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Judicial Interpretation Contributing towards the POCSO Victims in India

DR. ANINDITA CHOUDHURY¹

ABSTRACT

Sexual abuse of girl children remains a pervasive societal menace in India despite comprehensive legislative safeguards under the Protection of Children from Sexual Offences (POCSO) Act, 2012, the Indian Penal Code, and constitutional provisions guaranteeing special protections. This paper critically examines the pivotal role of the Indian judiciary in advancing the rights and protection of POCSO victims through progressive judicial interpretation and activism.

*As the guardian of fundamental rights, the judiciary has filled legislative and executive gaps by delivering landmark judgments that convict perpetrators, enhance sentences for heinous offences, and establish child-centric guidelines for victim rehabilitation, privacy protection, speedy trials, and systemic reforms. Through an extensive analysis of Supreme Court, High Court, and lower court decisions—ranging from *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* and *Vishal Jeet v. Union of India* to recent rulings such as *Nipun Saxena v. Union of India* (2019) and *Alakh Alok Srivastava v. Union of India* (2018)—the study illustrates the courts' commitment to deterrence, presumptions of guilt under Section 29 of the POCSO Act, and upholding the dignity of the child under Article 21 of the Constitution.*

Key judicial contributions include directions for special courts, advisory committees against child prostitution, compensation mechanisms, and media restrictions on victim identity. While affirming the judiciary's transformative impact in creating a safer environment for vulnerable children, the paper concludes that judicial vigilance alone is insufficient. Effective eradication of this social stigma requires robust governmental implementation, inter-agency coordination, and widespread awareness programmes alongside continued judicial activism.

I. INTRODUCTION

Sexual abuse of girl child is a precarious issue that needs to be handled safely. Legislative provisions along with several constitutional provisions are dealing with the problem of sexual exploitation. Though these provisions are present, yet the condition of the children in India is beyond description till now. Sexual abuses against girl children are thus unabated. Our

¹ Author is an Assistant Professor at Faculty of Law, ICAI University Tripura, India.

Constitution also mandates for special provisions for women and children. The Indian constitution is a written one where justice, liberty, equality, political unity, economic, social security are promised to be provided to every people of India. Thus for adhering these objectives, three organs of government are there i.e., the Legislative, the Executive, and the Judiciary.

The above organs are supreme within the powers and spheres allotted to them. The legislature is assigned to make laws and statutes for eradicating various evils and to maintain peace and order in the society. The executive on the other hand implements and executes the law prepared by our legislature, in the practical world. And judiciary primarily plays the role of administration of justice. The judiciary has also been assigned to play a part of judicial activism in any emerging issues.

The concept of independence of judiciary has been described as a basic feature of the constitution. Though there are various laws and legislatures present to protect the rights of children but they are still the ultimate sufferer of abuses. In such situation judiciary time and again through its landmark pronouncement secures the principles of law and is preserving their rights against abusers by punishing them. The judiciary also passed various guidelines for the protection of children by preventing abuses or exploitations against them. Though reformation of law is necessary, law reform alone cannot bring about justice to the child. Inter-agency structures and systems need to be worked out laying great emphasis on prevention. Undoubtedly the most effective prevention measure is awareness of such possible abuse and of how to deal with it amongst the various service providers – doctors, teachers, lawyers, judges, police, volunteers, parents and social workers so that they can significantly reduce the risk of abuse and respond appropriately, if it does occur.²

Judiciary is not expected to sit in an ivory tower like an Olympian closing their eyes, uncaring for the problems faced by the society. They have to exercise their judicial powers for protecting the fundamental rights and liberties of the citizen of the country. Therefore in order to achieve the mission the judiciary has to exercise and evolve its jurisdiction with courage, creativity and circumstances and with vision, vigilance and practical wisdom.³

It's the duty of the king or the ruler to offer justice to the oppressed and those who are deprived. Raja dharma included this duty as a very pious of the king. The king was required to hear and decide all cases with great care, impartially and in accordance with the relevant laws. Narada

² Asha Bajpai, 'The sexual Abuse and Exploitation of Children' One India, One People, Sept. 1999

³ Constitutional law of India. Dr. J.N Pandey. 44th Ed. 2007. page-360

Muni has said that the king should try cases with great care, should give decision according to the law and should adhere to the opinion of the chief justice. The same is in case of judiciary also. Everyone should get fair and public hearing by independent and impartial judiciary. An independent and impartial judiciary is said to be the first condition of liberty. It is the custodian of the rights of the citizen. Thus attempt has been made in our constitution to make the judiciary independent of all extraneous influences. The constitution also provides and facilitates separation the executive from the judiciary. Thus the magistracy that deals with criminal cases is placed on the same footing as civil courts our constitution. Such powers are given to the judiciary that not only they are bound by the oath to uphold the constitution but also the courts can be approached for the enforcement of the fundamental rights. Moreover wide power has been given to the judiciary by providing original and appellate jurisdiction to the Supreme Court and High Courts to adjudicate the constitutionality of any actions. It is fact that even highly organised legislative machinery of the modern state demands an active and constructive participation of the courts is the evolution of the law. The field for judicial power is therefore wide and open and the court can in needy circumstances create new law while deciding cases. Judiciary is instituted as the sole arbiter of the constitution the authoritative interpreter of the will of the people, and the sovereign protector of the freedom and liberty. It is the judiciary which is the ultimate authority to restrain any exercise of absolute capricious and arbitrary power. The human rights are secure and the tyranny of the majority is contained by judicial vigilance, that is to say the legislative and the executive action is counter-balanced by judicial verdict.⁴ The courts as sentinels and guardians of liberty and freedom and as citadels against any usurpation of power are now indispensable parts of democratic institutions; they are In fact, the firm sustainers of the democratic values.⁵

II. SIGNIFICANCE OF JUDICIAL ACTION

The judiciary are accorded to be in the most dignified and crucial position by our constitution. When the executives and legislatures are apathetic, the bureaucracy shows a total indifference and insensitivity to its mandatory duties, when the law enforcing agencies shows their brutality, the judiciary should check the excesses and also direct the authorities to effectively implement the welfare legislation.⁶ In needy circumstances the judiciary can show light to the path by its

⁴ Human Rights and the Law: Author: Paras Diwan and Peeyush Diwan, Deep and Deep Publication, New Delhi, 1998, p. 18.

⁵ Human Rights and the Law: Author: Paras Diwan and Peeyush Diwan, Deep and Deep Publication, New Delhi, 1998, p. 19.

⁶ Constitutional law of India. Dr. J.N Pandey. 44th Ed. 2007-360

interventions where the other organs of government are silent on any issue. Thus in this regard our Judiciaries time and again has raised into occasions with its land marking decisions to sort out any problem, as because the statutory obligations are often not properly discharged by the authorities. The Judiciary has been assigned this active role by the constitution in this regard, and time and again it realized its proper role in a welfare state. The judiciary by using this strategy of judicial interference not only can transform the whole society as an ordered one but also can create a crime free society.

The judiciary fulfils a special role in the state under the rule of law. As the guarantor of justice, and fundamental value in a law-governed State, it must enjoy public confidence if it is to be successful in carrying out its duties.⁷ The primary function of judiciary is to interpret and apply the laws accordingly in specific cases. And where the particular law is not sufficient and adequate, the judiciary is also assigned to apply the principles of justice, equity and good conscience to decide a dispute that comes before it. The judiciary thus acts as a custodian and guardian of the constitution also. The constitution though is the supreme law of the land; the judiciary on the other hand protects its spirit and character. In recent times the role, importance and scope of Indian judiciary has increased primarily due to the tremendous expansion of statutory intervention in the present era. It has been assigned to emerge as a tool to protect the pillars of Constitution in the form of protection of fundamental rights of citizens and non-citizens alike.

In democratic countries the judiciary is given a place of great significance. The courts perform the key role of expounding the provisions of the Constitution. The courts act as the supreme interpreter, protector and guardian of the supremacy of the Constitution. The judiciary has to perform an important role in the interpretation and enforcement of human rights inscribed in the fundamental law of the country. Therefore, it is necessary to consider what should be the approach of the judiciary in the matter of constitutional interpretation. The judiciary has to devise a pragmatic wisdom to adopt a creative and purposive approach in the interpretation of various rights embodied in the Constitution. The task of interpreting the constitution is a highly creative judicial function which must be in tune with the constitutional philosophy.⁸

The judicial interpretation is so important and valuable from the very past period upto this modern era, because it not only interprets and applies the law, but also expands and makes laws. Decisions given by judges in various land mark cases are treated as precedents in subsequent

⁷ ECtHR 26 April 1995, *Prager / Oberschlick v. Austria*, Series A , No. 313, p. 18,

⁸ JUDICIAL CREATIVITY IN CONSTITUTIONAL INTERPRETATION: LAWYERS CLUB INDIA. BY: [C.E.PRATAP](#) ON 09 NOVEMBER 2013

cases. Those precedents or earlier judicial decisions thus become one of the important sources of law also. Judiciaries thus are coming forward to solve various issues and of course playing a responsible role as an important government organ.

III. JUDICIAL OBSERVATION OF HON'BLE COURTS:

The human rights of children are time and again both questioned and solved by our judiciary. As a prudent person we can see and realize that our children are many a time facing a gross violation of their human rights by losing their dignity in the way of abuse. They are being abused both mentally and physically. Among such abuses, sexual abuse is one of the most pressing international problems. In spite of presence of various legislative sanctions, like Indian Penal Code, Constitutional provisions and other important statutes also, this sexual abuse of children especially of girl children is increasing in a high rate. Lack of implementation of laws, lack of co-ordination between the policy making and implementation are some of the actual reason of the continuity of the crime. In these situations, there judicial interventions are playing a vital role to protect those girl children from this social trauma. And in fact for the protection the girls of tender age, the judiciary no doubt raised into occasions with its land marking decisions.

In this regard we can refer some reported cases, as time and again decided by our Supreme Court, High courts as well as District and Sessions Courts.

In **Bharwada Bhoginbhai Hirjibhai v. State of Gujarat**⁹, the accused was a government servant. He was charged of sexually exploiting two girls aged around 10-12 years who were the friend of his daughter. The trial court convicted the accused for offences of wrongful confinement and outraging the modesty of the girls and sentenced him to two-and-a-half years' rigorous imprisonment. The High Court, on appeal, altered the conviction under Section 376 read with Section 511 of the Indian Penal Code for attempting to commit rape on the girls. The Supreme Court on appeal however took a liberal view with respect to the offender against the conviction by the High Court and upheld the conviction by altering the sentence to 15 months' rigorous imprisonment. The reasons assigned by the Apex court are that-

1. The offender was a Government servant and lost his job in view of the verdict of guilty recorded by the High Court;
2. He must have suffered great humiliation in the society;

⁹ 1953 AIR 753, 1983 SCR (3) 280

3. The prospects of getting a suitable match for his own daughter have perhaps been marred in the wake of the finding of guilty verdict against him in the context of rape and attempt to commit rape; and
4. The incident occurred some seven years back and about six-and-a-half years elapsed since the dismissal of appeal by the High Court.

Ghanshyam Mishra v. The State of Odisha¹⁰ is a revision petition filed against the appellate judgment of the Additional Sessions Judge of Cuttack, over the conviction and sentence of 3 years passed on the petitioner by the Assistant Sessions Judge of Dhenkanal, for an offence under Section 376, Indian Penal Code. At the time of the admission of this revision petition a rule was issued on the petitioner to showcause why the sentence may not be enhanced, and he was given full opportunity to argue against his conviction as well. The fact was that a school teacher aged 39 years taking advantage of his position induced a 10 years school girl to enter inside a school room and committed rape on her.

The appellate court thus found that, he was her School teacher and he took advantage of his position by inducing her to come inside the School room and committed such an atrocious act, the consequence of which might as well be the complete ruin of the future life of the girl. The court was unable to find any justifying circumstance in his favour. Therefore while maintaining the conviction of the petitioner under Section 376 I. P. C. enhances the sentence from 3 to 7 years of rigorous imprisonment. The appellate court also sentenced him with a fine of Rs. 200/- and ordered for payment of compensation to the father of the girl victim.

In Jai Singh v State¹¹, one Muhalla Malhupura, a betel shop owner aged 55 years caught hold the hands of a 7 years old girl child and took her to an adjoining kothri, and started to make effort to rape her. The girl child out of pain started raising cries, as a result of which some witnesses came and broke the door of the kothri. After breaking the door, they found the accused lying over the victim girl and trying to commit rape on her.

The trial court after finding him guilty under section 376 read with section 511 of Indian Penal Code, sentenced him to undergo 5 years rigorous imprisonment and to pay fine of Rs.500. In default of payment of the fine the accused has been directed to undergo 6 months further rigorous imprisonment.

On appeal, the appellate court on being convinced by the order of the trial court, denied any

¹⁰ AIR 1957 Orissa 78

¹¹ 1973 Cri L J 1466 (All)

interference on the judgement given. However the appellate court thus confirmed the punishment of 5 years rigorous imprisonment, but set aside the sentence of fine of Rs.500.

In **Ram Kishan Aggarwal v State of Odisha**¹², a 65 years old man committed rape on a 6 years aged girl child. The trial court thus sentenced him 3 years rigorous imprisonment and a fine of Rs. 5000.00, after finding him guilty. Later the Sessions court considering the offender's age as a mitigating factor reduced the punishment to meager 6months and partly fine of Rs. 500. The High court of Odisha and the Supreme Court of India upheld the conviction and the sentence.

In **Magia vs. State of Rajasthan**¹³, the Rajasthan High court rejected the appeal of a 40 years old person who had committed rape on a nine years old girl. The High court rejected the appeal on the ground that the act of the offender was barbaric. The court viewed that , "there exists no scope for licensing or taking liberal view and which if taken would tantamount to abetment of such heinous offence is a slur against the society and womanhood as a whole and which deserves most deterrent punishment'.

In **Satto v. State of U.P**¹⁴, the offenders were three young boys, between the age group of 10 to 14 years, and the victim of molestation was an 11 years old girl. The offenders were found guilty and were sentenced to 2 years' rigorous imprisonment by the trial court. The High Court of U.P. upheld the conviction and stated that, lastly, it is urged that the sentence awarded to the revisionists be reduced in view of their ages. I am reluctant to do so because they committed a crime which repels against moral conscience. They chose a girl of 11 years to satisfy their lust. They spoiled her life by committing this offence as her father would experience considerable difficulty in arranging her marriage. They were so cruel that all the three committed rape on that minor child. Such an act deserves to be deprecated. The sentence awarded by the learned lower courts does not at all err on the side of severity. Moreover, the learned lower courts have already shown sympathy by keeping them in an approved school at Etawah.

But the Supreme Court ordered the release of the appellants on probation of good conduct and ordered for committal to the care of their respective parents. Apex court thus stated that, In the present case, the Apex court directed the appellants to be released on probation of good conduct and committed to the care of their respective parents and if no surviving parent then their guardian executing a bond each, without sureties, to be responsible for the good behaviour of the youthful offender for a period of two years from the date of release. The release will be

¹² 1976 SCC (Cri) 244: (1976) 2 SCC 177

¹³ (1978)1 Crimes 157 (Raj)

¹⁴ 1979 SCC (Cri) 534: (1979)2 SCC 628

based on the observance of a condition, that the child shall be put to school or continue its studies if it is already at school.

In **Phul Singh vs. State of Haryana**¹⁵, in this case a 22 years adult sexually assaulted a 12 years old girl. The minor victim was deaf and dumb. The trial court convicted the offender for four years rigorous imprisonment. Later the appellate court considered the youthful age and as the offender has already undergone 2 years of incarceration, the court reduced the sentence to 2 years.

In **Sheela Barse vs. Children Aid Society and Ors**¹⁶, the moot point before the Hon'ble Supreme court is that courts have to be sensitive to the fact that children are not one homogenous category. All children are not similarly placed. Further, their vulnerabilities differ in type and extent. Children in difficult circumstances include orphans, children in observation homes, street children, migrant children, children affected by manmade and natural disasters, drug addicts, refugee children, slum and migrant children and children of commercial sex workers. BHAGWATI, CJ. noticed that, In recent years, children and the problems relating to children have been receiving attention both of the Government and also of the society but the main issue is that the problems are of such high magnitude that all that has been done till now is going to be insufficient. Due to improper growth of children at present, the future of the country will be in danger. It should be the duty of every generation to uplift the social, economic, moral as well as educational level of children who will be citizens of tomorrow in a proper manner. Children today will be the leader of tomorrow and will raise the country's banner high and also raise the prestige of the Nation. If a child gets wrong upliftment for want of proper attention, training and guidance, it will indeed be a deficiency of the society and of the Government of the day. A problematic child is itself a negative factor. Every society must, therefore, devote full attention to ensure that children are properly taken care of and brought up in a healthy environment and atmosphere where they could be able to receive adequate training, education and guidance in order that they may be able to have their proper place in the society when they grow up properly. The Court thus directed that,

1. The possibility of detailing sufficient number of personnel in the police department for the work connected with the Bombay Children Act should be speedily considered ;

¹⁵ 1980 SCC (cri) 1 ; (1979)4 SCC 413; AIR 1980 SC 249

¹⁶ (1983)2 SC 96

2. The Government should immediately review the resolution dated 2nd September, 1965 issued by the Education and Social Welfare Department, which fixes the allowances for escort duties done by voluntary organisations ;
3. It is also recommended that the Government should consider the constitution of an Escort Service which can consist of police personnel, youth volunteers and Government servants ;
4. The observation homes and the Juvenile Aid Police Unit should not wait for a sufficient number of children being ready for being escorted before implementing the orders passed by the Juvenile Court ;
5. The Magistrate presiding over the Juvenile Court should insist, in the case of local children, that the police must trace the parents of the children within a maximum period of 48 hours and take steps to restore them to their parents ;
6. Any tendency, if there is one, on the part of the personnel of Juvenile Aid Police Unit of fulfilling the quota for a month should be firmly put down.

In **M.C Mehta vs. State of Odisha and other**¹⁷, it was a petition filed by a social activist named M.C Mehta for seeking constitutional remedies under Article 32 of the Constitution. The petition was filed for remedies against 197 children who were lodged in Odisha jails for some petty offences. Those children were being tortured, and sexually exploited by other hardcore criminals in jails. The Supreme Court appointed a commission to investigate into the reality of the matter. The Commission confirmed the allegations and on order of the Apex court the children were released from jails.

In **Dilip vs. State of Madhya Pradesh**¹⁸, it was an appeal before the High court of Madhya Pradesh where the appellant himself was a teenager and committed rape on a girl below the age of 16 years. The court observed that the appellant was charged with offences of kidnapping and rape on the minor girl. Therefore the court held that a sentence of 6 months would meet the ends of justice.

In **Pratul Kumar Sinha vs. State of Odisha**¹⁹, some blind students in the Red Cross Blind School in Behrampur of Odisha were reported to be sexually exploited in schools. The report was given through a letter submitted to the court by an advocate of West Bengal. The letter was

¹⁷ W.P (cri) no 1501 of 1984

¹⁸ 1987 Cri LJ 212

¹⁹ AIR 1989 SC 1783

registered as a writ petition in the High court of Odisha under Article 32 of the Constitution of India. The court later ordered the Chief Judicial Magistrate to enquire into the allegations and also directed to record the statements of the inmates of the school. The inquiry report after investigating the allegations was submitted along with the affidavit filed by the Union of India in the said court. According to the report the allegations were true and some statements disclosed an incident of sexual assault of one girl child and also about her illegal abortion. The High court in its present order referring to the said report felt the need of ensuring better protection in their schools and society. Thus the court finally opined that certain directions are necessary for the proper management of the said institution i.e., the Red Cross Blind School.

In **Vishal Jeet v Union of India**²⁰, this is a writ petition filed under Article 32 of the Constitution of India at the instance of an Advocate by way of a Public Interest Litigation seeking issuance of certain directions by the Supreme Court, to look into issues of Red Light areas and child forced prostitution from a law enforcement perspective; to rescue the young victims of commercial sexual exploitation and provide them with proper medical aid, shelter, education and training in various disciplines of life so that they may be capable to choose a more dignified way of life; and to look into issues pertaining to dedication of young girls as *Devadasi* and *Jogin*.

Through the petition the fact came into light that poor parents on account of acute poverty were trading with their children and young girls with the hope that their children would be engaged only in household duties or manual labour. However, pimps, brokers, keepers either purchase or kidnap them by deceitful means and unjustly and forcibly inveigle them into 'flesh trade'

In this case some of the seminal questions are dealt with and also decided by the Apex Court. The honourable Court observed that it is highly deplorable and heart rending to note that many poverty stricken children and girls in the prime age of youth are taken to the flesh market and forcibly pushed into flesh trade which is being carried on in utter violations of all canons of morality, decency and dignity of mankind. The Supreme Court in this regard thus asked governments to set up advisory committees to make suggestions for the eradication of child prostitution and to evolve schemes for the rehabilitation of victimized children.

The Supreme Court thus after examining the Constitutional provisions pertaining to right against exploitation; traffic in human beings and rights of children; principles enumerated by

²⁰ AIR 1990 SC 1413

the Declaration of the Rights of the Child, 1959.,it considered all aspects of the matter before it and issued the following directions *inter alia* to the State Governments and Union Territories:

- Directed concerned law enforcing authorities to take appropriate and speedy action under the existing laws in eradicating child prostitution,
- To take steps in providing adequate and rehabilitative homes for vulnerable children, and
- To set up separate Advisory Committee consisting of relevant government officials, sociologists, criminologists, members of the women/ child welfare/ voluntary social organizations for making suggestions for eradicating child prostitution and child sexual exploitative customs like *devdasi* and *Jogin* tradition; and to take measures for care, protection, treatment, development and rehabilitation of victims.

The Supreme Court in **M.H Kakkad vs. Naval Dubey**²¹ tried and convicted an accused for the offence of rape and other types of similar sexual assault on his niece and other girls of his locality. The court punished the offender severely. During inflicting punishment the Apex court observed that- “Though all sexual assault on female children are not reported and do not come to light, yet there is an increasing and shocking increase on sexual offences committed on children. This is due to reason that children are ignorant of the act of rape and are not able to offer resistance and unscrupulous, deceitful and insidious act of luring female children and young girls. Therefore such offenders who are a menace to the civilized society should be mercilessly inexorably punished in the several terms”.

In **State of Himachal Pradesh vs. Raghbir Singh**, the victim was a little girl aged 7 years old. She was working along with her father and sister in their field. It started to rain suddenly and the victim along with her sister and father ran towards their house. But the victim suddenly got separated from them. During that time, one Raghbir Singh aged 16 years came close to her, caught hold to her hand and took her under a mango tree, and started abusing her sexually. He committed rape on her. Since, she had not reached home, her father after waiting half an hour again went towards the field. After reaching there the father of the victim saw the accused Raghvir Singh committing sexual assault on her daughter. Immediately he raised alarm, but the accused ran away. The doctor after examining the victim found that she had been subjected to sexual intercourse with injuries on her body. The learned session’s judge after a careful appraisal of the evidence on record found Raghbir Singh to be guilty of rape and sexual assault on the minor girl. Thus the court sentenced him with rigorous imprisonment of 5 years under

²¹ 1992 AIR SCW 1480

section 376 IPC. While awarding the sentence, the age of the accused was also taken into consideration and directed the accused to be kept in open air jail in Bilaspur during the term of 5 years RI. The respondent appealed to the High Court of Himachal Pradesh and the High Court acquitted him. On special leave being granted, the state of Himachal Pradesh has preferred appeal in the Apex court against the judgment of acquittal. Consequently the Supreme Court allowed setting aside the judgment of High Court. The respondent is therefore held guilty of the offence of sexual assault and rape with the girl child under section 376 of IPC. And thereafter sentenced him to suffer rigorous imprisonment for 5 years.²²

In **Abdul Wahid Sheikh vs. State of Maharashtra**²³, a father was charged of committing sexual assault on his own daughter of 8 years old. The trial court in this case awarded life imprisonment. But the Bombay High court reduced the sentence from life imprisonment to 10 years of rigorous imprisonment. During reducing the sentence the High court observed that, the appellant is a hutment dweller and his poverty has placed him in the difficult position of having to sleep huddled up in a tiny area is something that cannot be lost sight of. The records also indicate that the appellant's wife had left him three years earlier. The appellant comes from the weakest strata of the society having being deprived of any form of education, and having struggled through life with no opportunity of even acquiring a basic understanding of elementary issues of propriety. There is nothing on record to indicate that the accused had a background of sexual violence or even any misbehavior for that matter. And on the other hand the court found that even though his wife left him with a minor child, he send the child to school, arranges their meals from hotel, provide her with toys and also cooks the night meal for his child. These are the mitigating circumstances which would lead the court to accept that it was momentary lapse which again was occasioned due to the pathetic condition of the appellant while the nature of the act itself calls for a heavy sentence; on the other hand there are factors which impelled to keep it with reasonable limits.

In the case of **State v kola karsan**²⁴, a 22 years old man ravished a 7 years old girl causing brutal injuries on her private part. The offender also threatened the victim's mother for making the incident public. The Session court finding him guilty punished him with 7 years of rigorous imprisonment; and the appellate court upheld the trial court's judgement.

In **Dhananjay Chatterjee vs. State of west Bengal**²⁵, a security guard assaulted harshly a

²² 1993 (1) CCR 87 (SC) : 1993 (1) Scale 708 : 1993 (2) SCC 622

²³ 1993 Cri LJ 977 (Bom)

²⁴ 1993(2) LR 1755

²⁵ 1994(2)SCC220

minor girl. The accused raped and murdered a helpless school girl. The accused after raping the girl murdered the girl in a very barbaric and inhuman manner. The court treated the crime as a rarest of rare case. Trial court imposed death penalty on the accused. The death sentence was subsequently confirmed by the High court and the Supreme Court. The offence was an affront to human dignity and therefore the offender was hanged till death.

In **Laxman Naik v. the state of Odisha**²⁶, the accused Laxman Naik was the uncle of the victim girl aged about 7 years. He occupied the position of faith and trust of the victim and out of the trust she acted upon the command of the accused. The accused took her to a lonely place where she was all alone and no one was there to help her. The accused i.e., the uncle of the victim girl raped her and after satisfying his lust he thought of screening the evidence of the crime. As a result he put an end to the life of that innocent girl. The Session Court noticed how diabolically the accused has conceived his plan and brutally executed it by murdering such a tender aged girl after committing rape on her. The High Court of Odisha also confirmed the capital punishment which according to High Court falls in the category of rarest of rare case attracting no punishment other than Capital punishment.

Another famous case as decided by the Supreme court is, **Gaurav Jain v Union Of India**²⁷, regarding the protection of basic human rights and dignity of children and prevention of sexual abuse of those female child of the fallen women, where the Supreme court has pronounced its landmark decision. It has been held that as the right of the child is a matter of social concern, so those children must also have the right of equality of opportunity, dignity and protection and rehabilitation by the society. It has also been held that the state parties should recognize that every child has the inherent right to life which is already guaranteed by Article 21 of our Constitution. The purpose of the Article is to make the right of life meaningful, socially, culturally and economically, even to the deprived segments of the society with dignity of person and in pursuit of happiness.

The Supreme Court by its order dated 2.5.1990, set up an advisory committee, for the purpose of advising and to give suggestions making recommendations. The Apex court thus with such advise of the committee issued various directions. It was held that to protect the minor girl prostitutes and the children of the prostitutes from being sexually abused through involvement in child prostitution, first of all these fellows are required to be removed from red light areas and should be given shelter at juvenile homes. While the Supreme Court did not accept the plea

²⁶ 1994 (3) SCC 381

²⁷ AIR 1997 SC 3021

for separate hostels for children of prostitutes, it felt that "accommodation in hostels and other reformatory homes should be adequately available to help segregation of these children from their mothers living in prostitute homes as soon as they are identified". The court also observed that the rescue and rehabilitation of those minor girl prostitutes must be done under the authority of the department of women and children development under the ministry of welfare and human resources. The juvenile homes will play the roles of eliminating the traumas of the child prostitutes that they had suffered, by treating them as victims and not as offenders. The court also directed for their free counselling, legal aid, housing facilities and also other services so that the prostitutes once rescued are not required to return to their old evils of red light areas again.

In its judgment, Justice Mishra also well said that, Children of prostitutes should, however, not be permitted to live in unhealthy and the undesirable surroundings of prostitute homes. This is particularly so for young girls whose body and mind is likely to be abused with growing age for being admitted into the profession of their mothers. While we do not accept the plea for separate hostels for prostitute children it is necessary that accommodation in hostels and other reformatory homes should be adequately available to help segregation of these children from their mothers living in prostitute homes as soon as they are identified. Legislation has been brought to control prostitution. Prostitution has, however, been on the increase and what was once restricted to certain areas of human habitation has now spread into several localities. The problem has, therefore, become one of serious nature and requires considerable and effective attention.

Hari Shankar Tewari vs State of Tripura²⁸, this is a case where the accused was the Principal of Jawahar Navodaya Vidyalaya, Kakraban, South Tripura, a Central Residential School, aged around 50 years is alleged to have ravished a minor school girl aged only 14 years, reading in Class VIII in that school, once more focusing how insecure even our children are in the custody of the highly placed libidinous protectors. This being a residential school she and her elder sister who come from poor parents of a remote village were residing in the Girls' hostel. The Principal Hari Shankar Tewari, the convict-appellant herein, had a daughter of victim's age named Puja reading in the same class and they were close friends. The victim used to often visit the quarter of Hari Shankar with Puja. On the fateful day, she went to his quarter to borrow a book from his daughter Puja who was then found to be absence. There was no other family member except Hari Shankar in the quarter at that time. Hari Shankar told her that Puja was not in the quarter

²⁸ 2005 Cri LJ 3323 (Gauhati)

and then forced her into the room, closed the door, and drew her on the bed, stripped her naked, pressed her mouth by hand so that she could not raise alarm and then raped her. Such a sexual assault coming from a father like figure stunned her, struck her with fear and the moments of bewilderment made her unconscious. When she regained sense she saw the convict spraying water on her face after the act of sexual lust was over causing blood oozing out from her private parts. During the course of sexual act and before she became unconscious she heard somebody knocking on the door when the convict replied not to disturb him and to come later. Upset as she was with the suddenness of the attack, first of its kind in her life, she ran into deep emotional crisis and indelible traumatic, experience. After she regained sense, she could fairly realize the damaging effect of the turmoil in her body and mind and then in the aftermath of the invidious storm she lapsed into sobbing tears. The convict threatened her of dire consequences had she dared to disclose to anybody his libidinal act. He also threatened that not only she but even her elder sister who was reading in Class XI at that time would be expelled from the Institution if there was any attempt by her to disclose the incident. The convict did not stop there but repeated the sexual assault on her again after she returned from home at the end of the summer vacation. After a period of 9 months from the date of first sexual assault she felt pain in her abdomen and disclosed her condition to Smt. Moutoshi Deb, the accused-respondent, who was the House Mistress serving in the said Institution. Before the Doctor did arrive, Mita and Moutoshi, the two accused-respondents examined her, whispered something among them and then shifted her to their room where the other accused-respondent R.K. Sukhla joined them. He abused her in filthy language and asked her to disclose the name of the person who was responsible for her pregnancy. She for the first time disclosed to him that she was raped by the Principal, the convict-appellant. He directed her not to divulge the name of the Principal and also directed her to make her father responsible for her pregnancy with the threat that had she disobeyed his direction she would not be provided any medical treatment and she would be killed by pushing injection. Despite Doctor's advice she was not taken to the hospital, instead Moutoshi and Mita, began to play the role of a savior for screening Hari Shankar and ordered her to utter her father's name again. The father of the victim came to know the name of the accused from his daughter. He was under tremendous pressure and threats as he was receiving telephone calls of dire consequences. Fear had overtaken the rustic father who failed to gather courage to lodge a complaint to police. With all assurance and assistance of women's commission only the victim lodged a complaint to the Officer in-Charge of Belonia Police Station which was later forwarded to the Udaipur Police Station under whose jurisdiction the alleged occurrence had taken place.

After a full-dressed trial, the convict appellant was found to be guilty and has been sentenced to imprisonment for life with a fine of Rs. 10,000/-, in default six months' rigorous imprisonment under Section 376(2)(b) of the I.P.C. and another term of 2 years' rigorous imprisonment with a fine of Rs. 2,000/-, in default one month's rigorous imprisonment under Section 506, I.P.C accordingly while the accused-respondents were given acquittal.

In the result, the Criminal Appeal of the main accused principal is hereby dismissed and the appellate court convicted under Section 201 of the Indian Penal Code to Shri R. K. Sukhla, the leader of screening episode with sentence to undergo rigorous imprisonment for six months and the other two, Mita and Moutoshi to undergo rigorous imprisonment for two months. All the three are also liable to pay a fine of Rs. 5,000/- each in default another term of one month's rigorous imprisonment.

In **Rangesh vs State of Tamil Nadu**²⁹, the accused conducted physical training class in the school playground. The students participated. The victim is a minor girl of 9 years studying in class 4. The accused taken the victim separately from the ground to the toilet and asked her to find out whether water is coming in the tap. Thereafter, he has asked her to remove her clothes and committed rape on her. She struggled for breathing and asked for water. The accused taken water from the bathroom and gave it to her and also threatened that she should not disclose this to anyone otherwise he would kill his father and mother. She did not disclose to anyone out of fear. She returned to her house at 4.00 p.m. She felt uneasiness. She was taken to a Doctor. The victim informed that she was having burning sensations while passing urine. The Doctor gave some antibiotic medicines.

Again the minor student was subjected to sexual assault by the accused while she had attended the physical training class in the ground. As she fell ill and she was taken to the Doctor. On examination, the Doctor, found swelling and she also complained pain in her private part. The Doctor also found fungus infection in it. On enquiry the victim informed that she was subjected to sexual assault by her Physical Training Teacher/accused. She also informed her father about the occurrence and also informed him about the threat given by the accused.

The father of the victim went to Pallavaram Police Station and gave a report to the Inspector of Police. He registered the case for the offence under Sections 376 IPC. Ex.P11 is the F.I.R. The appellant/accused, a Physical Training Teacher of a School, who has been tried and convicted for the offence under Section 376(2) (f) IPC and sentenced to 10 years rigorous imprisonment with a fine of Rs.5, 000/- in default to undergo 1 year rigorous imprisonment on the allegation

²⁹ CrI.A.No.991 of 2006

of committing heinous crime of rape on a 9 years old school girl. The accused has come forward with an appeal questioning the legality of the judgment of the learned Additional District and Sessions Judge.

In the case on hand, the appellant being a Physical Training Teacher, has betrayed the trust and forfeited the faith of the students and parents in view of the commission of the above said offence. Such being the position, this Court is of the considered view that there are no two opinions that the heinous crime committed by the appellant should be dealt with an iron hand. In view of the same, this Court is of the considered view that the appellant is not entitled to the relief of reduction of sentence. Accordingly, the appeal is dismissed and the conviction and sentence imposed by the learned Additional District and Sessions Judge Chengalpattu by the judgment is hereby confirmed.

In **Shankar Kisanrao Khade v. state of Maharashtra**³⁰, the accused Shankar Kisharanrao Khade and his wife kidnapped a minor girl. The first accused committed rape on her several times and also strangulated her to death. The accused persons were charged sheeted under section 363, 366-A, 376, 302, 201 read with section 34 IPC. The additional session court convicted the first accused and sentenced him to death under section 302 IPC, subject to the confirmation by the High Court and also awarded imprisonment for life and to pay a fine of rupees 1000/- in default to suffer RI in of six months for offences u/s 376 IPC and a further 7 years RI and to pay a fine of RS 500/- u/s 366-A IPC and 5 years RI and to pay a fine of RS 500/- u/s 363 IPC the second accused was convicted for the offences punishable under section 363-A read with section 34 IPC and sentenced to suffer RI for 5 years and to pay a fine of Rs. 500/- in default and to suffer RI for one month.

The accused filed an appeal before the Maharashtra High Court. The high court dismissed the appeal and confirmed the death sentenced given by the trial court and the second accused had already suffered the punishment, she did not file any appeal against the order. The Supreme Court also confirmed the decision of the High Court.

In **Child line India Foundation vs. Alan John Waters and Others**³¹, Complaints of physical and sexual abuse of children kept in shelter homes in Mumbai were before the Supreme Court. Convicting the accused who deserved no leniency the court observed as follows:

“Children are the greatest gift to humanity. The sexual abuse of children is one of the most heinous crimes. It is an appalling violation of their trust, an ugly breach of our commitment to

³⁰ Criminal appeal MOS- 362-363 of 2010

³¹ (2011) 6 SCC 261

protect the innocent. There are special safeguards in the Constitution that apply specifically to children. The Constitution has envisaged a happy and healthy childhood for children who are free from abuse and exploitation”.

India has witnessed an increase both in crimes committed by children and those committed against them. Children who are likely to come in contact with the judicial system may be children in conflict with law or juveniles and children who are victims or witness in the case.

Rajendra Prahalad Rao Wasnik v. State of Maharashtra³² was a case of rape and murder of a 3year old child by a married man of 31 year. The High Court noticed the brutal manner in which the crime was committed and the pain and agony undergone by the minor girl. The Court thus awarded death sentence to the accused. The Supreme Court later on confirmed the death sentence awarded. The apex Court elaborately circumstance to be taken note of before awarding sentence and what are the principles to be followed while awarding death sentence.

In **M. Veersamy v. State of Tamil Nadu**³³, the Madras High Court held that compensation shall be granted to victims if they are subjected to sexual abuses and mental agony. In this case the petitioner sought for direction to grant compensation to petitioner’s daughter who was victim of child sex abuse perpetrated by Headmaster of school and for implementing constitutional safeguards and guidelines for speedy trial, victim protection, legal assistance and guidelines for conducting trial without causing any embarrassment to victim children. Admittedly numbers of school children belonged to scheduled castes community were sexually exploited by the Headmaster of the school. Admittedly complaints of children and their parents if found proved would attract section 3(1) (xi) and (xii) of 1989 Act. It was found by Child welfare committee that between 2009 and 2011 about 100 girl children were being sexually assaulted by the principal of their schools. It was found that the children were psychologically affected by the conduct of their principal. The committee also found that the victims were entitled to compensation even before any trial was completed based upon report given by the fact finding team and committee as well as the psychologist who examined the children. The court had directed the district collector to release full compensation without waiting further outcome of criminal trial. Apart from scheduled castes girls there were also non-scheduled caste girl children and they were not being discriminated in matter of compensation.

In **Jibin P.N. vs. State of Kerala**³⁴, the accused was engaged for rendering training in marshal

³² (2012) 4 SCC 37

³³ 2012-1-LW (CrI) 554

³⁴ CRIME NO 584/2013 OF KOCHI CUSBA POLICE STATION, ERNAKULAM

arts to girl students in a Government Upper Primary School. Allegation against him is that he had sexually assaulted and abused minor girl students during the course of such training. One of the girl students revealed the incident to a teacher, and, pursuant thereto the crime was registered. Petitioner was arrested on 07.03.2013. On production before the magistrate he was remanded to Judicial Custody. The accused was charged in crime No.584/2013 of Kochi Cusba Police Station, registered for offences punishable under Sections 354 A and 509 of the Indian Penal Code and under Section 23 of Juvenile Justice (Care and Protection of Children) Act and Section 8 of Protection of Children from Sexual Offences Act. He has moved an application seeking his enlargement on bail. Learned counsel for petitioner submitted that the allegation raised is totally false and he has been falsely implicated in the crime. The only ground on his bail was declined by learned Sessions Judge, according to the counsel, is the apprehension of threat to witnesses from him, canvassed by the prosecutor. It can be allayed by imposing adequate conditions according to counsel. The application is opposed by learned Public Prosecutor contenting that materials gathered by investigating agency, prima facie, disclose complicity of petitioner in the grave offence imputed. Even otherwise, statutory presumptions to be drawn under Sections 29 and 30 of the Protection of Children from Sexual Offences Act cannot be ignored by a Court, when any person, suspected of commission of sexual assault on a minor child, seeks his release on bail while investigation of crime is continuing. In the facts and circumstances presented in the case the court found, petitioner is not entitled to be released on bail at this stage, as there are sufficient reasons to suspect his culpability in the offences imputed. The Petition is dismissed.

In **Mohan Lal and Anr vs. State of Punjab**³⁵, one Manjit Kaur, who was a student of class X, had gone along with more 15-16 girls from her school to attend sports meet at Fatehgarh Sahib. While they all are walking on the road towards Fatehgarh Sahib, the director of physical education named as Balbir Singh asked Manjit Kaur to sit on the scooter of Mohan Lal Verma, without her will. But under the pressure of Balbir Singh sat on his scooter. Mohan Lal Verma on reaching near petrol pump of Machlian stopped his scooter and pretended to repair it. Meanwhile Ranjit Singh who is also a teacher of the school of Manjit Kaur appeared there on his cycle. Mohan Lal forced Manjit to sit on the cycle of Ranjit Singh. Ranjit Singh took her to his sister Jasbir Kaur's home. By this time Mohan Lal Verma, Amarjit Singh and Balbir Singh had already reached there. Jasbir Kaur offered tea to Manjit Kaur and then pushed her to a room where. Ranjit Singh committed rape on her in the presence of all other persons. Darbara Singh,

DISTRICT:Indiankanoon.com

³⁵ 2013 Cri L.J. 3265

father of the victim lodged an FIR. The matter was investigated, charge sheeted and filed against all these persons. After conclusion of the trial, the learned trial court convicted Ranjit Singh, Smt. Jasbir Kaur along with others for the offences punishable under sections 376 (2) (g) and 366 of Indian Penal Code, and awarded sentence of 10 years to each of them and fine of Rs. 2000/- and in default of payment of fine, to undergo further rigorous imprisonment for 1 year.

Appeals have been preferred against the conviction passed by the trial court, in the Chandigarh High Court. High Court observed that so far as the conviction is concerned, it was a case of gang rape by teachers with their student. In view of all these facts and issues appeals do not have any merit and accordingly are dismissed.

The State of Odisha vs. Philip George and T.Sam Jacob³⁶, in this case the minor victim girl, who is 12 years old, was studying in Class-VII by staying in the hostel of Padagada Child Development Centre. Accused Phillip George was by then working as Director of the said Child Development Centre and was staying in a rented accommodation near the hostel. When there was load shedding, the said accused used to call her (victim girl) along with other girl students to sleep in his house and in the night he was compelling them for his body massage. Whereafter he was also forcing them to keep physical relationship with them. On the alleged date of occurrence the said accused called the victim girl to his house as usual and laid her on the cot and then committed rape on her. When the victim girl cried, he threatened her not to disclose the matter before anybody or else she will be ousted from the hostel. Subsequently she along with other girl students of the hostel reported the incident before the Manager who in turn informed accused T.Sam Jacob, who was then Chairman of the Child Development Centre. Accused Sam Jacob came, enquired into the matter but took no action against accused Phillip George and he (accused Sam Jacob) also threatened the victim girl and girl students saying them that if they raise any voice against accused Phillip George, then he would expel them from the hostel. Since accused Sam Jacob took no action, she reported the matter in the police station in presence of all other girls alleging against both the accused persons. On the basis of the written report, the police registered the case, investigated into it and after completion of the investigation submitted charge sheet against both the accused persons which occasioned the present trial against them. The accused persons stand charged for the offences punishable U/S. 341/342/354/354-A/354-B/ 354-D/506/376(C) read with 109 of I.P.C and U/S. 6 of Protection of Children from Sexual Offences Act, 2012

³⁶ Arising out of G.R.No.608/2013 of S.D.J.M. Case No. 76/2013 dated 03-12-2013

But in the trial court the witnesses who could have thrown light regarding the alleged rape being committed on her made a back turn, the fate of the prosecution case remained in doldrums and thus the prosecution has utterly failed to make out any case against any the accused persons. Therefore, the whole effort of the prosecution becomes a futile exercise. Once the prosecution witnesses bid farewell to the prosecution allegation, the fate of the prosecution case is consigned to the moratorium and only a mere formality of the trial is adhered to. Above all, there is no sufficient evidence to connect any of the accused persons with the alleged charges for which they are entitled to an acquittal.

In the result, the District and sessions court of Koraput held the accused persons not guilty of offences punishable U/S. 341/342/354/354-A/354-B/354- D/506/376(C) read with 109 of I.P.C and U/S. 6 of Protection of Children from Sexual Offences Act, 2012 and acquit them U/S. 6 232 Cr.PC and they are set at liberty from the jail custody forthwith.

State of Tripura vs. Rahul Bhattacharjee³⁷, this is a case under the special legislation namely, Protection of Children from Sexual Offences Act, 2012 (in short, POCSO Act) in which the accused is charged under Section 4 of the Act. Prosecution case is that a written complaint was received at the Amtali Police Station (in short, P.S.). It was alleged therein that on the informant's daughter, then aged 9 years, went for private tuition to the accused. At that time, he committed rape on her. On the complaint, the case was registered and its investigation ended in prosecuting the accused under Section 376(2) (i)/506 I.P.C. and Section 4 of the POCSO Act. Charge was framed by the investigating officer against the accused on the accusation aforesaid under Section 4 of the POCSO Act only to which he pleaded not guilty and claimed to be tried.

The prosecution fails to prove the charge under Section 4 of the Act but the charge under Section 8 of the Act is clearly proved. The accused is thus convicted under Section 8 of the Act i.e., aggravated sexual assault. The convict is accordingly sentenced by the district and sessions judge, west Tripura to suffer rigorous imprisonment for a period of three years and to pay a fine of Rs.10, 000/-, in default, to suffer rigorous imprisonment for a further period of one year. The fine money, if realized, shall be paid to the victim as compensation.

The State of Odisha vs. Ganeswar Dangaria³⁸, in this case the minor victim girl who is 13 years old, is a student of Class-VII at the time of the alleged occurrence. The victim belongs to the category of Scheduled Tribe community whereas the accused belongs to General Caste category. On the day of occurrence at about 9 pm after taking dinner while the victim was going

³⁷ Special (POCSO) 02 of 2014, West Tripura District and Sessions court

³⁸ Case No. 31/2014 dated 02-04-2014 in the sessions judge cum special judge, Koraput

to the house of her friend Santoshi Odia of the said village, on the way seeing her alone the accused inducing to marry took her to a nearby Mango Tree situated at the back side of the house of one Raghuram Singhi and committed the sexual act against her will. Raghuram Singhi and Trinath Dangaria while going to attend call of nature saw the occurrence and when they focused torch light on them, out of fear they both fled away from the spot. On the next day after thorough search the parents found the victim in the house of one Bhima Dangaria, father of the accused, and on being asked, she disclosed the entire incident before them. When the parents of the victim approached the accused's parents to accept the victim as their daughter-in-law, they refused with a plea of caste aspiration. Finally finding no other alternative, the father of the victim lodged the written report at the Police Station against the accused alleging rape of the victim and penetrative sexual assault on her. On the basis of the written report, the police registered the case, investigated into it and after completion of the investigation submitted charge sheet against the accused which occasioned the present trial against him.

In the trial court the witnesses who could have thrown light regarding the alleged rape being committed on the victim made a back turn, the fate of the prosecution case remained in doldrums and thus the prosecution has utterly failed to make out any case against the accused. Therefore, the whole effort of the prosecution becomes a futile exercise. Once the prosecution witnesses bid farewell to the alleged prosecution allegation, the fate of the prosecution case is consigned to the moratorium and only a mere formality of the trial is adhered to. Above all, there is no evidence to connect the accused with the alleged charge for which he is entitled to an acquittal. In the result, the court the accused not guilty U/S. 376(2) (h)(i) of I.P.C & U/S.3(2)(v) of S.C & S.T (Prevention of Atrocities) Act & U/S. 4 of Protection of Children from Sexual Offences Act,2012 and acquit him U/S. 232 Cr.PC. The accused are set at liberty from the jail custody forthwith.

Badal Kumar Paul Vs. The State and Another³⁹ was a criminal revision petition taken out by the person who was initially accused and subsequently convicted by the learned trial court along with another persons who are teachers, of the victim under section 354/506 of the Indian Penal Code. The fact of the case is that a girl named Rubina, who is a student of government secondary school, Pahalgaon under Mayabunder Police Station, of North Andaman, after returning home explained to her mother how their teacher often does misdeeds with girl students of class VIII, of the school. They told that the said two teachers named Anil Kumar Dhali and another Badal paul made them sit on their lap, put their hands on the girl's cheek, chest and

³⁹ 2014 Cri L.J. 4642

back and after putting their hands on their waist, tickled them. When the principal is informed about the said incidences, by the mother of the victim girl student, the principal stated to her that he had made the two teachers understand and they would not repeat such activities again. But the complainant being unsatisfied lodged an FIR against both the accused under section 354/506 of IPC. And a criminal case was thus undiluted against the two teachers of the victim's school. The matter thereafter went on trial before the court of the learned judicial magistrate first class. The trial court held both the accused persons guilty of sexual harassment and outraging modesty of women and sentenced them to suffer simple imprisonment for one year and to pay fine of Rs. 2000/- in default, one months imprisonment for the offence punishable under section 354 of IPC and further sentenced both of them to suffer six months simple imprisonment for offence punishable under section 506 of the Indian Penal Code.

Later on an appeal was filed by the accused as a petitioner before the Additional Sessions Judge. The appellate court however modified the sentence handed out by the learned trial court to the petitioner herein by allowing him to be released on probation of good conduct and character under the probation of Offenders Act.

In **Om Prakash alias Raju v. State (Govt. of NCT of Delhi)**⁴⁰, the fact of the case in a nutshell is that the victim is a minor girl of 5 years of age. She along with her brother and another friend was playing in the gali outside her home in Aman Vihar, Delhi in the evening. At about 9 pm when the mother of the victim came outside home and found all of the kids missing there. After a long search her son came and narrated her that one 'buggiwala' had taken them in his 'jhotta buggi', who had left them on the way and took his sister i.e., the victim towards the field. After hearing this, their mother Smt. Geeta went to the house of the said buggiwala i.e., the accused Om Prakash alias Raju. On reaching his home Smt. Geeta discovered that the accused is sitting having the victim on his lap. The victim was crying. Smt. Geeta quickly snatched her daughter from the accused and she noticed blood stains, drops and spots on her inner clothes and also saw that blood was oozing out from private parts of the victim minor girl and thereafter the accused tried to run away. However he was caught by the neighbours and other persons on the cry raised by Smt. Geeta. The accused was handed over to the local police officials, on the allegation of the offence of rape. During investigation the statement of the child victim was recorded under Section 164 of the Code of Criminal Procedure. In the due course they came to the sessions court where charge sheet was framed against the accused under Section 376 (2) (f) of Indian Penal Code.

⁴⁰ 2014 CRI, L.J.4526

The child victim also gave evidence before the learned trial court that while they were playing, the said accused took them and after a while after learning the boys took the victim to a field and raped her. The victim also successfully identified the accused. The trial court convicted the accused for the commission of the offence punishable under Section 376 (2) (f) of the IPC for having raped the five years old girl and thus sentenced to undergo imprisonment for life and also to pay a fine of Rs. 5000/- with default stipulation of 2 months simple imprisonment in case of non-payment of fine.

The accused later on challenged the judgement by way of appeal in the Delhi High Court. But evidences of all the witnesses remained unshattered in their cross examination and all of them render full credence to the prosecution case. The appellate court therefore found no merit in this appeal and accordingly rejected it.

In **The State of Bihar v. Hemlal Shah**⁴¹, the victim is a 14 years old girl. She along with her cousin went to a paddy field at about 7 am for sanitation purpose. After that when they were washing their hands, accused Hemlal Shah who was hiding inside the bushes came out, forced her and threw her on the ground. He started having sexual intercourse with her by catching hold of her neck and wrapping a dupatta around her neck. He also threatened the victim not to shout otherwise he will kill her. The cousin of the victim after witnessing this ghastly occurrence went running to her house and narrated the story to her parents as well as the parents of the victim. Where after the victims parents and other neighbours came running to the paddy field and when they reached they saw that the accused Hemlal Shah was fleeing away towards south. After looking for some time the parents and villagers found the half naked dead body of the minor victim lying in the bushes. She was put to death by trying her dupatta around her neck. The post mortem report also revealed that her death was due to strangulation of neck by encircling her dupatta. The report also discovered occurrence of rape quickly before her death. Bleeding from vagina was noticed.

During investigation, accused was arrested and a charge sheet was laid under section 376/302 of IPC read with section 4/6/8/10 of the prevention of children from Sexual Offences Act, 2012 against the accused. The trial court sentenced the accused to suffer imprisonment of life and pay a fine of Rs. 5000/- and in default of payment of fine, suffer rigorous imprisonment for a period of six months. The court also made it clear that if the fine is realized, the same shall be paid to the parents of the deceased victim.

The accused challenged the order in Patna High Court. But the High Court after making all

⁴¹ 2014 Cri L.J. 1767

observations ordered that the appeal shall stand disposed of.

In **The State of Tripura vs. Sri Subrata Debnath**⁴², the case is that a minor victim girl of the complainant, Uttam Debnath went to the house of accused Subrata Debnath to play carom board as per his calling. After a while, the accused gagged the mouth of the minor victim girl by pressing pillow and forcibly committed rape upon her. Thereafter, the victim girl went to her house after crying and when her parents wanted to know about the reason of crying, and then she told the fact to her parents. The complainant informed the fact to the Upa-pradhan of the locality who advised him to report police station. Accordingly, the complainant lodged this case against the accused person narrating all the facts stated above to the O/C Sabroom PS.

After hearing both sides and having found prima facie case charge under section 376(2)(i) of IPC and section 6 of the Protection of Children from Sexual Offences Act, 2012 were framed against the accused namely Sri Subrata Debnath. The court observed that prosecution case suffers from inherent, improbability and appears completely absurd. More so, evidence of prosecutrix inspires no confidence as there is no corroborative evidence with the witnesses as also by medical evidence. Hence, it is given and the accused Subrata Debnath is hereby acquitted from the charge labeled against him under sec. 376(2) (i) of IPC and also under sec. 4 of the Protection of children from Sexual Offences Act, 2012. He is set at liberty.

In **The State of Odisha vs. Prakash Chandra Nanda**⁴³, the victim girl is a minor and is reading in Class VII at Saraswati Vidya Mandir (S.V.M), Damanjodi. Accused Prakash Chandra Nanda is a drawing teacher of the said S.V.M. Informant Saroj Kumar Sahu, who is the maternal uncle of the victim girl; a resident of Mathalput stated before the I.I.C., Damanjodi police station alleging that his niece (the victim girl) cried and disclosed before him that the accused used to exhibit obscene photos before her and other girls talking to her in dirty language and sexually harassing her since long. The manner in which the victim girl was being harassed by the accused is reflected below:-

- (a) The accused used to catch hold of her hand and showed her indecent behaviour;
- (b) He used to touch her private part very often and used to exhibit obscene photos;
- (c) He used to touch her breasts on his elbow on the pretext of pulling the collar of her school dress;
- (d) He used to push his hand inside her dress and touch her sensitive places;

⁴² CASE NO. Special 04 (POCSO) OF 2014, in the court of District judge, south Tripura

⁴³ Arising out of G.R.No.887/2015 of S.D.J.M., Case No. 72/2015

Further the accused used to pay Rs.10/- to the victim girl and if the girl denied to receive the same, he forcibly put the same in the pocket of her school dress and further threatens the victim girl to cut her into pieces. The matter does not end here. The accused further made the victim girl stand and opened his private part and forced the victim girl to catch the same. Very often the accused used to hug her and kiss her. This is what the accused sexually assaulted the victim girl and threatened her that in case of disclosure of the matter before others she will be dealt severely. The informant being aware of the fact from the victim girl brought the matter into the notice of the Principal, S.V.M. for taking necessary action against the accused. But as the Principal remained callous over the matter, so he was compelled to report the matter at the police station for taking strong legal action against the accused. Basing on the report of the informant, police registered the case, investigated into it, arrested the accused, forwarded him to the court in custody and subsequently the accused was remanded to jail custody.

After completion of the investigation the Investigating Officer submitted charge sheet against the accused U/S. 376 (2) (f) (i) (n) /354-A(1) & (2) /506 of the Indian Penal Code and U/S.10/12 of the Protection of Children from Sexual Offences Act,2012 and cognizance of the offence is accordingly taken. But subsequently after scrutinizing the materials at length, charge U/S. 354-A (1) & (2) /506 of the Indian Penal Code and U/S. 10 of the Protection of Children from Sexual Offences Act has been framed against the accused.

But to the utter surprise none of the witnesses supported the prosecution case. Rather they turned hostile for which they have been cross-examined to their respective previous statement recorded by the police asking leading questions as per the procedure laid down. The victim girl (P.W.1) pleaded her ignorance regarding the occurrence, although she deposed that the informant is her maternal uncle and the accused is a drawing teacher serving at Saraswati Vidya Mandir, Damanjodi. She categorically did not state in her evidence during cross-examination by the defence that the accused has neither misbehaved nor did any indecent act with her. She has also not disclosed any such incident to anyone. Thus, keeping in view S. 22(2) of the POCSO Act no action is taken against her for false complaint or false information since the statute prohibits for taking any such action against the child.

In the result, the court of Sessions judge, Koraput held the accused not guilty of offences charged U/S. 354-A (1) & (2) /506 of the Indian Penal Code and U/S. 10 of the Protection of the Children from Sexual Offences Act, 2012 and acquit him U/S. 232 Cr.PC. He is set at liberty from the jail custody forthwith.

The State of Odisha vs. Mohana Charan Prusti⁴⁴, the fact of the case is that the minor victim girl, who belongs to “Dombo” caste which comes under S.C. category, is reading in Class-X and also appearing in H.S.C.examination at Dhamanahandi High School center. The accused, who is her teacher of Bharandi School, asked for a glass of drinking water. She gave water, but instead of drinking the accused caught hold of her and forcibly tried to commit rape on her. Knowing the intention of the accused out of fear she came out from his clutch and ran out from the spot house, where after the accused fled away from the spot. On the basis of the written report, the police registered the case, investigated into it and submitted charge sheet against the accused which occasioned the present trial against him.

But on cross examination the persons who could have thrown light regarding the alleged offence being committed on the minor girl made a back turn, the fate of the prosecution case remained in doldrums and thus the prosecution has utterly failed to make out any case against the accused. Therefore, the whole effort of the prosecution becomes a futile exercise.

In the result, the District and Sessions court, Koraput held the accused not guilty U/S 452/354(A/354(B) of I.P.C and U/S. 8 of Protection of Children from Sexual Offences Act, 2012 and U/S. 3(1) (xi) of S.C and S.T (Prevention of Atrocities) Act and acquit him U/S. 232 Cr.PC and he is set at liberty after being discharged from his bail bond.

In **Rasheed vs. state of Kerala⁴⁵**, the sole accused in for the offences punishable under Section 376 of Indian Penal Code, Section 3(a) of the POCSO Act, 2012 and Section 27 of the Juvenile Justice Act is the petitioner herein. The allegation of the prosecution is that, the accused acting as the school van driver had sexually abused the defacto complainant, a girl aged 4 years and another girl of the same age while they have been transported from their school back home. The girl has given in the complaint the detailed version of what has transpired was mentioned. On the basis of the crime registered, the accused was arrested. He seeked bail while he was in custody. The learned counsel for the petitioner vehemently contended that the case as set up by the prosecution does not stand to reason and for reasons best known to the defacto complainant; he has been falsely implicated to silence him. The statement of the child recorded by the learned Magistrate shows that she has given the meticulous details of what transpired. The learned Public Prosecutor on instructions submitted that another victim is even now mentally and physically unable to give a statement to the police. Having regard to the serious nature of

⁴⁴ Arising out of G.R.No.243/2015 of S.D.J.M, Case No.39/2015

⁴⁵ Crime No.1403 of 2015 of Maradu Police Station, Kerala: Indian kanoon.com

allegation and the impact the granting of bail to the petitioner at this stage may have on the victim; the court is not inclined to grant bail. Considering these facts, this petition is dismissed.

The State of Odisha vs. Allauddin⁴⁶, the case in brief, is that the accused was touching the body of his minor daughter aged about 4 years by removing her inner garments and on seeing this, the mother rescued the victim and on receipt of this information, the father of the victim lodged the report and produced the accused before the police, on which police registered a case under Dhanupali Police station. The police took up investigation and on completion of investigation, submitted charge-sheet against the accused for offences under sections 342, 354-A, 354-B, I.P.C. and section 8, POCSO Act, In order to prove its case prosecution has examined four witnesses on its behalf and has relied upon documentary evidence.

In the ultimate analysis, the Sessions Judge-cum-Judge (Special Court), Sambalpur conclude that prosecution has failed to bring home the charges u/s.354-A/354-B, I.P.C and section 8, POCSO Act against the accused beyond reasonable doubt. Accordingly the court hold the accused not guilty of the said offences and acquit him thereof under section 235 (1) of Cr.PC. The accused are ordered to set at liberty forthwith.

The State of Odisha vs. Pitabas Panigrahi⁴⁷, the fact of the case, which reveals from the FIR, is that informant Jagat Khara of village Bhejaput, Police station of Sunabeda, appeared before Sunabeda Police station and presented a written report to the effect his daughter (victim) aged about 14 years, reading in class IV in the school. While the class was going on the accused who is their teacher, suddenly told the victim and other classmates of the victim to be undressed and tortured them. The accused several times told them to be undressed which was admitted by the victim and due to the act of the accused, the students including the victim afraid of to go to school. First of all the informant did not take the matter so serious but when the acts of the accused was repeated day by day, the informant reported the matter at the Police station. Basing on the written report of the informant, the Sunabeda P.S registered the case and took up investigation of the case and on completion of the same charge sheeted the accused in this case.

According to the victim, the informant is her father and the accused was a teacher in their school. By the time the report was lodged, she was 14 years old and was reading in class IVth in Upper Sahi U.P. School, Bhejaput. She does not remember regarding any such occurrence, for which her father lodged the report. Her statement was recorded by the Magistrate. The classmates of the victim the child witnesses, having not given rational answers for which they have not

⁴⁶ Arising out of G.R. Case No. 1311 of 2016 relating to Dhanupali P.S. Case No. 141 of 2016)

⁴⁷ Case No25/16 of 2016

administered oath and on being asked they pleaded their ignorance regarding the occurrence. All the witnesses were allowed to be cross examined by the prosecution asking leading questions which they denied and their cross examination have been declined by the defence. In the result, the court of special judge, Koraput held the accused not guilty of the offence punishable U/s 12 of the Protection of Children from Sexual Offences Act, 2012, acquits him U/S. 232 Cr.PC. He is ordered to be set at liberty.

Nipun Saxena v. Union of India (2019): Established strict guidelines prohibiting the disclosure of a child victim's identity in media and held the management of establishments liable for employee acts.

Alakh Alok Srivastava v. Union of India (2018): The SC directed the setting up of special courts to handle POCSO cases for faster trials and ordered the training of judges to be child-friendly.

Balaji Sarjerao Kamble v. State of Maharashtra (2017): The Bombay High Court held that the absence of a specific date of the crime in the victim's testimony does not mean her evidence can be disregarded.

In Re: Right to Privacy of Adolescents (2025): The Supreme Court, exercising Article 142, held back from sentencing a convict to 20 years to avoid further trauma to the victim, acknowledging systemic failures in implementation.

Supreme Court on Child Pornography (2024): The SC overturned a Madras High Court decision, ruling that viewing, storing, or possessing child pornography is a punishable offence under the POCSO Act.

Testimony of Child Victim (2025): The Supreme Court affirmed that a child victim's testimony requires no corroboration if it is clear and cogent, and that Section 29 of POCSO creates a presumption of guilt once foundational facts are established.

IV. CONCLUSION

Apart from the efforts taken by our judiciary to tackle the situations of sexual abuse of girl child, our government both at central and state levels are issuing various plans, schemes and programmes for the eradication of this social stigma. Sexual abuse of girl child is a stain on the face of civilization. It is already established that only legislature and judiciary are not able to eradicate these issues without proper implementation in the society. Time and again fingers have been raised towards the Government for the gradual increase of such issues. India is a welfare country. Therefore, the Government should initiate need based policies and

programmes to mitigate the problems.
