuring that the accused is in a position to hear the statement of the child and communicate with his advocate.

(2) For the purposes of sub-section (1), the Special Court may record the statement of a child through video conferencing or by utilising single visibility mirrors or curtains or any other device.

37. Trials to be conducted in camera.—The Special Court shall try cases in camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence:

Provided that where the Special Court is of the opinion that the child needs to be examined at a place other than the court, it shall proceed to issue a commission in accordance with the provisions of Section 284 of the Code of Criminal Procedure, 1973 (2 of 1974).

38. Assistance of an interpreter or expert while recording evidence of child.—(1) Wherever necessary, the Court may take the assistance of a translator or interpreter having such qualifications, experience and on payment of such fees as may be prescribed, while recording the evidence of the child.

(2) If a child has a mental or physical disability, the Special Court may take the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed to record the evidence of the child.

CHAPTER IX

MISCELLANEOUS

39. Guidelines for child to take assistance of experts, etc.—Subject to such rules as may be made in this behalf, the State Government shall prepare guidelines for use of non-governmental organisations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child.

40. Right of child to take assistance of legal practitioner.—Subject to the proviso to Section 301 of the Code of Criminal Procedure, 1973 (2 of 1974) the family or the guardian of the child shall be entitled to the assistance of a legal counsel of their choice for any offence under this Act:

Provided that if the family or the guardian of the child are unable to afford a legal counsel, the Legal Services Authority shall provide a lawyer to them.

41. Provisions of Sections 3 to 13 not to apply in certain cases.—The provisions of Sections 3 to 13 (both inclusive) shall not apply in case of medical

examination or medical treatment of a child when such medical examination or medical treatment is undertaken with the consent of his parents or guardian.

¹⁹[**42. Alternate punishment.**—Where an act or omission constitutes an offence punishable under this Act and also under Sections 166-A, 354-A, 354-B, 354-C, 354-D, 370, 370-A, 375, 376, ²⁰[376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB], ²¹[376-E, Section 509 of the Indian Penal Code or Section 67-B of the Information Technology Act, 2000 (21 of 2000)], then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment under this Act or under the Indian Penal Code as provides for punishment which is greater in degree.]

²²[**42-A. Act not in derogation of any other law.**—The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.]

43. Public awareness about Act.—The Central Government and every State Government, shall take all measures to ensure that—

- (a) the provisions of this Act are given wide publicity through media including the television, radio and the print media at regular intervals to make the general public, children as well as their parents and guardians aware of the provisions of this Act;
- (b) the officers of the Central Government and the State Governments and other concerned persons (including the police officers) are imparted periodic training on the matters relating to the implementation of the provisions of the Act.

44. Monitoring of implementation of Act.—(1) The National Commission for Protection of Child Rights constituted under Section 3, or as the case may be, the State Commission for Protection of Child Rights constituted under Section 17, of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006), shall, in addition to the functions assigned to them under that Act, also monitor the implementation of the provisions of this Act in such manner as may be prescribed.

(2) The National Commission or, as the case may be, the State Commission, referred to in sub-section (1), shall, while inquiring into any matter relating to any offence under this Act, have the same powers as are vested in it under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006).

19. Subs. by Act 13 of 2013, S. 29 (w.r.e.f. 3-2-2013). Prior to substitution it read as:

“42. *Alternative punishment.*—Where an act or omission constitute an offence punishable under this Act and also under any other law for the time being in force, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under such law or this Act as provides for punishment which is greater in degree.”

20. Subs. for “376-A, 376-C, 376-D” by Act 22 of 2018, S. 25 (w.r.e.f. 21-4-2018).

21. Subs. for “376-E or Section 509 of the Indian Penal Code (45 of 1860)” by Act 25 of 2019, S. 10 (w.e.f. 16-8-2019).

22. Ins. by Act 13 of 2013, S. 29 (w.r.e.f. 3-2-2013).

(3) The National Commission or, as the case may be, the State Commission, referred to in sub-section (1), shall, also include, its activities under this section, in the annual report referred to in Section 16 of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006).

CASE LAW ► Commissions for protection of child.—National Commission for Protection of Child Rights (NCPCR) and State Commission for Protection of Child Rights (SCPCR). Governments and Union Territories directed to ensure that all vacancies are filled up with dedicated persons on or before 31-12-2017. Both the above Commissions have a role to play in the implementation of law relating to children, that is, Commissions for Protection of Child Rights Act, 2005, Protection of Children from Sexual Offences Act, 2012 (POCSO) and Juvenile Justice (Care and Protection of Children) Act, 2015. NCPCR and SCPCRs must be allowed to function as independent bodies for the above statutes. They have a duty to prepare annual reports and special reports. And if required, they must also approach constitutional courts for protecting child rights. Laws solemnly enacted by Parliament cannot be insulted by putting hurdles in effective functioning of these Commissions, such as by not appointing the Chairperson or Members, *Exploitation of Children in Orphanages*, *In re*, (2017) 7 SCC 578 : (2017) 4 SCC (Cri) 95.

45. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely—

- ²³[(a)] the manner of deleting or destroying or reporting about pornographic material in any form involving a child to the designated authority under sub-section (1) of Section 15;
- (aa) the manner of reporting about pornographic material in any form involving a child under sub-section (2) of Section 15;]
- ²⁴[(ab)] the qualifications and experience of, and the fees payable to, a translator or an interpreter, a special educator or any person familiar with the manner of communication of the child or an expert in that field, under sub-section (4) of Section 19; sub-sections (2) and (3) of Section 26 and Section 38;
- (b) care and protection and emergency medical treatment of the child under sub-section (5) of Section 19;
- (c) the payment of compensation under sub-section (8) of Section 33;
- (d) the manner of periodic monitoring of the provisions of the Act under sub-section (1) of Section 44.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall

23. Ins. by Act 25 of 2019, S. 11 (w.e.f. 16-8-2019).

24. Re-lettered by Act 25 of 2019, S. 11 (w.e.f. 16-8-2019).

thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

46. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for removal of the difficulty:

Provided that no order shall be made under this section after the expiry of the period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

THE SCHEDULE

[See Section 2(c)]

ARMED FORCES AND SECURITY FORCES CONSTITUTED UNDER

- (a) The Air Force Act, 1950 (45 of 1950);
- (b) The Army Act, 1950 (46 of 1950);
- (c) The Assam Rifles Act, 2006 (47 of 2006);
- (d) The Bombay Home Guard Act, 1947 (3 of 1947);
- (e) The Border Security Force Act, 1968 (47 of 1968);
- (f) The Central Industrial Security Force Act, 1968 (50 of 1968);
- (g) The Central Reserve Police Force Act, 1949 (66 of 1949);
- (h) The Coast Guard Act, 1978 (30 of 1978);
- (i) The Delhi Special Police Establishment Act, 1946 (25 of 1946);
- (j) The Indo-Tibetan Border Police Force Act, 1992 (35 of 1992);
- (k) The Navy Act, 1957 (62 of 1957);
- (l) The National Investigation Agency Act, 2008 (34 of 2008);
- (m) The National Security Guard Act, 1986 (47 of 1986);
- (n) The Railway Protection Force Act, 1957 (23 of 1957);
- (o) The Sashastra Seema Bal Act, 2007 (53 of 2007);
- (p) The Special Protection Group Act, 1988 (34 of 1988);
- (q) The Territorial Army Act, 1948 (56 of 1948);
- (r) The State police forces (including armed constabulary) constituted under the State laws to aid the civil powers of the State and empowered to employ force during internal disturbances or otherwise including armed forces as defined in clause (a) of Section 2 of the Armed Forces (Special Powers) Act, 1958 (28 of 1958).

NOTIFICATION

*Department of Women And Child Development, Noti. No. F. No. 61(313)
DD(CPU)/DWCD.2013/Vol-III/8661-94, dated August 4, 2022 and published
in the Delhi Gazette, Extra., Part IV, dated 5th August, 2022, p. 2, No. 386*

In exercise of the powers conferred under Section 28 of the **Protection of Children from Sexual Offences Act, 2012** (32 of 2012) and in consultation with Acting Chief Justice of Delhi High Court, the Lt. Governor of the National Capital Territory of Delhi is pleased to designate the Court of Principal District & Session Judge (New Delhi District), Patiala House Courts as special court to try the offences under this Act (32 of 2012) for the district New Delhi.