

**WORKING OF POCSO ACT: STRUCTURAL AND PROCEDURAL
COMPLIANCE BY THE SPECIAL COURT OF KALAHANDI DISTRICT IN
THE STATE OF ODISHA.**

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ABSTRACT

Children are an important marginalized group who, instead of playing in the sun and going to school, often suffers from various types of abuse, especially sexual abuse. They are the most vulnerable sections in the society. They are the most vulnerable to such a crime because they do not understand the consequences and severity of the problem. Innocent little children can only feel the pain of the unfortunate if they leave a scar on their body and mind forever. A welcome development has been the enactment of a special law i.e. Protection of Children against Sexual Offences (POCSO) Act 2012 that criminalises a range of acts including child rape, harassment, and exploitation for pornography. The paper highlights the intended benefits and the unintended consequences that might arise from the application of the law in the Indian context. On the basis of some case studies, the applicability of this law is examined in addition to its deficiencies. The passing of POCSO has been a major step forward in securing children's rights. The letter and spirit of the law, which defines a child as anyone under 18 years of age, is to protect children from sexual abuse. However, criminalising all sexual behaviour under 18 years of age can be problematic.

**STRUCTURAL COMPLIANCE OF SPECIAL COURT IN KALAHANDI
DISTRICT**

The POCSO Act prescribes limited structural requirements for the Special Courts like designation of Special Courts, appointment of SPPs for conducting cases only under the provisions under the Act, and certain mechanisms to prevent contact between the child victim and the accused at the time of evidence;

1. Establishment of Special Court in Kalahandi district

According to Section 28(1) of POCSO Act, State Governments should, in consultation with the Chief Justice of the High Court, designate a Sessions Court to be a Special Court to try offences under the POCSO Act, to facilitate speedy trial. However, if a Sessions Court has been notified as a Children's Court under the Commissions for Protection of Child Rights

Act, 2005, or if any other Special Court has been designated for similar purposes under any other law, it will be regarded as a Special Court under the POCSO Act.¹

The Court of Additional District and Session Judge of Kalahandi District in the State of Odisha is designed as special court to try all the cases under POCSO Act.

At present, Smt. Rashmita Dalai is designed as Additional District and Session Judge of Kalahandi District in the State of Odisha.

The POCSO Act does not mandate an exclusive Special Court to hear cases under the Act. The designated Courts of Kalahandi district hear POCSO cases with other civil and criminal cases.

2. Appointment of Special Public Prosecutor

According to Section 32(1) of POCSO Act 2012, the State Government should appoint a SPP for conducting cases only under the provisions of Act. Advocates with a minimum of seven years practice are eligible to be appointed as an SPP. The language of the provision clearly suggests that the SPPs must exclusively handle POCSO cases. At present, Sri Susanta Kumar Sahu Sahoo is designed as Special Public Prosecutor for Kalahandi district to deal with cases under POCSO Act 2012.

3. Design of the court room

According to Section 33(4) of POCSO Act, the “child-friendly atmosphere” of the courtroom can be created by allowing a family member, a guardian, a friend or relative, in whom the child has trust or confidence, to be present in the court. This provision bears no reference to the physical dimension of the courtroom or the behaviour required to ensure that the child’s interaction with the criminal justice system is child-friendly. In Kalahandi district, there is no separate waiting room for child victims and their family members near the Special Court. There are three different complex. One is Court complex, second one is collectorate complex and third one is fast track court complex.

In Court Complex, there are followings courts;

- District and Session Judge Court
- Civil Judge (Senior Division) Court
- Registrar
- J.M.S.C. Court
- Permanent Lok Adalat

In Collectorate Complex, there are following courts

- Additional District and Session Judge Court (Special Court under POCSO Act)

¹Section 28(2), Protection Of Children from Sexual Offences Act, 2012, No. 32 Acts of Parliament 2012(India).

- J.M.F.C. – cum – Civil Judge (Junior Division) Court
- Assistant District Judge Court
- S.D.J.M. Court
- Chief Judicial Magistrate Court

In Fast Track Court Complex, there are following courts

- Vigilance Court
- Family Court

In Collectorate Complex, the court rooms are very small. Speaking about Special Court, It has hardly of 9 audience sitting capacity. There are only two entrance to the Special Court, One is for everybody and other is for only Judge. There are no separate entrances for children. A child will inevitably be confronted with the accused, police in uniform, and other accused persons while waiting to testify. Toilets and drinking water facilities are not available in the collectorate complex.

PROCEDURAL COMPLIANCE OF SPECIAL COURT IN KALAHANDI DISTRICT

The POCSO Act lays down the procedures to be followed by Special Courts while trying cases under the Act.

Direct Cognizance by the Special Court

Section 33(1) of POCSO Act, empowers the Special Court to directly take cognizance of an offence based on a complaint or upon a police report, without the accused being committed to it for trial.² The police must, therefore, bring the matter directly before the Special Court instead of initiating committal proceedings before a Magistrate. This is to facilitate speedy trial of sexual offences against children.

Questioning Children

Section 33(2) of POCSO Act, prohibits the Special Public Prosecutor and the defence lawyer from putting questions to the child directly. All questions during the examination-in-chief and cross-examination must be routed through the Special Court Judge. Under Section 33(6), POCSO Act, the Special Court should not allow aggressive questioning or character assassination of the child and should ensure that dignity of the child is maintained during the trial. The Concerned Judge usually intervene actively when degrading or insensitive questions are posed to the child.

Creation of Child Friendly Atmosphere

² Section 33(1) Protection Of Children from Sexual Offences Act, 2012, No. 32 Acts of Parliament 2012(India).

Section 33(4) of POCSO Act, requires the Special Court to create a child-friendly atmosphere by allowing a family member, guardian, friend, or relative, in whom the child has trust or confidence, to be present in the court.

Interviews revealed that Judge interact with the victim generally, and give the child sufficient time to relax. They sometimes also offer water, and enquire if the child has had food prior to recording of evidence.

Minimizing Appearances in Court and Permitting Breaks during the Trial

Special Courts should ensure that children are not called repeatedly to testify in the court under Section 33(5), POCSO Act. As per Section 33(3) of POCSO Act, frequent breaks should be allowed to the child during trial, if necessary.

The child's examination is generally completed in one visit. In exceptional cases, the defence lawyer is given another date for cross-examination. The cases are not posted on a day-to-day basis in a POCSO case, which is one of the reason for delay in proceeding.

Protection of Identity

Section 33(7) of POCSO Act, requires the Special Court to protect the identity of the child during the investigation and trial. For reasons recorded in writing, the Special Court can permit disclosure, if it is in the interest of the child. The Explanation to Section 33(7) states that identity of the child would include "the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed."

The observation of the researcher reveal that the trial is being commenced in camera in all POCSO cases which means that there would be only victim, special public prosecutor, accused, defence lawyer, judge and stenographer inside the court room and the doors of the courtroom shall be closed.

But the researcher has also found that the examinations are conducted in such a manner that can be easily audible which means a person standing outside can also listen to it.

The researcher has not found any mechanism used in Kalahandi Court to protect the identity of the victim.

Award of Compensation

Section 33(8) of POCSO Act, empowers the Special Court to direct payment of compensation, in addition to punishment, for physical or mental trauma caused to the child or for immediate rehabilitation. Rule 7(1), POCSO Rules, states 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. The purpose of interim compensation is to meet the immediate rehabilitation or relief needs of the child. Compensation, interim and final, can be awarded even if the accused is acquitted, discharged, or untraceable, if according

to the Special Court, the child has suffered loss or injury. Rule 7(3), POCSO Rules, specifies 12 factors that the Special Court should consider before it awards compensation. The compensation awarded should be paid from the Victim Compensation Fund or any other government scheme for compensating and rehabilitating victims and must be paid by the State Government within 30 days of the receipt of the order. But by analysing certain judgments, the researcher has found that in very few cases, compensation is awarded in Kalahandi district.

Prompt Recording of Evidence and Disposal of Cases

Evidence should be recorded within 30 days of the Special Court taking cognizance of the offence, as per Section 35(1) of POCSO Act. Reasons for the delay should be recorded by the Special Court. But the researcher has found that adjournments are liberally granted to defence lawyer, cases are not posted on daily basis which results in delay in disposal of cases.

Avoiding Exposure to the Accused

Section 36(1) of POCSO Act, requires the Special Court to ensure that the child is not exposed to the accused while testifying. For this purpose, curtains, single visibility mirrors, and video-conferencing facilities can be adopted. As there are only two entrance in special court of kalahandi district, one for people and other for only judge, in most of the time victim ends up with coming into direct contact with accused or accused's advocate.

In-Camera Trials

Section 37 of POCSO Act, requires the Special Court to conduct the trial *in-camera*, and in the presence of the parents of the child, or any other person in whom the child has trust or confidence. The child can also be examined in a place other than the courtroom, if the Special Court deems fit. The researcher has observed that not the entire trial but only during examination of victim or any other witnesses, the doors are closed.

Assistance of Interpreters, Experts and Special Educators

According to Section 38 of POCSO Act, the Special Court may take the assistance of a qualified translator, interpreter, special educator, or a person familiar with the manner of communication of a child. Pursuant to the Criminal Law Amendment Act, 2013, Section 119 of the Indian Evidence Act was amended to provide that a witness who was unable to speak, could give evidence in any other intelligible manner, such as by writing or by signs. Such writing or signs should be made in open court and would be considered oral evidence. While the Special Court has discretion under the POSCO Act to seek the assistance of an expert, it is mandatory under the proviso to Section 119, Indian Evidence Act, 1872 for the court to take the assistance of an interpreter or special educator when recording

the statement of a witness who cannot communicate verbally, and to videograph the statement.

During interview to the Special Public Prosecutor, the researcher found that in some cases, translator and interpreter are used to convey the mind of the victim to the court.

Assistance of Private Legal Practitioners

Section 40 of POCSO Act, recognizes the right of the family or guardian of the child to take assistance of a legal counsel of their choice in proceedings under the POCSO Act. The District Legal Services Authority is required to provide them with a lawyer in case they are unable to afford one. However, all the POCSO Cases are dealt by SPP in Kalahandi District. There are lawyers registered under DLSA but the cases are dealt by SPP only.

Child Welfare Committee

The main role of the CWC under the POSCO Act is to provide assistance to children who are alleged to be victims of sexual assault and, where applicable, their families, in obtaining care and protection. This role has been given to the CWCs in recognition of the fact that in cases of sexual assault it is important to look beyond the investigation and trial of the alleged perpetrator to providing assistance to the children in such cases who are in need of care and protection.

In Kalahandi district, following persons constitute Child Welfare Committee;

- Rajesh Kumar Nayak – Chairman
- Swarnalata Mohany – Member (Female)
- Niranjana Mishra – Member
- Satya Narayan Mahapatra – Member (Expert)
- Sudhansu Kumar Nanda – Member
- Nigamananda Sahoo – ADEO

The researcher observed that Child Welfare Committee is actively working in Kalahandi district.

MEASURES TO BE TAKEN BY SPECIAL COURT DURING TRIAL OF CASES UNDER POCSO ACT

1. The identity of the child should not be disclosed.
2. Frequent breaks during trial should be permitted to the child
3. Create a child-friendly atmosphere by allowing a family member or any person the child trust to be present
4. Ensure that the child is not summoned to testify time and again
5. Ensure that the dignity of the child is maintained by disallowing aggressive questioning or character assassination of the child.

6. Ensure that the child victims should not be brought through the common corridor and from the same entrance as the abuser into the Courtroom which undermines the dignity of the child victim
7. Ensure the identity of the child is not disclosed during the investigation or trial
8. As far as possible, ensure that the trial is completed within one year from the date of taking cognizance of the offence.
9. The trial at the Special Court must be conducted in camera and in the presence of the child's parents or any other person of the child's choice.
10. During the course of the trial, all questions that the Special Public Prosecutor or the counsel for the accused, have for the child should be communicated to the Special Court, who in turn will put the questions to the child.
11. Under Section 35 of the Act, the evidence of the child should be recorded within a period of thirty days of the Special Court taking cognizance of the offence. Any reasons for delay in doing so, should be recorded.
12. The Special Court should ensure that the child is not exposed to the accused, and arrange for the accused to hear the child's statement and communicate with his lawyer. This is typically done by recording the evidence through video-conferencing or by using single visibility mirrors or curtains.
13. While recording the evidence of a child with mental or physical disability, the assistance of a qualified special educator or a person familiar with the manner of communication of the child or an expert in that field, can be sought as stated in Section 26.
14. The Special Court is also in a position to order interim compensation to meet the relief and rehabilitation needs of the child, any time after the FIR is registered. This order can be passed based on an application by or on behalf of the child, or by the court itself. The compensation that is awarded is payable by the State Government from the Victims Compensation Fund or other similar schemes that have been established for compensating victims under of the Code of Criminal Procedure and is payable within 30 days of the receipt of the order as per Rule 7 of POCSO Rule 2012.

DATE ANALYSIS AND PERSONAL OBSERVATION

The researcher has studied 15 randomly selected cases of the Trial Court and identified and collected the data and information about the cases of the POCSO Act from the following stakeholders:

- Special Public Prosecutor
- Defence Advocates
- Police Officials
- Child Welfare Committee

Narratives & Case Studies

In the first section, the researcher has presented the brief narratives of the aforesaid stakeholders who are directly as well as indirectly involved with POCSO cases. These narratives were prepared on the basis of personal interviews with the respondents, using semi- structured questionnaire and open ended questionnaire as tools.

In the second section, the researcher describes the case studies which were prepared on the basis of the researcher's observation of the cases produced before the Court and the case files of the Court. The researcher attempts to analyse and interpret each case study and give views accordingly.

Narratives of Research Participants

Participant 1 (P1) – Sri S.K. Sahoo, Special Public Prosecutor, Bhawanipatna

He is the Special Public Prosecutor, deals with POCSO cases in Special Court, Bhawanipatna. He said that the child sexual abuse is a curse to the humanity which hampers the overall life of the child. But the POCSO Act is being used mostly in making false and frivolous cases. There is a communication gap between investigating officer and public prosecutor. Hence, the evidences are not able to be properly arranged. In many cases, investigation doesn't reveal the age of victim that ultimately results in acquittal of cases.

Participant 2 (P2) – Khirod Prasad Negi, Advocate, Bhawanipatna

He is the defence council in numbers of POCSO Cases in Bhawanipatna appearing on behalf of the accused. He said more than half of the cases coming to the Court are not in good spirit nor they are real. Mostly, such cases are just to create pressure to get something or to harass the accused. Most of the cases are false and frivolous. Out of all, those few cases which are real are proceeded with appropriately and the accused are punished.

Participant 3 (P3) – I.I.C., Town Police Station, Bhawanipatna

He is a police officer posted as I.I.C. of Town Police Station, Bhawanipatna. As per his sayings, most of the cases registered under the POCSO Act are not the real cases because in most of the cases the victim and the accused have previous sexual relationship out of their free consent and love but due to any misunderstanding or conflict or to create pressure on the opposite party or denial of acceptance by parents, people get their cases registered under the Act using their minor children. However, a few cases are real and are dealt with good spirit and the accused are punished.

Participant 4 (P4) – Anil Kumar Padhi, Advocate, Bhawanipatna

He is a Trial Court Advocate and he says that child sexual abuse is a heinous crime which must be punished severally. However, the objective of enacting the

POCSO Act is not completely achieved but he regularly sees the people misusing the Act to get undue advantage.

Participants 5 (P5) – Rajesh Kumar Nayak, Chairperson, Child Welfare Committee

He is the chairperson of child welfare committee. He says that the false and frivolous cases are more than the real cases. And because of these false and frivolous cases, even the genuine cases are, prima facie, seen with the same perspective making it difficult for the genuine victims to get justice.

Participant 6 (P6) – Hemanta Kumar Chauhan

He is a practicing advocate at Bhawanipatna. Out of his own experience, he says that there are very few genuine cases of child sexual abuse that comes to the court. Most of it ends with acquittal only. Very few convictions are noticed. POCSO Act is a beautiful stringent legislation to prevent the child sexual abuse and protect the right of a child. It also envisages various provision to make special court as child friendly court. But unfortunately we don't have such infrastructure or facilities. The court rooms are so small, hardly 7-8 people can sit. But the basic purpose of such a beautiful legislation fails as because people have learnt to misuse it.

4.4.1.2. Case Studies

At the time of data collection, the researcher has randomly selected 15 cases out of the cases in the designated court for in-depth study. The researcher has used his observation, previous knowledge, skills and experience to find out the reality behind the case. The following are the brief facts of the cases studied by the researcher:

Case 1:

State of Odisha Vs. Balikuntha Nag

C.T. Case No: 237 of 2014 (POCSO)

U/s – 366, 376(2)(i)(n), 506, 294 of IPC

U/s - 6 of POCSO Act

Victim: Not to be disclosed
(SPP)

For Prosecution: Sri S.K. Sahoo

Accused: Balikuntha Nag

For Defence: Sri K.P. Negi

Gist of the case: As per FIR lodged by the father of victim, the accused kidnapped his daughter and kept her in his home. When the father visited to the accused's home, he found his daughter in physically and mentally harassed condition.

Date of Crime: 23/07/2014
Date of FIR: 23/07/2014
Informant: Victim's father
Date of Judgement: 03/05/2018
Judgement: Acquittal
Grounds cited in the judgment: Lack of authenticity of allegations made
against accused.
Witness Turning Hostile: Yes
Compensation: No Compensation granted
Approximate Duration between incident and judgment: 4 years
Accused known to the victim: Yes

Case 2:

State of Odisha Vs. Siman @ Simanchal Bag

C.T. Case No: 367 of 2015 (POCSO)

U/s – 366, 376(2)(i)(n) of IPC

U/s - 6 of POCSO Act

Victim: Not to be disclosed
(SPP)

For Prosecution: Sri S.K. Sahoo

Accused: Siman @ Simanchal Bag

For Defence: Sri K.P. Negi

Gist of the case as per the Prosecution: As per FIR lodged by the father of
victim, when her daughter had been outside to attend the call of nature, the
accused kidnapped his daughter and sexually abused her.

Date of Crime: 15/08/2015
Date of FIR: 21/08/2015
Informant: Victim's father
Date of Judgement: 20/09/2017
Judgement: Acquittal
Grounds cited in the judgment: The evidence of prosecutrix and
her parents not credible and trustworthy
Witness Turning Hostile: Yes

Compensation: No Compensation granted

Approximate Duration between incident and judgment: 2 years

Accused known to the victim: Yes

Case 3:

State of Odisha Vs. Samir Sahu

C.T. Case No: 264 of 2015 (POCSO)

U/s – 366, 376(2)(i)(n), 313 of IPC

U/s - 6 of POCSO Act

U/s – 3 (2) (v) of SC & ST (Prevention of Atrocities) Act

Victim: Not to be disclosed
(SPP)

For Prosecution: Sri S.K. Sahoo

Accused: Samir Sahu

For Defence: Sri K.P. Negi

Gist of the case as per the Prosecution: As per FIR lodged by the victim, accused on false pretext of marriage took her to Sambalpur where they stayed in a rented house. They had been into physical relationship and out of which, the victim got pregnant. The accused, after coming to know about the pregnancy of the victim, abused her and administered her medicine for abortion. Then he left to his village leaving her alone. When she came to meet the accused, accused's mother abused her with bad language casting her caste.

Date of Crime: 07/04/2015

Date of FIR: 30/06/2015

Informant: Victim

Date of Judgement: 21/02/2018

Judgement: Acquittal

Grounds cited in the judgment: The prosecution failed to prove beyond all the reasonable doubt.

Witness Turning Hostile: Yes

Compensation: No Compensation granted

Approximate Duration between incident and judgment: 3 years

Accused known to the victim: Yes

Case 4:

State of Odisha Vs. Lalit Mohan Naik

C.T. Case No: 03 of 2016 (POCSO)

U/s – 354 of IPC

U/s - 10 of POCSO Act

Victim: Not to be disclosed
(SPP)

For Prosecution: Sri S.K. Sahoo

Accused: Lalit Mohan Naik

For Defence: Sri K.P. Negi

Gist of the case as per the Prosecution: As per FIR lodged by the victim, at about 7 AM in the morning, when she had been to hotel Laximipriya to take tiffin, the accused offered her some sweet. She denied politely. But still the accused continued with his behaviour to give sweet. The he came close to her and touched her from back and front. When she screamed for help, the accused left her. The accused was identified as police constable of M. Rampur Police Station.

Date of Crime: 21/01/2016

Date of FIR: 21/01/2016

Informant: Victim

Date of Judgement: 27/04/2018

Judgement: Acquittal

Grounds cited in the judgment: The evidence of girl and her parents not credible.

Witness Turning Hostile: Yes

Compensation: No Compensation granted

Approximate Duration between incident and judgment: 2 years

Accused known to the victim: No

Case 5:

State of Odisha Vs. Manoj Kumar Sahu & Others

C.T. Case No: 110 of 2016 (POCSO)

U/s – 354(A), 341, 506, 201 of IPC

U/s - 10 of POCSO Act

Victim: Not to be disclosed
(SPP)

For Prosecution: Sri S.K. Sahoo

Accused: Manoj Kumar Sahu & Sibaram Harijan **For Defence:** Sri K.P. Negi

Gist of the case as per the Prosecution: As per FIR lodged by the victim's uncle, on 04/08/2016 the victim had been to school. At that time, the accused Manoj Kumar Sahu who is a teacher there called her and asked her to sweep the room and corridor. He was alone in the room and take undue advantages, he touched the private parts of the victim and kissed her. Then the victim stopped going to school and on repeated asking by her aunt, she revealed all the incident. On 09/08/2016, the victim along with her maternal grandfather went to school to identify the accused and at that time Sibaram Harijan threatened them to face dire consequences if they inform anyone.

Date of Crime: 04/08/2016

Date of FIR: 09/08/2016

Informant: Victim's uncle

Date of Judgement: 23/11/2017

Judgement: Acquittal

Grounds cited in the judgment: The evidence of girl and her parents not credible.

Witness Turning Hostile: Yes

Compensation: No Compensation granted

Approximate Duration between incident and judgment: 1 years

Accused known to the victim: Yes

Case 6:

State of Odisha Vs. Binod Bihari Dandasena

C.T. Case No: 195 of 2014 (POCSO)

U/s – 366, 376 (2) (i) (n) of IPC

U/s - 6 of POCSO Act

Victim: Not to be disclosed
(SPP)

For Prosecution: Sri S.K. Sahoo

Accused: Binod Bihari Dandasena

For Defence: Sri K.P. Negi

Gist of the case as per the Prosecution: As per FIR lodged by the victim's father, on 05/10/2014, after taking their dinner he along with his family members went to bed. At the midnight, when he woke up to attend the call of a nature, he noticed that his daughter is not there in her bed. He tried to search her with his other family member but could not find her and lodged the written report at Junagarh Police Station. Then the victim was recovered from accused's place by the police.

Date of Crime: 05/10/2014

Date of FIR: 06/10/2014

Informant: Victim's father

Date of Judgement: 31/08/2018

Judgement: Acquittal

Grounds cited in the judgment: Victim girl being major voluntarily accompanied

the accused and consented for alleged sexual act.

Witness Turning Hostile: Yes

Compensation: No Compensation granted

Approximate Duration between incident and judgment: 4 years

Accused known to the victim: Yes

Case 7:

State of Odisha Vs. Padman Kandha @ Majhi

C.T. Case No: 166 of 2014 (POCSO)

U/s – 376 (2) (i) (n) of IPC

U/s - 6 of POCSO Act

Victim: Not to be disclosed
(SPP)

For Prosecution: Sri S.K. Sahoo

Accused: Padman Kandha @ Majhi

For Defence: Sri N.K. Pradhan

Gist of the case as per the Prosecution: As per FIR lodged by the victim aged about 12, on 24.05.2014 the victim had been to grazing field to watch goats. At around 12 noon, when she was sitting alone under a tree, the accused taking

undue advantages of her loneliness, forcefully committed sexual intercourse with the victim causing bleeding injury on her private part.

Date of Crime: 24/05/2014

Date of FIR: 26/05/2014

Informant: Victim

Date of Judgement: 12/12/2016

Judgement: Convicted

Rigorous Imprisonment for 10
years

Fine imposed Rs. 5000/-

If failed to pay fine,3 months
imprisonment

Grounds cited in the judgment: The prosecution successfully established
the case against the accused.

Witness Turning Hostile: No

Compensation: DLSA directed to consider the compensation amount

Approximate Duration between incident and judgment: 2 years

Accused known to the victim: No

Case 8:

State of Odisha Vs. Nilambar Bhoi

C.T. Case No: 96 of 2016 (POCSO)

U/s – 363, 366, 376 (2) (i) (h) (n) of IPC

U/s - 6 of POCSO Act

Victim: Not to be disclosed
(SPP)

For Prosecution: Sri S.K. Sahoo

Accused: Nilambar Bhoi

For Defence: Sri B.B. Panda

Gist of the case as per the Prosecution: As per FIR lodged by the victim's father, on 13/07/2016, the accused kidnapped the minor daughter of the informant from his lawful custody. Later on received a reliable information regarding confining of his daughter by the accused in his house.

Date of Crime: 13/07/2016
Date of FIR: 16/07/2016
Informant: Victim's father
Date of Judgement: 11/01/2017
Judgement: Acquittal
Grounds cited in the judgment: Victim girl didn't support the allegation
Witness Turning Hostile: Yes
Compensation: No Compensation granted
Approximate Duration between incident and judgment: 1 years
Accused known to the victim: Yes

Case 9:

State of Odisha Vs. Pramod Kumar Parida

C.T. Case No: 66 of 2016 (Session/POCSO)

U/s – 366 (A), 276 (2) (i) of IPC

U/s - 6 of POCSO Act

Victim: Not to be disclosed
(SPP)

For Prosecution: Sri S.K. Sahoo

Accused: Pramod Kumar Parida
Pattnaik

For Defence: Sri A.K.

Gist of the case as per the Prosecution: As per FIR lodged by the victim's father, on 21/02/2014 he along with his wife and son had been outside of his village for labour work. At that time, his minor daughter was alone in his house. Taking undue advantages of her solitariness, the accused along with Ashok Parida came in a red motor cycle and kidnapped his daughter. During the search of her, when the informant met with the father of Ashok Parida and asked about her daughter, he expressed his ignorance.

Date of Crime: 21/02/2014
Date of FIR: 22/02/2014
Informant: Victim's father
Date of Judgement: 27/12/2016
Judgement: Acquittal

Grounds cited in the judgment: Victim girl stated herself to be 22 years old.

She didn't support the allegation of kidnapping

Witness Turning Hostile: Yes

Compensation: No Compensation granted

Approximate Duration between incident and judgment: 2 years

Accused known to the victim: Yes

Case 10:

State of Odisha Vs. Chitra Bhatra

C.T. Case No: 288 of 2013 (POCSO)

U/s – 366, 376 (2) (i) (n) of IPC

U/s - 6 of POCSO Act

Victim: Not to be disclosed
(SPP)

For Prosecution: Sri S.K. Sahoo

Accused: Chitra Bhatra

For Defence: Sri Rajesh Naik

Gist of the case as per the Prosecution: As per FIR lodged by the victim's father, on 09/08/2018, the accused had come to his village to take meat and liquor. And at about 9 pm, he fled with his daughter and started staying together in the house of Hiranya Pujhari.

Date of Crime: 09/08/2013

Date of FIR: 11/08/2013

Informant: Victim's father

Date of Judgement: 27/10/2016

Judgement: Convicted

Rigorous Imprisonment for 10
years

Fine imposed Rs. 5000/-

If failed to pay fine, 3 months
imprisonment

Grounds cited in the judgment: The prosecution successfully established the case against the accused.

Witness Turning Hostile: Yes

Compensation: DLSA was recommended to pay the compensation

Approximate Duration between incident and judgment: 3 years

Accused known to the victim: Yes

Personal Observation

1. Victim and Accused are familiar

In most of the cases, victim and accused know each other. They are quite familiar to each other.

2. Existence of previous sexual relationship between Victim and Accused

In number of cases, it was observed that the victim and the accused had previous physical relationship. But at one of time, their relationship turned into sexual offences as because the victim wearing a status of minor falsely accused their relationship to take undue advantages from the accused or to harass him or to blackmail him.

3. Family interference or pressure

In most of the cases, the victim turns hostile. Even though the victim and accused love each other, their parents don't accept it. And to separate them, they take undue advantages of this stringent legislation to harass the accused or to blackmail him. The provision of POCSO Act is widely misused to separate two love birds just because their families are not supportive.

In one of the landmark judgments by the Hon'ble Supreme Court of India clearly mentions "Right to choose life partner is a fundamental right. Consent of family, community, clan not necessary for marriage."³

4. Accused are mostly uneducated

The researcher has observed that in most of the cases, the accused are usually uneducated. In case of romantic relationship, the accused has absolutely no idea that having sexual relationship with a minor is dealt as a serious offence in India. Education play a vital role in preventing a person from getting indulged in such activities.

5. Bail is usually granted

The stringent legislation also makes the provision of bail more stringent for the accused. But the researcher has observed that bails are usually granted

³ *Shkati Vahini v. Union of India*, W.P(C) No. 231 of 2010.

taking in to the consideration of romantic relationship of accused and victim.

6. Conviction rate is lower

It was found that the conviction rate is lower and pendency of the cases are higher. Pendency is higher because of lack of corroborative evidence against the accused or false cases registered against the accused.

7. False and frivolous cases are more

The researcher observed that false and frivolous cases are higher. 90% cases are acquittal cases. The undue pressure and interference of parents or family members brings a lot of cases to the court.

8. Overburdened Court

The Special Court designed under POCSO Act is overburdened as it tries other civil and criminal disputes along with POCSO Cases. Hence, it becomes impossible for the court to complete the trial within 1 year as stipulated in POCSO Act 2012.

9. Burden of Prosecution

When Section 29 of the POCSO Act 2012 and Section 114A of Indian Evidence Act 1872 clearly make out the presumptions in cases of rape or sexual assault, the burden is still imposed on the prosecution to prove the case beyond all the reasonable doubt.

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