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CHILD SEXUAL ABUSE IN INDIA: AN ANALYSIS UNDER THE NEW CRIMINAL JUSTICE JURISPRUDENCE

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ABSTRACT

In the Social Fabric of Society, the child plays an important role as they are considered future nation builders. It constitutes a significant stage of human existence. Children are the purest and most innocent human beings in this world but the human race has degraded themselves to such an extent that they do not hesitate to make them a target to fulfil their unlawful desires. In India, the Parliament and Judiciary have done tremendous work for safeguarding the legal and human rights. Still, unfortunately, the children are subject to sexual exploitation directly or indirectly. India has the second-largest child population and is amongst top 5 nation-states that are facing the skyrocketing rate of sexual offences against juveniles. Every other moment in India, a minor is facing emotional cruelty, physical abuse, sexual abuse, or assault. In Punjab, such offences surged tremendously. The laws relating to sexual victimisation are very stringent in India despite that the offence is increasing day by day, resulting in an urgent need of an extensive and powerful policy as well as practical efforts to stop this menace.

INTRODUCTION

Juveniles constitute the bedrock of a sovereign entity and epitomize the prospective trajectory of the global order. This makes them essential to the process of developing a nation. They require additional legal padding since the law primarily sees them as defenceless, vulnerable units.³ Juvenescence constitutes a pivotal phase in the continuum of human existence. It serves as the foundational sub

stratum upon which the edifice of one's entire lifecycle is constructed. Cognizance of its paramount significance is indispensable for the collective societal fabric. A progeny embodies a prospective asset or developmental capital. It remains integral to the evolutionary progression of the sociopolitical sphere.⁴ From birth, it confronts formidable adversities. Starvation emerges as an existential threat. Illiteracy obstructs intellectual emancipation. Forced labour subjugates autonomy. Trafficking commodifies

3 Retrieved from <https://blog.iplayers.in/a-critical-note-on-child-laws-in-india/> visited on 29th July, 2024, at 12:07 am

4 Nanjunda D.C, "Child Labour and Human Rights", Kalpaz Publications, Delhi, 2008, pg.- 14

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human existence. Drug abuse erodes cognitive and physiological integrity. Sexual assault desecrates innocence.⁵ Progenies constitute the vanguard of a nation's futurity, orchestrating its trajectory toward affluent advancement. However, in the prevailing sociopolitical milieu, transgressions perpetrated against these foundational architects of the state are escalating at an alarming cadence. Juveniles are being inexorably coerced into nefarious enterprises such as human trafficking and mendicancy; commodified as mere instruments of pecuniary exploitation; and, in egregious instances, subjected to extermination.⁶ Even in the realm of sexual transgressions, including the abhorrent atrocity of child rape, their innocence offers no sanctuary, as they fall prey to the depraved proclivities of predatory malefactors under the guise of carnal gratification. There is nothing more outrageous than this. It is an act of violence against humanity. Due to the societal stigma associated with such occurrences, many of them are not even reported. Prostitution and human trafficking are precipitated by endemic destitution, asymmetrical socioeconomic proliferation, institutionalized venality, gendered subjugation, regressive customary and cultural orthodoxy, and cataclysmic environmental upheavals. These nefarious phenomena constitute egregious transgressions against the inalienable human rights of the afflicted, simultaneously precipitating the moral entropy of the society as a whole.⁷ Children require particular attention and safety. In these situations, it is primarily up to the courts to ensure that the children are given the appropriate legal protection. Children are our nation's natural resource as they represent the nation's future. They hold the key to tomorrow's hope.⁸

CHILD SEXUAL ABUSE

This constitutes the subjugation of a juvenile to carnal transgressions beyond their cognitive apprehension. It entails coercive participation in lascivious acts for which they lack volitional autonomy. Their developmental immaturity precludes informed acquiescence. Their incapacity to furnish juridical or conscious consent renders such vio-

lations egregious infractions against sociocultural mores and legal precepts.⁹ The term "child sexual abuse" is not restricted to rape. It has been discovered that the majority of child rapes are by family members. As a result, the girl children experience tremendous trauma. There are fewer opportunities for an adult to rape a child because of larger families and the number of people living there. When an adult abuser is a close relative, even a parent, the trauma is the most severe. The most painful experience for a girl child is to be sexually assaulted by someone she trusts to treat her with respect and who she perceives as a natural defender.¹⁰ Child sexual abuse dichotomizes into two principal classifications. Tactile violations encapsulate the imposition of lascivious engagements upon juveniles. These wrongdoings include the orchestration of prurient diversions. They entail the illicit fondling of minors. They mandate the coercive manipulation of another's genitalia. They involve the forcible insertion of extraneous objects or anatomical appendages into the oral, anal, or vulvar orifices of the victim. Non-tactile crimes manifest through the exhibition of pornographic material. They materialize in the deliberate indecent exposure of an individual's genitalia before a minor. They transpire through the commodification of children via human trafficking and coerced carnal servitude. They incorporate the surreptitious documentation of juveniles in sexually explicit postures. They necessitate the coercion of minors into the observation or auditory reception of licentious acts in corporeal or digital form. They extend to the voyeuristic surveillance of children during disrobing or engagement in excretory functions.¹¹

CAUSES OF EXPLOITATION

Cruelty against juveniles can occur in numerous settings. Some cases where a child is victimised:-

I. Domestic Victimisation

It's a form of abuse that occurs in homes between two people. Families with an account of domestic abuse are prospective to have children who grow up to experience abuse themselves. When a man mistreats his wife, it is also

5 R. Kavinth Chandar and M. Kannappan, "A study on Sexual Abuse of Children and Youth in India, International Journal of Pure and Applied Mathematics, 2018, Vol.119

6 Retrieved from <https://legalserviceindia.com/legal/article-9059-crime-against-children-a-critical-analysis.html> visited on 29 July, 2024 at 12:22 am

7 Dr. Sharanjit, "Gender Justice", Regal Publications, New Delhi, 2015, pg. no.- 125

8 R.P. Kataria and S.K.A. Naqvi, "Law relating to Sexual Offences", Orient Publishing Company, Allahabad, 2011, p. 106

9 Retrieved from <https://apps.who.int/iris/bitstream/handle/10665/1878/AFR.RC54.15%20Rev.1.pdf?sequence=1&isAllowed=y>, visited on 29 July, 2024 at 12:38 am

10 R.P. Kataria and S.K.A. Naqvi, "Law relating to Sexual Offences", Orient Publishing Company, Allahabad, 2011, p. 106

11 Retrieved from <https://www.preventchildabusenc.org/resource-hub/about-child-sexual-abuse/> visited on 29 July, 2024 at 12:45 am

likely that he will mistreat their children as well.¹²

II. Stress and Lack of Support:

When their guardians or parents are under pressure or stress, many children experience mental illness and abuse. It is difficult for parents to meet a child's requirements, especially when they are under pressure. Parents may mistreat their children as a result of divorce, extramarital affairs, money and employment issues, and other factors.¹³

III. Exploitation:

Child labour is the term used to describe the use of kids for commercial/domestic tasks. Sexual harassment intermittently materializes as a corollary of this systemic subjugation, precipitated by the child's estrangement from familial oversight and subordination to the custodianship of an employer. This pervasive exploitation engenders deleterious ramifications upon the juvenile's intellectual cultivation, ethics, sociocultural maturation, physiological well-being, and psychological equilibrium, as well as other areas such as child labour and harassment.¹⁴

IV. Lack of Education and Unemployment

The future of the child is in his or her education. And without it, every person will face enormous difficulty. Since they are outside of the shielding sphere of school and auxiliary welfare mechanisms, uneducated juveniles remain more vulnerable and susceptible to victimisation. This sexual exploitation is very frequently caused by unemployment. Even so, it can lead to marital disintegration, chronic inebriation, systemic impoverishment, and a plethora of ancillary adversities. Any modality of maltreatment, inclusive of sexual victimization, frequently manifests as a maladaptive psychosocial response to the existential duress engendered by vocational instability.¹⁵

EFFECTS OF SEXUAL CRUELTY IN JUVENILES:

It is frequently seen that sexual exploitation of kids can prevent victims of sexual abuse from growing up in a normal social environment and can lead to psychosocial issues for the rest of their lives. Even many years after the experience or experiences have seized, they can still lead to anxiety.¹⁶ The possible consequences of child abuse and neglect are:

I. Mental Health Problems:

In particular, for adolescents, mental health issues like depression and anxiety disorders have frequently been related to child maltreatment and neglect. Frequent maltreatment of minors can permanently harm their minds and seriously harm their mental health. They are susceptible to major ailments. Abuse of children has devastating effects and can have an adverse effect on a kid's ability to develop. The victimization of juveniles engenders profound ramifications upon an individual's somatic integrity, sociocultural integration, affective stability, and cognitive development. This pernicious maltreatment may catalyze externalized belligerence, manifesting through combative altercations, infliction of corporeal harm upon others, or the perpetration of grievous violence. Conversely, it may precipitate auto-destructive proclivities, including self-inflicted mutilation and suicidality as pathological responses to sustained psychological trauma.¹⁷ A child's mind is so deeply disturbed by child sexual abuse that it is impossible for them to recover from it. As a result, they live their entire lives in constant fear. The majority of child abuse goes unreported because of children's fear of being taken away from their parents.¹⁸

II. Teenage Suicide

Juvenile psychological affliction, particularly carnal victimization, constitutes a formidable etiological determinant of self-annihilation. This form of maltreatment exhibits the most pronounced correlation with suicidality relative to

12 Rutuja Chitnis, "Child Abuse- A Guide to Parents and Caregivers", Retrieved from <https://parenting.firstcry.com/articles/child-abuse-a-guide-to-parents-caregivers/> visited on 29 July, 2024 at 01:03 am

13 Kriti Aeron, "Child Sexual Abuse in India: An Understanding", International Journal of Law Management & Humanities, 2018 Volume 2, Issue 1

14 Shalini Gupta and Dr. Seema Garg, "Causes and Effects of Child Sexual Abuse", International Journal of Innovative Science and Technology, 2020, Volume 5 Issue 5

15 Dan Brown, Elisbetta De Cao, "The Impact of Unemployment on Child Abuse and Neglect in the United States", 2017 visited on 22 July, 2023 at 12:15 pm

16 CVML Rishita and Sai Ananya Mysore, "A Detailed Study on Child Abuse in India", International Journal of Law Management and Humanities, 2022, Vol. 5 Issue 1

17 Neha Singh, "Legal Research on Child Abuse", Retrieved from https://theadvocatesleague.in/assets/pdf/papers/legal_research_on_child_abuse.pdf, visited on July 22, 2023 at 12:48 pm

18 Shalini Gupta and Dr. Seema Garg, "Causes and Effects of Child Sexual Abuse", International Journal of Innovative Science and Technology, 2020, Volume 5 Issue 5

other modalities of childhood victimisation.¹⁹ Empirical inquiry substantiates the nexus between sexual wrongs and a spectrum of psychopathological manifestations. These cover melancholic dysphoria, pervasive suicidal ideation, diminished self-concept, pathological apprehension, recurrent nocturnal terrors, psychosomatic perturbations, social retraction, executive dysfunction, and dysregulated alimentary behaviors.²⁰

III. Inhibited Affective Articulation

Juveniles subjected to maltreatment encounter profound impediments in the externalization of their affective states. This affective suppression culminates in the internal sequestration of emotional distress, precipitating an array of psychopathological aberrations. In later stages of psychosocial maturation, such individuals frequently resort to substance-induced escapism. The proclivity for alcohol consumption or psychotropic dependency emerges as a maladaptive mechanism to attenuate the residual anguish engendered by chronic anxiety and pervasive melancholia.²¹

If we analyse the data of NCRB report against child under the POCSO Act then it was 47324 in 2019, 47221 in 2020 and 53874 in 2021. In Punjab, the offences against children increased tremendously from last few years and Child Sexual Abuses is one out of them which is also increasing day by day. If we analyze the National Crime Bureau Reports then we can understand and able to analyze the present situation of the society where the juveniles are reflected indispensable, in growth of every nation-state.²²

CONSTITUTIONAL SAFEGUARDS

The Constitution constitutes the paramount juridical framework governing the sovereign polity. Any legislative enactment incongruous with its doctrinal precepts shall be adjudicated as ultra vires. Thereby rendering it

null and devoid of legal efficacy.²³ The corpus of statutory prescriptions, the constitutional architecture, the ideological dogmas, the codified legal tenets, and the entrenched sociocultural conventions all emanate from a predominantly androcentric genesis. Enhancing status and dignity of girl child is the most important and most effective step to curb the prevalent evils of son preference and female foeticide.²⁴The Constitution safeguards children’s rights to prevent abuse of their dignity or integrity. In Indian society, susceptible children are more probable to experience unfair treatment.²⁵

Sr. No.	Sections	No. of Incidence	No. of child Victims	Crime Rate ²¹ per lakh Population
1.	Murder with Rape/ POCSO Act, 2012	3	3	0.0
2.	Section 4 and 6 of POCSO Act, 2012 R/W (Read With) Sec. 376 Indian Penal Code	751	753	8.6
3.	Section 8 and 10 of POCSO R/W Sec. 354 IPC	121	121	1.4
4.	Section 12 of POCSO Act, R/W Sec. 509 IPC	3	3	0.0
5.	POCSO Act R/W Section 377 IPC	28	28	0.3

Table No. 1. Data of Punjab (Source: National Crime Bureau Report 2021)

As per Art. 14, “The State shall not deny to any person equality before the law or equal protection of the laws within the territory of India.” This covers both natural and legal persons, as well as citizens and non-citizens. All people are entitled to equality before the law, regardless of their race, colour, or nationality.²⁶ Equality is the essence of democracy and hence it is an inviolable component of

19 Retreived from <https://nap.nationalacademies.org/read/10398/chapter/7#185> visited on 29 July, 2024 at 01.30 am

20 Pranita Mainali, Fatima Motiwala, Chintan Trivedi, Ramu Vadukapuram, Zeeshan Mansuri, Shailesh Jain, ‘Sexual Abuse and its Impact on Suicidal Ideation and attempts and Psychiatric Illness in Children and Adolescents with Posttraumatic Stress Disorder’, The Primary Care Companion, 2023

21 Rutuja Chitnis, “Child Abuse- A Guide to Parents and Caregivers”, Retreived from <https://parenting.firstcry.com/articles/child-abuse-a-guide-to-parents-caregivers/> visited on 29 July, 2024 at 01:50 am

22 shitaBhatnagar, “Child Sexual Abuse in India” retrieved from <https://www.legalserviceindia.com> last visited on 21st May 2022 at 9.30pm.

23 Krishan Pal Malik and Dr. Kaushik C. Raval, “Law and Social Transformation in India”, Allahabad Law Agency, Haryana, 2012, pg.- 305

24 Moly Kuruvilla, “Discrimination against girl child”, Gyan Publishing House, 2011, pg.- 129

25 Retreived from <https://blog.ipleaders.in/legal-framework-protection-child-rights/> visited on 29 July, 2024 at 02:22 am

26 Chiranjit Lal v. Union of India AIR 1951 SC 41

the constitutional superstructure.²⁷ Article 15 safeguards citizens against invidious differentiation predicated upon the axes of religious affiliation, racial taxonomy, caste stratification, biological sex, and nativity. Article 15(3) provides exception by making rules for the protection of children. Article 15(3) makes it abundantly apparent that “special provision” does not imply unequal treatment but is rather a measure put in place for the Indian children’s welfare and growth. The sovereign apparatus retains the prerogative to institutionalize specialized dispensations for juveniles within the purview of this constitutional provision.²⁸

Art. 19(1) codifies an inalienable prerogative. It confers upon the citizenry an untrammelled latitude to engage in discursive articulation and ideational dissemination. It entrenches the sovereign entitlement to establish collectivised entities, syndicates, and federations, to amass amiably devoid of armaments. It enshrines the uninhibited liberty of peripatetic traversal across the sovereign territorial jurisdiction. It accords the juridical sanction to domicile and effectuate permanent establishment within any geo-spatial subdivision of the nation-state. It consecrates the vocational autonomy to engage in professional endeavors, mercantile enterprises, commercial transactions, and economic undertakings. With regard to the freedoms guaranteed under Art. 19(1), SC maintained the right of three children to remain silent after they were removed from their school for rejecting to intone the National Anthem. Court held that if a person has legitimate conscientious objections because of his or her religious beliefs, he or she can’t be enforced to vocalise the Anthem. Thus, right to speak and to express oneself encompasses the freedom to remain silent.²⁹

In a jurisprudentially seminal adjudication, the SC mandated the sovereign apparatus to effectuates the unsailable constitutional entitlement of every juvenile, up to the chronological threshold of fourteen years, to institutionalized pedagogy. The judicial forum postulated that the DPSP enshrined within Article 45—mandating gratuitous and obligatory scholastic instruction for all progeny within this demographic ambit, inclusive of those below six years—must be construed in doctrinal consonance with the sacrosanct fundamental right to existential dignity enshrined under Art. 21.³⁰ There was a widespread call for

education to become a fundamental right. Consequently, pursuant to the mandates of Article 21-A, the legislature ratified the Constitutional 86th Amendment Act, 2002. thereby codified education as an inviolable fundamental entitlement.

Article 23 unequivocally proscribes human trafficking and coerced labor, denouncing such exploitative practices as antithetical to fundamental human dignity. Article 24 imposes an absolute interdiction on the engagement of juveniles below the chronological threshold of fourteen years in industrial enterprises, subterranean excavations, or any occupational domain classified as perilous to their physiological and psychological well-being.

Provisions of Indian Penal Code (IPC) (currently referred as The Bharatiya Nyaya Sanhita, 2023) for Child Protection

Before POCSO Act was passed, matters relating child victimisation may be tried under the older penal provisions. Section 293 of IPC (referred as Section 295 of BNS) forbids the showing of obscene material to children. The selling/purchase of juveniles for prostitution is forbidden by secs. 372 & 373 of the IPC (referred as Sections 98 and 99 of the BNS). Owners of brothels that let prostitutes to stay in their premises for two or three hours each night and let customers pay for their services are in breach of the Act. Any female under the age of 18 in the care of a brothel management was also presumed to be used for prostitution.³¹ The global campaigns for eradicating ferocity against womanhood & children in recent years indicate the enormity as well as seriousness of the atrocities committed against them. Unfortunately, crimes against women and children and their exploitation have multiplied many folds in recent years in spite of dozens of laws to protect and safeguard their interests.³² Despite the strict laws passed after *Mukesh v. State for NCT of Delhi*³³ (*Nirbhaya case*), *Md. Akhtar v. State of J&K*³⁴ (*Kathua rape incident*) shocked the entire community. An 8-year-old girl was the victim of a gang’s savage lust, subjected to brutal sexual assault, and exterminated to satiate their depraved carnal proclivities and sadomasochistic gratification. Three additional offences were added under the Amendment Act, 2018 i.e. sections

27 M.Nagraj v. Union of India AIR 2006 8 SCC 212

28 Retrieved from <https://www.legalserviceindia.com/legal/article-7203-article-15-right-to-equality.html> visited on 29 July, 2024 at 3:05 am

29 Bijoe Emmanuel v. State of Kerala AIR 1986 SCR (3) 518

30 Unni Krishnan v. State of Andhra Pradesh AIR 1993 SCR (1) 594

31 Vivekanand, Dr. Karan Singh Yadav, Dr. Ajay Kumar Yadav, “Sexual Offences against Female Child in India”, IJARIE, 2022, Vol. 8 Issue 3

32 Dr. S.K. Chatterjee, ‘Offences against Children and Juvenile Offence’, Central Law Publications, Allahabad, 2013, pg- 99

33 2017 SCC Online SC 533

34 Writ Petition (Criminal) No.85/2018

376AB, 376DA, and 376DB of IPC (currently referred as sections 65 and 70 of The BNS) These charges are specifically designed to address the increase in rape cases against minors. The severity and penalties for raping minors are now graded under these new charges. According to Section 376AB (currently referred as section 65 of The BNS), raping a woman under the age of 12 carries a min. sentence of 20 yrs. in prison, with a probable life sentence (meaning the remainder of the offender's lifespan) and maximum to a death sentence. While the gang rape provisions are extended in sections 376DA and 376DB (currently referred as section 70 of The BNS). These clauses have been carved out to address gang rape incidents involving women who are under the age of 16 or under the age of 12 (currently referring it under the age of 18 yrs.). For the first time, the IPC's Section 376 DA (currently referred as section 70 of The BNS) now mandates a mandatory life term for gang raping a female under six-teen (currently under eight-teen yrs.). While enhanced penalty for gang rape of a girl under twelve (currently referring it under 18 yrs.) under Sec. 376DB IPC (currently referred as section 70 of The BNS) is life imprisonment (even demise).³⁵ Section 366B (currently referred as section 141 of The BNS) criminalizes the act of transnational procurement, prohibiting the importation of any female below the chronological threshold of twenty-one years (presently delineated as under twenty-one for females and under eighteen for males) into Indian territorial jurisdiction for sexual exploitation and prostitution.³⁶

ANALYSIS OF POCSO ACT, 2012

“Child” is God's purest and most innocent creation, unaffected by any kind of materialism or worldly deception, wrongdoing, or social problems. However, the human race has degraded itself so far that even the most innocent members of God's creation, children, are not protected from the evil and criminal behaviour of other people. They met with incredible obstacles from the instant their lives come to existence.³⁷

The POCSO Act³⁸ is historical legislation as it defines sexual crimes of carnal violation, libidinous molestation, and obscene exploitation. Thereby fortifying the rights

and welfare of juveniles. The legislative mandate was operationalized on the 14th of November, 2012, in conjunction with the ancillary procedural codifications promulgated thereunder. POCSO Act constitutes a sui generis legal instrument devised to shield minors from sexual aggression, predatory harassment, and pornographic victimisation while ensuring the preservation of their juridical and psychological interests throughout the adjudicatory continuum. This legislative safeguard is effectuated through the institutionalisation of child-centric protocols governing the reportage of offences, evidentiary documentation, forensic inquiry, and the expedition of judicial proceedings. It mandates appointing Special Public Prosecutors and establishment of designated Special Courts to adjudicate such infractions. The statute prescribes draconian punitive measures commensurate with the gravity of the perpetrated violations.³⁹

Features:

POCSO Act addresses and/or prevents sexual assault, exploitation of children, sexual harassment, and pornographic abuse. Some provisions are:

- I. It delineates ‘child’ as ‘any person’ below eighteen yrs. This institutes a gender-neutral tone within the statutory architecture governing child sexual victimisation. It refrains from engendering any differential treatment concerning the gender of the perpetrator. Judicial pronouncements have substantiated this neutrality by adjudicating culpability upon female offenders in instances of such crimes.⁴⁰
- II. Secs. 19 to 22 necessitate any 3rd parties who are aware of sexual abuse acts to report such instances to ensure proper application.⁴¹
- III. Pursuant to Sec. 23, the divulgence of a minor's identity to the media stands categorically proscribed, barring explicit judicial authorisation from the Special Court. The ambit of identity encapsulates nominative particulars, residential co-ordinates, photographic representations, famil

35 The Criminal Law (Amendment) Act, 2018 (22 of 2018)

36 Retrieved from <https://old.amu.ac.in/emp/studym/100000881.pdf> visited on 29 July, 2024 at 04:05 am

37 Surbhi Garg, “The Protection of Children from Sexual Offences: A Critical Analysis”, *Journal of Legal Studies and Research*, 2018, Volume 4 Issue 4

38 The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012)

39 Retrieved from <https://pib.gov.in/newsite/PrintRelease.aspx?relid=113750> visited on 29 July, 2024 at 11:03 am

40 Retrieved from <https://timesofindia.indiatimes.com/blogs/developing-contemporary-india/five-things-to-know-about-the-pocso-act/> visited on 29 July, 2024 at 10:21 am

41 Retrieved from <https://blog.ipleaders.in/pocso-act-everything-you-need-to-know/> visited on 29 July, 2024 at 10:36 am

- IV. ial affiliations, scholastic institutions, communal vicinities, and any ancillary identifiers that could facilitate the discernment of the child's persona.⁴²
- V. In accordance with Sec. 28, the State Government is mandated to constitute a designated Court of Session as a Special Court. It is exclusively vested with the jurisdiction to adjudicate cases pertaining to sexual victimisation. This institutionalisation necessitates consultative concurrence with the Chief Justice of the respective HC. This ensures the judicial infrastructure remains attuned to the exigencies of expeditious and child-sensitive adjudication.⁴³
- VI. Section 42A states that where a provision of this Act conflicts with other laws, the POCSO Act shall prevail.⁴⁴
- VII. The Amendment Act 2019 primarily includes provisions for more severe punishments. Additionally, it has vested the judiciary with the discretionary prerogative to decree capital retribution in cases classified under the juridical doctrine of the "rarest of rare," thereby underscoring the gravity attributed to egregious transgressions against juveniles.⁴⁵

ROLE OF JUDICIARY

The judiciary exercises a proactive adjudicatory role in formulating a codified matrix of jurisprudential principles to uphold doctrinal uniformity. The court underscored that the imposition of penal sanctions must embody an equilibrium of equity. It must ensure impartiality not solely towards the accused but concurrently safeguarding the interests of the victim and the collective societal order.⁴⁶ In another case, according to the trial court, the accused was provoked to commit the crime by the actions of the victim. As a result, he will receive a year of stringent penal servitude. The HC nullified the adjudication rendered by the Trial Court. It augmented the punitive quantum to eight-year term of austere incarceration. The court opined that the ostensibly provocative nature of the victim's conduct

did not warrant an unduly lenient sentence. The adjudicatory dispensation of a mild punishment for such an egregious transgression contravenes the principles of proportionality in penal jurisprudence. The Supreme Court received a Special Leave Petition. It commuted the sentence to three yrs. of severe captivity. The apex tribunal acknowledged the provocative dimension of the victim's actions. It underscored the imperative of reconciling punitive severity with the contextual nuances of the case.⁴⁷

- I. A harrowing case transpired wherein a frenzied mob subjected a mother and her daughter to egregious indignities, forcibly disrobing them in a public marketplace, brutally murdered them, also engaged in sexual assault by inserting things in their private parts. Although this case occurred in 2006, judicial adjudication materialized only in the same year that the Shakti Mills case⁴⁸ reached its jurisprudential resolution in 2019. The magnitude of barbarity paralleled that of the Shakti Mills incident, transcending individual victimization to signify a collective assault upon the Scheduled Caste community. Despite the gravity of this crime, the presiding judicial authority rendered a mere life sentence⁴⁹ and in Shakti Mills case, it imposed death penalty by relying on Sec 376 E of The IPC (currently referred as Sec 71 of the BNS).

- II. In the Priyadarshini Mattoo case⁵⁰, a DU scholar endured egregious sexual violation and merciless extermination at the hands of her senior within the confines of her residence. The perpetrator, progeny of an eminent law enforcement functionary, evaded penal consequences despite the Trial Court's possession of copious evidentiary material. Even with all of this evidence, the trial judge still chose to acquit the defendant for some odd reason, obviously demonstrating the influence of the defendant's father in one way or another. Upon appellate scrutiny, the case ascended to the High Court, which ultimately adjudicated the defendant culpable of both sexual violation and homicide, mandating capital retribution. The accused subsequently instituted an appeal before the Supreme Court. The apex tribunal enunciated that in

42 Retrieved from <https://legalvidhiya.com/salient-features-of-pocso-act> visited on 29 July, 2024 at 11:04 am

43 Ibid

44 Retrieved from <https://byjusexamprep.com/upsc-exam/pocso-act-upsc-4> visited on 29 July, 2024 at 10:52 am

45 Varun Kumar, "Critical Analysis of the POCSO Act 2012 and the recent Amendment Act 2019", Vol. 2 Issue 1, 2020

46 State of Madhya Pradesh v. Mehtab Cri. Appeal no. 290/2015

47 Modi Ram and Lala v. State of Madhya Pradesh AIR 1972 SC 2438

48 Vijay Jadhav v. The State of Maharashtra W.P. No. 1181 of 2014

49 Central Bureau Of Investigation v. SakruMahaguBinjewar, Criminal Appeal nos. 1791-1795 of 2014

50 Santosh Kumar Singh v. State CrI. A. 87 of 2007

instances where judicial discretion oscillates between life incarceration and capital punishment, deference must be accorded to the lesser sanction in the absence of unequivocal determinacy.

- III. In the Kathua rape case⁵¹, an eight-year-old minor girl endured recurrent sexual violence within a temple following her abduction. The egregious nature of this atrocity was in no manner subordinate to the barbarity of the Nirbhaya rape case⁵². Nevertheless, whereas the judiciary adjudicated capital punishment in the latter, it sanctioned merely a life sentence in the former. In the Unnao rape case⁵³, the perpetrator—a former BJP legislator—was judicially indicted not solely for the sexual violation of a minor but also for orchestrating a conspiracy to eliminate her father. Despite the gravity of these transgressions, the court decreed only life incarceration.
- IV. Only the Nirbhaya atrocity and the Shakti Mills violation culminated in the imposition of capital retribution. The remaining transgressions engendered sentences of perpetual incarceration, despite the fact that all of the aforementioned rape incidents were equally grave and heinous in nature. The parties to the dispute feel unjustified in the absence of any standardised rules, and as a result, they appeal to higher courts in order to obtain relief, which is another factor in the delay of justice for the victim.

CONCLUSION

Childhood is a time of growth and should be filled with security, happiness, and safety, however, for a substantial demographic, this phase is marred by systemic vulnerabilities and exploitative adversities. India should be stricter in its monitoring, implementation, and decision-making of the juridical framework governing juvenile privacy. It's evident that children in India experience a wide range of issues, and child rights violations have grown significantly since time immemorial. This is due to ignorance about what rights are available to them and what are not. Children in India deal with issues like coerced labor, premature matrimonial coercion, intrafamilial maltreatment, extrinsic abuse, sexual victimization, illicit human commodification, and cybernetic predation. Society should look out for indications of abuse so that it can be identified and a child can be protected. A crucial step taken by the legislature to fortify juvenile welfare is POCSO Act, 2012. This makes it possible to have distinct legislation that only addresses offences against children. The Act facilitates the child-friendly procedure that must be followed in cases of child sexual abuse. The enactment of this very act has precipitated a discernible amplification in the reportage of child sexual victimization within India. Despite its legislative rigor, its deterrent efficacy remains circumscribed by systemic lapses in enforcement. Judicial discretion, in calibrating punitive decrees, must equilibrate the procedural entitlements of the accused, the restitutionary prerogatives of victim, & overarching imperatives of public interest. Penal sanctions exert profound ramifications upon an individual's psychological, corporeal, and socio-juridical constitution. We must understand that a person's mental, physical, and social status are all significantly altered by receiving a punishment. Therefore, while dispensing criminal justice, extreme caution must be used; otherwise, the basic concepts of justice would be compromised.

51 Mohd. Akhtar v. The State Of Jammu And Kashmir W.P. (CrI.) 85/2018

52 Mukesh & Anr v. State for Nct of Delhi & Ors. Criminal Appeal Nos. 607-608 of 2017

53 Sunaunvar v. State Of U.P. Criminal Appeal No. 90 of 1997