

## Error corrected: Laws should not be interpreted in a way that destroys the intent behind them- the Hindu

(Down to Earth)

A Bench of Justices UU Lalit, S Ravindra Bhat and Bela M Trivedi set aside the controversial Bombay High Court judgment that held that groping a minor's breast without "skin to skin contact" cannot be termed as sexual assault as defined under the Protection of Children from Sexual Offences (POCSO) Act.

In the landmark verdict, the Supreme Court ruled that the most important ingredient of constituting sexual assault under Section 7 of POCSO is sexual intent and not skin-to-skin contact with the victim.

### About POSCO Act:

- ❖ In order to effectively address the heinous crimes of sexual abuse and sexual exploitation of children through less ambiguous and more stringent legal provisions, the Ministry of Women and Child Development championed the introduction of the Protection of Children from Sexual Offences (POCSO) Act, 2012.
- ❖ The Act has been enacted to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and related matters and incidents.
- ❖ The Act was amended in 2019, to make provisions for enhancement of punishments for various offences so as to deter the perpetrators and ensure safety, security and dignified childhood for a child.

The National Crime Records Bureau data (2021) stated that 47,221 cases of Prevention of Child from Sexual Offences (Pocso) Act were reported in 28 states and eight union territories across the country. Of these, UP reported the maximum – 6,898 cases of Pocso Act in 2020. UP is followed by Maharashtra with around 5,687 Pocso cases, Madhya Pradesh 5,648 cases, Tamil Nadu 3,090 and West Bengal 2,657 cases.

### Silent feature about POSCO Act:

- ❖ The **Act is gender neutral** and regards the best interests and welfare of the child as a matter of paramount importance at every stage so as to ensure the healthy physical, emotional, intellectual and social development of the child.
- ❖ The **Act defines a child as any person below eighteen years of age**, and regards the best interests and well-being of the child as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child.
- ❖ It **defines different forms of sexual abuse**, including penetrative and non-penetrative assault, as well as sexual harassment and pornography, and deems a sexual assault to be **"aggravated"** under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority vis-à-vis the child, like a family member, police officer, teacher, or doctor.
- ❖ **People who traffic children for sexual purposes** are also punishable under the provisions relating to abetment in the Act. The Act prescribes stringent punishment graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life, and fine.
- ❖ It **defines "child pornography"** as any visual depiction of sexually explicit conduct involving a child which includes photograph, video, digital or computer-generated image indistinguishable from an actual child, and image created, adapted, or modified, but appear to depict a child.

**Table 1: Punishment for offences for using child for pornographic purposes**

Offence	POCSO Act, 2012	2019 Bill
Use of child for pornographic purposes	· Maximum: 5 years	· Minimum: 5 years
Use of child for pornographic purposes resulting in penetrative sexual assault	· Minimum: 10 years · Maximum: life imprisonment	· Minimum: 10 years (in case of child below 16 years: 20 years) · Maximum: life imprisonment
Use of child for pornographic purposes resulting in aggravated penetrative sexual assault	· Life imprisonment	· Minimum: 20 years · Maximum: life imprisonment, or death.
Use of child for pornographic purposes resulting in sexual assault	· Minimum: Six years · Maximum: Eight years	· Minimum: Three years · Maximum: Five years
Use of child for pornographic purposes resulting in aggravated sexual assault	· Minimum: Eight years · Maximum: 10 years	· Minimum: Five years · Maximum: Seven years

**Certain concern about the introduction of death penalty in Section 5 of the Amendment Act, 2019:**

- ❖ The **Amendment Act, 2019** introduced the death penalty for aggravated penetrative sexual assault on children to create a deterrent effect. It refers to the Supreme Court judgments in **Machhi Singh (in 1983)** and **Devender Pal Singh (in 2002)**, in which the Apex Court had held that the **death penalty can be awarded only in rarest of the rare cases**.
- ❖ It has mostly been seen that the perpetrators of abuse are family members, and hence having the death penalty may discourage the registration of the crime itself.
- ❖ It also may have the effect of proving to be a threat to the life of the minor as the maximum punishment for murder is also death sentence.
- ❖ **The 262nd report of the Law Commission of India, 2015 provides for the abolition of the death penalty; the only exception being in terror cases.**
- ❖ The Justice **J.S.Verma Committee**, constituted in the year 2013 as an aftermath to the Nirbhaya case **after due deliberations were against the imposition of the death penalty in cases of rape.**
- ❖ It is mostly believed that the real deterrence effect comes by the certainty of punishment and not by its severity.
- ❖ Research has shown that despite stringent punishments, there has been no reduction in the rate of commission of crimes, thus proving the limitation of the deterrent theory.

**Conclusion:**

- ❖ There has been a rising trend in recent times in the incidences of child sexual abuse which clearly demonstrates the inhumane mind-set of the abusers who have been barbaric in their approach. Children fall easy prey to such people owing to their tender age, physical vulnerability as well as the inexperience of life and society.
- ❖ Due to all these reasons, there was a strong impending need to take stringent measures to deter the rising trend of child sex abuse in India.

- ❖ The amendments brought about by the Amendment Act, 2019 have made sure that by enhancing the punishments and penalties for various offences, the perpetrators of such crimes shall be punished and this would also serve as a deterrent for the potential offenders; thus ensuring the safety, security and dignified childhood for a child.
- ❖ However, it should also be noted that before providing death penalty to any convict, it should be widely discussed and debated and it should only be used in the rarest of rare cases.

**Important provisions to protect child right:**

- World Day against Child Labour: International Labour Organization (ILO) launched the World Day against Child Labour in 2002 to focus attention on the global extent of child labour and the action and efforts needed to eliminate it. Each year it is celebrated on 12 June.
- Child Labour policies: *Child Labour (Prohibition & Regulation) Amendment Act, 2017*; Constitutional Provisions for Child Upliftment: (i) Article 21 A: Right to Education, (ii) Article 24: Prohibition of employment of children in factories, etc., (iii) Article 39: The State shall, in particular, direct its policy towards securing; The two Core Conventions directly related to child labour are that of ILO Convention 138 and 182. India has ratified both the Core Conventions of International Labour Organization (ILO) Conventions 138 regarding admission of age to employment and Convention 182 regarding worst forms of Child Labour, National Policy on Child Labour.
- Childline 1098 service: *CHILDLINE* is a platform bringing together the *Ministry for Women & Child Development*, working in Partnership with *State Governments, NGOs, International Organizations*, the Corporate Sector, Concerned Individuals and Children.
- Convention on the Rights of the Child: The United Nations Convention on the 'Rights of the Child' is an international statement of the civil, political, economic, social and cultural rights of children.
- Eliminating Corporal Punishment in Schools
- Juvenile Justice (Care and Protection of Children) Act, 2015

**NCPCR: (National Commission for Protection of Child Rights)**: it emphasises the principle of universality and inviolability of child rights and recognises the tone of urgency in all the child related policies of the country. For the Commission, protection of all children in the 0 to 18 years age group is of equal importance.