

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES, 2012 - AN OVERVIEW

by

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1. INTRODUCTION

Child Sexual Abuse is considered as the most heinous crime which can be done to a child as the offender of these crimes knows that the forced sex which they are doing with the child is by leashing child's vulnerability and trust and is exposing to child under grave trauma which is not just a physical attack on its body and private parts but also disturbing a child's mind so blatantly that it can take a lifetime for the child to feel normal ever after that abuse.

The Census Data of 2011 revealed that India has a population of 472 million children below the age of eighteen, of which 225 million are girls. In the backdrop of rampant sexual exploitation and abuse of children, who became ever more vulnerable because of the ineffectiveness of the prevalent penal laws that were mandated to protect them, The Parliament of India passed the Protection of Children from Sexual Offences Bill, 2011 which came into force on 20th June, 2012. The intention of the Parliament behind enacting the law was to protect the children from offences of sexual assault, sexual harassment and pornography and to facilitate adequate legal machinery by establishing special courts for trial of such offences and matters incidental connected with child sexual abuse crimes. This was in due compliance of Article 15 of Constitution of India which mandates the states to protect the children of this nation and in lieu of United Nations Conventions on the Rights of the Child.

Protection of Children from Sexual Offences Act, 2012 defines a child as a person under the age of 18 years. It encompasses the biological age of the child and remains silent on the mental age considerations. It recognizes all forms of penetration other than penile-vaginal penetration and criminalizes acts of immodesty against children too. With respect to pornography, this act criminalizes even watching or collecting pornographic content involving

children under Sec 15 of the Act and shall be punished with imprisonment of either description which may extend to three years or with fine or both.

It also provides for various procedural reforms under Sec 19-22 of the Chapter V under the Act making the tiring process of trial in India considerably easier for children. The procedural formalities of reporting the case to Special Juvenile Police has made it easier to report child sexual abuse cases in a prompt and hassle-free manner. Under Sec 20 of the act under chapter V makes it obligatory for media personnel's and personnel employed by 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 so that such sex abuse offenders' can be tracked down by police immediately.

2. Why Protection of Children from Sexual Offences Act,2012 when the Bharatiya Nyaya Sanhita, 2023 or Indian Penal Code already contains provisions for Sexual offences against children?

- i. Provisions of Indian penal code, 1860 were not gender neutral, for e.g. Section 376 IPC is only concerned with the female, the male child was left out. The national survey conducted by the Ministry of Women & Children Development in 2007 shows that 57% of children who said that they have experienced one or more form of sexual abuse, were boys. The offender can be male, female or transgender irrespective of their age. When an offence under this act is committed by a child, such child shall be dealt with under the Juvenile Justice (Care and Protection of Children) Act, 2015.
- ii. Failure to curb the crime of child sexual abuse and less efficacy of the previous provision. The need for the POCSO Act, 2012 was reflected by different surveys conducted by the government of India. In 2007, the survey conducted by the Ministry of Women and Child development in which 12,500 children participated across 13 states,

showed that 53% of the children said that they have been subjected to one or more forms of sexual abuse.

- iii. Increase in the number of child abuse cases: A total of 33,098 cases of CSA (Child Sexual Abuse) were reported in the nation during the year 2011 when compared to 26,694 reported in 2010 which increased by 24%.
- iv. When the abuser is a family member itself, the question of child safety and protection remains unanswered. The first study on CSA in India was conducted by Recovery and Healing from Incest, an Indian non-government organization (NGO) in 1998. The majority (76%) of the participants reported being abused during childhood or adolescence.
- v. Despite provisions in the Information and Technology Act, 2000 that deals with child pornography were not enough to stop online child abuse.

3. BASIS OF PROVISIONS FROM THE CONSTITUTION OF INDIA:

The following Articles of the Constitution of India shows the basis of provisions to tackle the cases of children sexually abused. Thus the POCSO Act finds its constitutionality from the following Articles:

- a. Article 14 of the Constitution of India dealing with Equality before law says that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
- b. Article 15(3): It states that even though the state will not discriminate anyone, they can make special provisions only for women and children to safeguard their interests. This Act is therefore enforced to protect the dignity of the children.
- c. Article 21A of the Constitution of India was inserted by Constitution (Eighty Sixth Amendment) Act, 2002 and this Article dealing with Right to Education says that the state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state may, by law, determine.

In *Bachpan Bachao Andolan v. Union of India*, 29 the aspect of rehabilitation of children saved from employment in circuses had been discussed.

- d. Article 39(e): It states that the health and strength of workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.
- e. Article 39(f): It states that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.
- f. Article 39A of the Constitution of India dealing with Equal Justice and Free Legal Aid says that the State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity and shall in particular, provide Free Legal Aid by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not derived to any citizen by reason of economic or other disabilities
- g. Article 45: The Constitution of India in its Directive Principles contained in Article 45 has made a provision for free and compulsory education for all children up to the age of 6 years. This will make him/her aware of these incidents of sexual exploitation and harassment by the perpetrators. This is one of the reasons why the Right to Education Act, 2009 has been enacted by the parliament. But its needful application is still far away than it is expected

4. OBJECTIVES FOR ENACTING POCSO ACT, 2012

The objective of enacting the POCSO Act, 2012 is to protect the children from various types of sexual offences and to establish a Special Court for providing speedy disposal of cases. Before this Act, most of the sexual offences were covered under IPC, 1860. But IPC provisions were general in nature and it was felt that they were inadequate to deal with sexual offences against children. This is very clear that the objective of the Act is to provide protection to the children and not only to punish the child offenders. It was

held in **Alakh Alok Srivastava vs. Union of India**, that the objective of the POCSO Act is to protect the child from many aspects so that he/she does not feel a sense of discomfort or fear or is reminded of the horrified experience and further there has to be a child friendly atmosphere. The POCSO Act, 2012 is a special enactment which provides punishment for penetrative, touch, and non-touch based sexual offences against children and also mandates the establishment of Special Courts and procedures for the trial of offences involving children as the statute was enacted to protect children from offences arising out of sexual assault, sexual harassment and pornography. The Act is applicable to the whole of India. The POCSO Act, 2012 defines a child as any person below the age of 18 years and provides protection to all children under the age of 18 years from sexual abuse. It also intends to protect the child through all stages of the judicial process and gives paramount importance to the principle of "best interest of the child". It is, therefore, proposed to enact a self contained comprehensive legislation inter alia to provide for protection of children from the offences of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and well being of the child at every stage of the judicial process, incorporating child-friendly procedures for reporting, recording of evidence, investigation and trial of offences and provision for establishment of Special Courts for speedy trial of such offences

5. NATURE OF OFFENCES UNDER THE POCSO ACT:

The POCSO Act, 2012 and its rules were enacted with the objective of protecting children from physical, emotional or sexual abuse while safeguarding interest of children at all stages. The POCSO Act is a stringent law which is gender neutral and affords protection to children of all gender as well as provides for child friendly measures in investigation & prosecution within stipulated time frame. All individuals, male or female, under the age of 18 years, are entitled to get protection under POCSO Act. The Act is also gender neutral in case of the offender. As for the person who commits the crime - it does not matter whether the person is male or female. Both genders are equally punishable for offences under this law. The POCSO Act not only spells out the punishments for offences, but also sets out a system for support

of victims and improved methods for catching offenders. There are 3 broad categories of sexual offences punishable under POCSO: sexual assault, sexual harassment and using a child for pornography. Sexual assault itself has various degrees of seriousness. By sub-categorising them further, Penetrative and aggravated penetrative sexual assault, sexual and aggravated sexual assault, sexual harassment, and child harassment including using of child for pornographic purposes are the five offences against children that are covered by this Act. This Act envisages punishing even for abetment or for an attempt to commit the offences defined in the Act. It recognizes that the intent to commit an offence, even when unsuccessful, needs to be penalized. The punishment for the attempt to commit is up to half the punishment prescribed for the commission of the offence.

6. NATURE OF OFFENCES DEFINED UNDER POCSO ACT

- Penetrative sexual assault (Section 3)
- Aggravated Penetrative Sexual Assault (Section 5)
- Sexual assault (Section 7)
- Aggravated Sexual Assault (Section 9)
- Sexual harassment (Section 11)
- Using Child for Pornographic Purposes (section 13)

• Penetrative Sexual Assault:-

Section 3 says, 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.

Punishment for penetrative sexual assault

- a. **Section 4.** Whoever commits penetrative sexual assault 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.
- b. Whoever commits penetrative sexual assault on a child below sixteen years shall be punished with imprisonment of either description for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean remainder of natural life of that person and shall also be liable to fine.
- c. The fine shall be imposed under sub section(1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of victim.

Judgements on Penetrative Sexual Assault:

- i. In **Shri Pranil Gupta v State of Sikkim CrI. A. No. 32 of 2014**, the question that arises for consideration by the Hon'ble High Court is whether the Appellant committed the offence of penetrative sexual assault as defined under Section 3 of the POCSO Act, 2012 and is to face penalty under Section 4 of the same Act. The Hon'ble after examining the evidence produced before it held that victim under the umbrella of protection of "child", as defined in Section 2(d) of the POCSO Act, 2012. And also, Section 29 of the POCSO Act, 2012 enjoins upon the Court that where a person is prosecuted for committing or abetting or attempting to commit any offence under Section 3, 5, 7 and 9 of the 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.

Upon of the examination of evidence given by the Gynaecologist, it is found that the victim had sexual contact with the Appellant. Upon examination of statement of victim on being perused for corroborative purposes, indicates that the Appellant opened her clothes, although she resisted and cried and that night, he raped her five times. Thus, it is

evident that the Appellant had committed the offence of penetrative sexual assault as defined in Section 3 of the POCSO Act, 2012. Hence the appeal was dismissed.

- ii. In **Dinesh Kumar Maurya v. State of U.P. 2016 (2) ACR 1260**. The Hon'ble Allahabad High Court shed light upon the intricacies of the medical evidence of the victim. The High Court in this case set aside the conviction of the accused under Sections 3 and 4 of the POCSO Act as there were no marks of injury on the body of the victim who was 14 years of old but the victim had stated that there was forcible sexual intercourse. The Court made the following observations in this case:
- iii. The injuries on the body are not always sine qua non for proving the offence of sexual assault but if the victim states that she has been helplessly raped then the marks of injury on the thighs, breasts, face, wrists or any other part of the body can immensely support her statements.
- iv. The Courts should always take into consideration the fact that false charges of rape or sexual assault are common and the parents in order to take revenge convince their minor daughters to tell lies and concoct stories.
- v. In **Thoura Damei v. State of Meghalaya, 2024 SCC OnLine Megh 596**: The Hon'ble Meghalaya High Court regarding the contention based on Section 7 of the POCSO Act, that there was no penetration into minor girl's vagina and the convict had only touched her private part with his penis, the Court said that such interpretation cannot be accepted, as it would signify that the private part of a female can be touched with penis and only insertion in the vagina is impermissible that will alone amount to commission of offence, which is not the intent of the provisions of the POCSO Act.

The Court said that Section 3 of the POCSO Act explains penetrative sexual assault and Section 3(a) of the POCSO Act makes it clear that there is no requirement that the penis should have completely penetrated the vagina. The Court observed that at tender age, there is no possibility for a child to have an idea about a sexual assault and according to the child, a physical assault like hitting or pinching is a

matter of concern. The Court held that minor girl was four years old at the time of incident and hence, the offence of aggressive penetrative sexual assault was clearly established under Section 5(m) of the POCSO Act, which is punishable under Section 6 of the POCSO Act. Hence, the Court dismissed the appeal holding that the impugned decision did not warrant any interference.

- **Aggravated Penetrative Sexual Assault.**

Section 5. (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
 - 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 (5) of section 2 of the Mental Health Act, 1987 or causes 14 of 1987. impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or
 - 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; or iv) caused death of the child.
- k. whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or
- 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 of communal or sectarian violence; 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.

Punishment for aggravated penetrative sexual assault

Section 6(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 and shall also be liable to fine.

• Sexual Assault :-

Section 7. 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

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.

Punishment For Sexual Assault.:- Section 8 says 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.

Judgements on Sexual Assault:

i) In **Subhankar Sarkar vs State of West Bengal Cri.A.No.32/2014**, The Hon'ble Calcutta High Court while setting aside the judgment and order of conviction passed by the Trial Court of the appellant under Section 376 IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012, but also affirming the order of conviction passed under Section 506 IPC read with Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, clarified the between Penetrative sexual assault and Sexual Assault.

The Hon'ble High Court held that in the absence of clinching evidence of rape or penetrative sexual assault, the accused cannot be convicted under Section 376 IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012. In the present case upon the examination of the victim, it is found that no sexual intercourse was possible upon her and her private parts were found to be intact with no signs of injuries but scratch marks were found on the body of her indicating the use of force and only sexual assault was committed against the victim and not Penetrative sexual assault.

ii) In **Attorney General of India v. Satish and Another (2022) 5 SCC 545** The Hon'ble Supreme Court while setting aside the judgement of Bombay High Court held that

“the interpretation of Section 7 of POSCO Act, 2012 at the instance of the High Court on the premise of the principle of “ejusdem generis” is also thoroughly misconceived. It may be noted that the principle of “ejusdem generis” should be applied only as an aid to the construction of the statute. It should not be

applied where it would defeat the very legislative intent. As per the settled legal position, if the specific words used in the section exhaust a class, it has to be construed that the legislative intent was to use the general word beyond the class denoted by the specific words. So far as Section 7 of the POCSO Act, 2012 is concerned, the first part thereof exhausts a class of act of sexual assault using specific words, and the other part uses the general act beyond the class denoted by the specific words. In other words, 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 of such person or any other person, would be committing an offence of "sexual assault". Similarly, whoever does any other act with sexual intent which involves physical contact without penetration, would also be committing the offence of "sexual assault" under Section 7 of the POCSO Act. In view of the discussion made earlier, the prosecution was not required to prove a "skin to skin" contact for the purpose of proving the charge of sexual assault under Section 7 of the Act".

- **Aggravated Sexual Assault:-**

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

1. within the limits of the police station or premises where he is appointed; or
 2. in the premises of any station house whether or not situated in the police station to which he is appointed; or
 3. in the course of his duties or otherwise; or
 4. 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—
1. within the limits of the area to which the person is deployed; or
 2. in any areas under the command of the security or armed forces; or
 3. in the course of his duties or otherwise; or
 4. 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.
- h) 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
- i) whoever commits sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or
- j) whoever commits sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or
- k) whoever commits sexual assault on a child, which—
- l) physically incapacitates the child or causes the child to become mentally ill as defined under clause (/) of section 2 of the Mental Health Act, 1987 or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or
- m) 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
- n) whoever, taking advantage of a child's mental or physical disability, commits sexual assault on the child; or

- o) whoever commits sexual assault on the child more than once or repeatedly; or
- p) whoever commits sexual assault on a child below twelve years; or
- q) 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
- r) 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
- s) 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
- t) whoever commits sexual assault on a child knowing the child is pregnant; or
- u) whoever commits sexual assault on a child and attempts to murder the child; or
- v) whoever commits sexual assault on a child in the course of communal or sectarian violence; or
- w) 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
- x) 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.
- y) 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 is said to commit aggravated sexual assault.

Punishment for aggravated sexual assault:-

Section 10. 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.

Judgements on Aggravated Sexual Assault:

In **Sofyan v State 2017 DHC 1838**, the Hon'ble Delhi High Court upheld the conviction of Trial court for the offence of Aggravated sexual assault and dismissed the appeal. The High court also observed that sexual assault on a tender aged girl is bound to create a permanent impact and impression on the mind of such a girl, which may permanently affect her adversely.

The appellant in the present case neither furnished any plausible reason as to why he opted not to report for duty next day nor denied his presence at the spot at the relevant time making a strong presumption that the accused had committed the aggravated sexual assault on the victim and hence held that judgment of trial court is based upon fair appreciation of the evidence deserves no intervention and as a result dismissing the appeal.

• **Sexual Harassment:-**

Section 11. 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.

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

Punishment for sexual harassment.

Section 12. 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.

• **Using Child for Pornographic Purposes:**

Section 13. 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—

- i) representation of the sexual organs of a child;
- ii) usage of a child engaged in real or simulated sexual acts (with or without penetration);
- iii) 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.

Punishment for using child for pornographic purposes:-

Section 14. (1) Whoever uses a child or children for pornographic purposes shall be punished with 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 subsection (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 u/s 4, 6, 8 and 10, respectively, in addition to the punishment provided in sub-section (1)

Section 15. (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."

Judgements on Using Child for Pornographic Purposes:

In **Fatima A S v State of Kerala 2020 KER 26328**, The Hon'ble High Court Justice P.V.Kunhikrishnan explained the importance the mother-daughter relationship and role of mother in life of the children. Hon'ble Justice said

"I can understand if the mother is doing these activities inside the four walls of her house. It is the freedom of every mother to teach sex education according to her will if it is not forbidden by law. Whether such a video can be uploaded in social media and the petitioner can escape by saying that she was trying to teach sex education to all children is the question to be decided."

"The concept of mother in our society is always great. The role of mother is always important in the life of a child. The mother will be a

pillar of emotional support to the child. As a mother, it is her duty and responsibility to be the emotional anchor of their children so that they can face the storms of life. The children are not born with a moral compass and it is the job of parents, especially of the mother, to build that compass for them. Be responsible enough to teach and demonstrate the values that your kids need in order to grow up as decent human beings. You are also responsible for living your life according to the same moral values that you preach, as that is the only way kids will learn. The petitioner has got the freedom to teach her child according to her philosophy. But that should be within the four walls of her house and should not be forbidden by law. A good mother has outstanding qualities. No one can replace her in life to her children. Deep love for her children, sacrifice and dedication, protection and security etc., are the qualities of a mother. When a baby is born, he is totally unaware of the outside world. The mother plays an important part in introducing him to the world. The outlook that the child will form towards life depends a lot on the mother. His attitude, his views - religious or otherwise - his perspective on life and its goals will all be gained from her. Eventually, he will mature and perhaps form his own changed views. But in the initial years, what the child learns from their mother will always have a lasting impression on their mind. It is usually said that, the mother will be the window of the child to the world."

7. COGNIZABLE BUT WHEN BAILABLE OR NON-BAILABLE:

While providing for a whole range of offences, the POCSO Act does not specify whether the offences are cognizable or not, or bailable or not. Section 19 of the POCSO Act and Rule 4 (3) (a) of the POCSO Rules imply that the sexual offences are cognizable as the police receiving information of commission of such offence is required to record and register a First Information Report (FIR), per the provisions of Section 154 of CrPC, and furnish a copy of it, free of cost, to the person making such report. To determine whether a sexual offence is bailable or non-bailable, it is necessary to see the First Schedule of Cr.P.C (Part II - Classification of Offences against Other Laws):

1. Whenever the punishment is less than 3 years of imprisonment, the offence is bailable and
2. Any term of imprisonment equal to or more than 3 years, the offence is non-bailable. All sexual offences under the POCSO Act are punishable with imprisonment up to 3 years or more and are, therefore, non-bailable.

8. PRESUMPTION UNDER POCSO ACT, 2012

Section 29 and 30 of the POSCO Act, 2012 deal with the presumptions. The presumption that needs to be taken is a "shall Presume". Shall presume denotes a strong assertion or intention to determine any fact. Section 2 of Bharatiya Sakshya Adhinyam, 2023 explains the principle of 'Shall Presume' that the court does not have any discretionary power in the course of presumption of 'Shall Presume', rather the court has presumed facts or groups of facts and regard them as if they are proved until they are disproved by the other party. Section 2 of Bharatiya Sakshya Adhinyam, 2023 explains that the concept of 'Shall Presume' may also be called 'Presumption of Law' or 'Artificial Presumption' or 'Obligatory Presumption' or 'Rebuttable Presumption of Law' and tells that it is a branch of jurisprudence.

Section 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.

Presumption under section 29 is not absolute.

Judgements on presumptions under POSCO Act, 2012:

- **Navin Dhaniram Vs State of Maharashtra, 2018 Cr.L.J 3393(Bombay)**

It cannot be disputed that no presumption is absolute and every presumption is rebuttable. It cannot be countenanced that presumption under section 29 is absolute. It would come into operation only when prosecution is first able to establish facts that would form foundation for presumption under section 29 of POCSO Act to operate. Otherwise, all that

prosecution would be required to do is to file chargesheet against accused under provisions of said Act and then claim that evidence of prosecution witnesses would have to be accepted as gospel truth and further that entire burden would be on accused to prove contrary. Such proposition of law or interpretation of presumption under section 29 of Act cannot be accepted as it would clearly violate constitutional mandate that no person shall be deprived of liberty except in accordance with procedure established by law.

- **Imran Shamim Khan vs The State of Maharashtra 2019 ALL MR (Cri) 1375.**

The Hon'ble High Court in the present case held that

"the nature of answers given by the victim at the time of cross-examination needs to be taken into consideration for taking judicial approach. The answers are not in denial. She chooses to forget the incident as she was coerced by her relatives and the accused and she was pained by the fact that she has to forget the incident to protect the accused. And therefore, the answers to all the questions are that she does not recollect. It is for the Court to decide as to whether she does not really recollect or she is being forced to forget. It is very easy to say that the prosecution has failed to prove the guilt of the accused. However, in a case like the present one, the judicial approach necessarily has to see that justice is imparted to victim as well. So, notwithstanding the fact the victim had turned hostile the onus of proof is still on the accused to prove that he is innocent as per section 29 of the POSCO Act, 2012".

- **Suresh @ Sureshkumar vs State Represented by Inspector of Police CRLA(MD) No.195 of 2016**

Observations made by Hon'ble Madras High Court:

It is pertinent to note that the reverse burden contemplated under Section 29 of POCSO Act, 2012 must not only be required to be strictly complied with, but also may be subject to proof of some basic facts as envisaged under the statute. The subject of reverse burden of proof can only be made applicable in a case, where prosecution has already let substantial evidence with regard to the offence complained. The prosecution has to establish a prima facie case beyond reasonable

doubt and only when the foundational facts are established by the prosecution, the accused will be under an obligation to rebut the presumption that arise, by adducing evidence with the standard of proof of preponderance of probability.

No doubt, the accused facing charge under the POCSO Act, is duty bound to discharge his reverse burden, but only on production of foundational evidence revealing the ingredients of the offence. It is pertinent to note that the proof of penetrative sexual assault, is sine quo non prior to making application of the presumption available under Section 29 of POCSO Act. But in the present case, the prosecution has miserably failed to prove the basic and foundational facts to the charge projected by them and as such, the question of burden shifting to the accused does not arise at all.

Section 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.

- **Dashwanth Vs State, 2018 Cri.LJ 4226(Madras)**

Admission by accused in his statement under section 313 Cr.P.C as to viewing of obscene movies and pornographic material stands established. Presumption can be raised about existence of culpable mental state of accused.

9. COMPENSATION:-

The term 'Compensation' means amend for the loss sustained. Compensation is anything given to make things equivalent, a thing given to make amends for loss, recompense, remuneration or bay. It is counter balancing of the victim's sufferings and loss that result from victimization. The rationale or basis for compensation may be the following three perspective:

1. As an additional type of social insurance.
2. As an welfare measure another facet of the Government/Public assistance of the Unprivileged.
3. A way of meeting an overlooked governmental obligation to all citizens.

10. COMPENSATION UNDER THE POCSO ACT:

Provisions for Compensation under POCSO Act:

Under **Section 33 (8) of the POCSO Act, 2020** in addition to punishment, the Special Court may "*direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to her / him for immediate rehabilitation of such child.*" Rule 9 of the POCSO Rules lays down the details regarding payment of compensation. Compensation is payable to the child by the State Government, and not by the accused as in the case of fine. The factors to be considered by the Special Court for computing the amount of compensation are contained in Rule 9 (3) (i) to (xii) of the POCSO Rules. The list is not exhaustive and includes: type of abuse; gravity of the offence and the severity of the mental or physical harm or injury suffered by the child; the expenditure incurred or likely to be incurred on medical treatment for physical and/or mental health; loss of educational opportunity as a consequence of the offence, including absence from school due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason; the relationship of the child to the offender, if any; financial condition of the child against whom the offence has been committed so as to determine his need for rehabilitation; etc.

11. STAGES OF GRANTING COMPENSATION

The Special Court may direct payment of compensation in the following form: -

- I. interim compensation to meet the immediate needs of the child;
- II. final compensation taking into account the loss or injury suffered by the child as a result of the offence. The Special Court may pass an order directing payment of compensation on its own or on an application made by the Special Public Prosecutor or the child's lawyer. Compensation may be provided at any stage after the registration of FIR, irrespective of whether "the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified" [Rule 9 (2) of the POCSO Rules]. The interim compensation paid to the child is to be adjusted against the final compensation awarded by the Special Court, if the court decides to award any final compensation [Rule 9 (1) of the POCSO Rules]. The needs and interests of the child should determine the amount of compensation payable. Once the amount of compensation is determined by the Special Court, it shall pass an order "for the award of compensation to the victim" [Rule 9 (3) of the POCSO Rules]. The order should mention the amount of compensation to be paid by the State Government to the child. The amount of compensation is a contended issue in POCSO cases since no amount of compensation can actually undo the wrong done to a child.

Taking a progressive and novel view, **Justice Jasmeet Singh of the Delhi High Court**, in the case of **X vs. State of NCT of Delhi and Ors. 78** , said that – (Para 46, 47 and 48)

"The compensation as per DVC scheme provides a maximum and a minimum. The statutes/scheme should not decide the maximum. The court has the power to scale up and scale down. To scale down these provisions would mean injustice to the survivors who have suffered. These are the situations which require scaling up. The special court shall decide the final compensation amount and the interim compensation granted by the SLSA/DLSA and the special court, shall be adjusted from the final compensation amount awarded by the special court."

12. PROVISIONS FOR AWARDING COMPENSATION:

The Rule 9 of POCSO Rules makes it clear that interim compensation can be awarded by the Special Court, on its own, or based on an application by or on behalf of the child, at any time after the FIR has been registered. A sustained reading of the POCSO Rules along with the objectives of POCSO makes it clear that compensation is to be given as soon as the Special Court forms an opinion that the child has suffered loss or injury. In the above-mentioned case of X vs. State of NCT of Delhi and Ors., 79 it was held that – (Para 56, 57 and 62)

“In my opinion, the pendency might be getting created because the POCSO states that compensation shall be given after registration of the FIR but does not provide a fixed time limit, within which the compensation is to be disbursed. The POCSO Rules only give the starting point as registration of the FIR. This gap allows for the delay in disbursement of interim compensation. Thus, I am of the opinion that the interim compensation is to be paid at the earliest. Although no time frame has been given but in my understanding 2 months within filing of charge sheet to disburse interim compensation would be reasonable. Section 357A (5) of the CrPC deals with grant of compensation to the victims which contemplates a similar time frame.”

“I must reiterate that the trigger to award compensation is filing of the chargesheet. The Special Court must endeavour to, within 2 months of filing of chargesheet, award the compensation. After the conclusion of trial, even if the order of acquittal is passed, but if the factum of rape/injury is substantiated, the Special Court is obligated to grant maximum permissible compensation, less the interim compensation awarded earlier by the special court and the DSLSA/ DLSA.”

13. WHO HAS TO FILE APPLICATION AND AT WHAT STAGES COMPENSATION SHALL BE GRANTED:-

In order for the Special Court to order for interim or final compensation, it is not pre-requisite for the child to file an application. The Special Court may order on his/her own accord where it is found to be appropriate. A record of conviction is not mandatory for the provision of compensation. Where the

Special Court is satisfied that a child has been a victim of sexual abuse, the judge may direct compensation to be paid in cases where the accused has been acquitted or even in cases where the accused has not identified or traced POCSO Rules, Rule 7(2) Interim compensation can be paid at any stage and is not linked to the child's testimony. The compensation ordered must be disbursed by the State Government within 30 days from the order POCSO Rules, Rule 7(4) and 7(5) The State Government may pay the sum from the Victims Compensation Fund or any other scheme or fund which has been established under section 357A of the Code of Criminal Procedure. The quantum of compensation is not specified in the POCSO Act and it is based on the discretion of the judge deciding the matter. The POCSO Rules provides that while deciding the quantum of compensation, the judge must take into consideration the type, nature and severity of abuse, the extent of physical and mental harm caused to the child, expenditure incurred for medical treatment for physical and/or mental health, financial condition of the child, etc. POCSO Rules, Rule 7(3)

For quick reference and understanding of para Nos.10 to 13

Categories of Compensation

1. Immediate Compensation/Specific Relief.

- Under Rule 8 of the POCSO Rules, 2020.

2. Interim Compensation.

- Under Rule 9(1) of the POCSO Rules, 2020.

3. Final Compensation.

- under sub-section (8) of section 33 of the Act read with subsections (2) and (3) of section 357A of the Code of Criminal Procedure, 1973 (2 of 1974).

1. Immediate Compensation/Specific Relief:

- **Provision:** Under Rule 8 of the POCSO Rules, 2020.
- **Purpose:** For Contingencies such as food, clothes, transport and other essential needs.
- **Assessment of requirement & recommendation will be made by:** Child Welfare Committee.

- **Who will pay:** District Legal Services Authority u/s 357A of Cr.P.C.; or, District Child Protection Unit out of such funds placed at their disposal by State.; or, Juvenile Justice Fund maintained u/s 105 of the J.J. Act, 2015.
- **Time limit for such immediate payment:** Within a week of receipt of recommendation from the CWC (Child Welfare Commission).

2. Interim Compensation:

- **Provision:** Under Rule 9(1) of the POCSO Rules, 2020.
- **Purpose:** To meet the needs of the child for relief or rehabilitation.
- **Stage:** At any stage after registration of the First Information Report.
- **Who will order:** The Special Court.
- **Mode of claim:** The Special Court on its OWN; or, on an application filed by or on behalf of the child.
- **From which fund:** From the same fund as provided for payment of final compensation as the same has to be adjusted at the time of final compensation.
- **Adjustment:** Such interim compensation paid to the child shall be adjusted against the final compensation, if any.

3. Final Compensation:

- **Provision:** Under Rule 9(2) of the POCSO Rules, 2020.
- **Purpose:** to compensate the loss and injury suffered as a result of that offence as well as to meet the needs of the child for relief or rehabilitation.
- **Stage:** At the time of disposal of the case.
- **Result of the Judgment is immaterial for granting compensation:** Where the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified.
- **Who will order:** The Special Court having opinion that the child has suffered loss or injury as a result of that offence.

- **Mode of claim:** The Special Court on its OWN; or, on an application filed by or on behalf of the child.
- **By whom the Interim & Final compensation will be paid:** Under Rule 9(4) of the POCSO Rules, 2020 By the State Government
- **From which fund:** from the Victims Compensation Fund or other scheme or fund established by it for the purposes of compensating and rehabilitating victims under section 357A of the Code of Criminal Procedure, 1973 or any other law for the time being in force, or, where such fund or scheme does not exist, by the State Government.
- **Time limit for payment:** Under Rule 9(5) of the POCSO Rules, 2020, the State Government shall pay the compensation ordered by the Special Court within 30 days of receipt of such order.

14. RELEVANT FACTORS TO BE CONSIDERED WHILE GRANTING COMPENSATION:-

Where the Special Court, under sub-section (8) of section 33 of the Act read with subsections (2) and (3) of section 357A of the Code of Criminal Procedure, makes a direction for the award of compensation to the victim, it shall take into account all relevant factors relating to the loss or injury caused to the victim, including the following: -

- i) type of abuse, gravity of the offence and the severity of the mental or physical harm or injury suffered by the child;
- ii) the expenditure incurred or likely to be incurred on his medical treatment for physical and/or mental health;
- iii) loss of educational opportunity as a consequence of the offence, including absence from school due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;
- iv) loss of employment as a result of the offence, including absence from place of employment due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;

- v) whether the abuse was a single isolated incidence or whether the abuse took place over a period of time;
- vi) whether the child became pregnant as a result of the offence;
- vii) whether the child contracted a sexually transmitted disease (STD) as a result of the offence;
- viii) whether the child contracted human immunodeficiency virus (HIV) as a result of the offence;
- ix) any disability suffered by the child as a result of the offence;
- x) financial condition of the child against whom the offence has been committed so as to determine his need for rehabilitation;
- xi) any other factor that the Special Court may consider to be relevant.

15. VICTIM COMPENSATION FUND:-

The compensation awarded by the Special Court is to be paid by the State Government from the Victims Compensation Fund or other scheme or fund established by it for the purposes of compensating and rehabilitating victims under section 357A of the Code of Criminal Procedure or any other laws for the time being in force, or, where such fund or scheme does not exist, by the State Government. The State Government shall pay the compensation ordered by the Special Court within 30 days of receipt of such order.

16. FINE WHICH IS TO BE PAID TO VICTIM

Rule 10 of the POCSO Rules, 2020 provides the procedure for imposition of fine and payment thereof. —

- i. The CWC (Child welfare Commission) shall coordinate with the DLSA (District Legal Services Authority) to ensure that any amount of fine imposed by the Special Court under the Act which is to be paid to the victim, is in fact paid to the child.
- ii. The CWC (Child welfare Commission) will also facilitate any procedure for opening a bank account, arranging for identity proofs, etc., with the assistance of DCPU (District Child Protection Unit) and support person.

Judgements dealing with compensation under POSCO Act, 2012:

- In **Nipun Saxena vs Union of India (2019) 13 SCC 715**, The Hon'ble Supreme Court had considered the issue as to lack of guidelines or a scheme framed for awarding compensation to victims of sexual abuse under the provisions of POCSO Act. The Hon'ble Court Considered the NALSA Compensation Scheme, 2018 and had noted that a Scheme of such nature had not been framed with regards to victims of sexual abuse under the POCSO Act, 2012 and directed that till such compensation scheme is framed, the NALSA Compensation Scheme would function as a guideline for the Special Court to award Compensation to minor victims of sexual abuse, under Rule 7 of the POCSO Rules, 2012. (Now POCSO Rules, 2020).
- In **Bijoy vs. State of West Bengal 2017 Cri.L.J.3893**, The Direction relating to the compensation under the POCSO Act, 2012 issued by the Calcutta High Court are:
 1. *The Special Court upon receipt of information as to commission of any offence under the POSCO Act, 2012 by registration of FIR shall on his own or on the application of the victim make enquiry as to the immediate needs of the child for relief or rehabilitation and upon giving an opportunity of hearing to the State and other affected parties including the victim pass appropriate order for interim compensation and/or rehabilitation of the child.*
 2. *In conclusion of proceeding, whether the accused is convicted or not, or in cases where the accused has not been traced or had absconded, the Special Court being satisfied that the victim had suffered loss or injury due to commission of the offence shall award just and reasonable compensation in favour of the victim.*
 3. *The quantum of the compensation shall be fixed taking into consideration the loss and injury suffered by the victim and other related factors as laid down in Rule 7(3) of the Protection of Children from Sexual Offences Rules, 2012 (now According to 2020 rules) and shall not be restricted to the minimum amounts prescribed in the Victim Compensation Fund.*
 4. *The interim/final compensation shall be paid either from the Victim Compensation Fund or any other special scheme/fund established under section 357A of the Code of Criminal*

Procedure, 1973 or any other law for the time being in force through the State Legal Services Authorities or the District Services Authority in whose hands the Fund is entrusted.

5. *If the Court declines to pass interim or final compensation in the instant case it shall record its reasons for not doing so. The interim compensation, so paid, shall be adjusted with final compensation, if any, awarded by the Special Court in conclusion of trial in terms of section 33(8) of the Act.*

- In **Mother Minor Victim No.1 & 2 vs. State 2020 DHC 2097**, the Hon'ble Delhi High Court held that even though there was no specific scheme for awarding compensation to victims under the Protection of Children from Sexual Offences Act, 2012 (POSCO Act), the Scheme put in place by the National Legal Services Authority viz. the Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018, was required to be considered as a guideline for awarding compensation for victims under the POSCO Act. The Court further held that it was not open for the Trial Court to delegate the power of determination of the compensation payable to a minor victim to the concerned Legal Services Authority. It also held that multiple interim compensation applications can also be filed.

Some more Relevant Judgements regarding compensation: -

In several cases thereafter, the apex court has repeated its order, making compensation an integral aspect of right to life

- Bhim Singh vs. State of Jammu & Kashmir, 1985; AIR 1986 SC 494
- Dr. Jacob George vs. State of Kerala, 1994 SCC(3) 430;
- Manju Bhatia vs. N.D.M.C. AIR 1998 SC 223;
- Paschim Bangal Khet Mazdoor Samity vs. State of West Bengal & Ors., 1996 SCC (4) 37;
- People's Union for Democratic Rights Thru. Its Secy. vs. Police Commissioner, Delhi Police Headquarters, 1989 4 SCC 730;
- People's Union for Democratic Rights vs. State of Bihar, 1987 AIR 355).

CONCLUSION:-

Despite all claims, the fact remains that the legal regime for protection of women and children are tinged with female subjugation in continuing with child marriage and sexual exploitation of married women of all ages. Lives of millions of minors ought not to be put at risk for the sake of customs and cultural ethos to justify customary child marriages and male dominance in marital relationships. The State has duty-bound for providing statutory provisions for protecting females against sexual assault in marriage, enabling their rights to enjoy a dignified life. The existing set of substantive and procedural laws is grossly discriminatory to married minors. The sexual offences with children irrespective of marital status must be dealt with under POCSO Act, 2012. The Indian judiciary has made creditable contribution in upgrading the rights of women and children, but much is yet to be done.
