
AGGRAVATED SEXUAL ASSAULT UNDER THE POCSO ACT

Samanta Pradhan, Amity Law School, Amity University, Kolkata

ABSTRACT

In this paper I am going to delve into the topic Aggravated Sexual Assault under the Protection of Children From Sexual Offences POCSO Act, The punishments that is to be served and the protection of the victims. Aggravated Sexual Assault refers to particularly severe forms of sexual violence committed against children. Aggravated sexual assault can include various offence such as penetrative sexual assault, sexual assault, sexual harassment and pornography involving children. Aggravated sexual assault may involve factors such as the use of force, threats, weapons repeated offences or severe injuries to the victim. The POCSO Act provides to the stringent punishments for those found guilty of committing aggravated sexual assault against children, including imprisonment and fines. It also includes provisions for the speedy investigation and trial of such cases, as well as measures to ensure that safety and well being of child victims. Aggravated Sexual Assault under the POCSO Act typically involves circumstances that exacerbate the severity of the offence.

Introduction

Any person that has sexual intercourse, with any other person without the consent of that person in circumstances of aggravation is the simplest way to define aggravated sexual assault. Aggravated sexual assault is a very serious and heinous crime characterised by the use of violence, coercion or any other aggravating factors during a sexual assault. It usually involves sexual assault or contact or penetration without the consent of the other person and with aggravating circumstances such as the use of weapon, use of power, inflict serious bodily injury, involvement of multiple perpetrators and targeting of particularly vulnerable victims. In the legal words aggravated sexual assault is a felony and carries several penalties for the crime, including prison sentences and fine, mandatory sex offender registration¹ and other consequences. For the benefit of the society in order to protect the vulnerable's. In India the sex offender registry began from September 2018, and is monitored by the National Crime Record Bureau and with its inception its recorded to have 450,000 people. As we know in the POCSO Act², the term aggravated sexual assault has not been defined in any acts but rather only the punishment³ and under what circumstance⁴ will the act be considered an aggravating sexual assaults. The literal term has not been defined in any of the acts is a very crucial topic to debate on as the term aggravated sexual assault is a very prime term to start on, There are two types on regards to which we can categorise the aggravated sexual assault that is aggravated sexual assault and aggravated penetration sexual assault, On the basis of the types of the assault will the punishment be further given.

Aggravated sexual assault, whoever being a person of power for instance a police officer, security forces, armed forces etc., being a jail remand, public servant, being a relative or guardian, involvement of multiple persons, commits sexual assault in duration of their duty, in their base or in their care, while on their custody are termed as aggravated sexual assault under the POCSO section 9⁵. It is a very power imposed crime where we get to see the vulnerability of the victim as the offender is a person with power whether be it armed or with the position they have in the society or be it with involvement of multiple perpetrators, where a victim is vulnerable to take any steps before and after the assault committed. The victims and their

¹ National Sex Offender Registry

² Protection of Children From Sexual Offences (POCSO) Act, 2012

³ Under Section 6 and Section 10 of the POCSO Act

⁴ Under section 5 and Section 9 of the POCSO Act

⁵ Section 9 of the POCSO Act :- Aggravated sexual assault.

families tend to make sure not to make a complaint as they are haunted by the fear of being harmed this is the issue that prevails still in the South Asian countries that's why even after laws made and amended for the very purpose victims intend to keep it to themselves. In 2019 the highest rate of POCSO was reported from Sikkim and in that list Uttar Pradesh was said to be ranked 16th among the twenty eight Indian states⁶. This simply proves the under/un-reporting of the "child sexual abuse", In 2021 only 36.5% of crimes against children was registered under the POCSO Act. This is mostly due to the social stigma of the society, Aggravated Sexual Assault is a very serious crime and must be reported by the victim and the guardian or legal authority in charge, as the law intends to protect the victim, but it is the duty of the individuals to make sure that the perpetrators are punished and not let go off. Whoever with the sexual intent touches the private parts or shows the private parts and intends sexual desires out of the victim without the penetration is considered sexual assault.

Aggravated Penetration Sexual Assault⁷ is when the perpetrators penetrates the private part into the victims private part or for sexual desire penetrates the private part into victims any other body part. Since the term "Aggravated Rape" has not been termed we therefore follow with the terms of Sexual assault, Aggravated Sexual Assault and Aggravated penetration sexual assault . For aggravated penetrative assault also there are same aggravating circumstances as the aggravated sexual assault. Whoever being police officer, jail remand, armed forces, relative, security forces, guardian, involvement of multiple perpetrators by using deadly weapons, bodily injury commits penetrative sexual assault to the victim while being in the custody of, or take care of, or in their guidance. In India there is a lot of caste, status dynamics which in my humble opinion plays a very crucial role in these assaults, The perpetrators always intend to choose the vulnerable people of the society, their victims are the innocent vulnerable group of a society they overpower them and the victims are forced to do nothing but surrender. In a very recent case of the Lakhimpur Kheri district of Uttar Pradesh 2022, where two Dalit sisters aged 17 and 15 were found hanging in the tree of their district shook the state⁸. The victims had been gang raped by six accused and were then murdered by them and left the, hanging in the tree for people to believe they had committed suicide, the perpetrators had abducted the girls three hours prior to the bodies being found, the accused were charged under section 376D, 302 and 201 of the Indian Penal Code and have also been filed under the POCSO Act. The Lakhimpur

⁶ National Crime Record Bureau Data

⁷ Under Section 5 of the POCSO Act

⁸ The incident happened under the jurisdiction of the Nighasan police station on September 14, 2022

Kheri case with along with many other similar cases show us the overpowering of the perpetrators, where we get to witness the power dynamic a perpetrator holds where a victim is helpless. There are many such cases prevailing in India still waiting to be heard of in the courts.

The Punishment for Aggravating Sexual Assaults are stated below :-

Under section 9 of the Protection OF Children From Sexual Offences (POCSO Act), Aggravated Sexual Assault has been mentioned, and also the criterion for which the assault will be stated as aggravated sexual assault, however the punishment for such assault has been mentioned in Section 10⁹ of the Protection OF Children From Sexual Offences (POCSO) of whoever commits aggravated sexual assault shall be punished with imprisonment of not less than five years and which shall if needed be extended till seven years and also shall be liable to fine. The perpetrators of aggravated sexual assault must be punished and not let go off and so does the liability of the victim and the person taking care of the victim stand for making sure to report the assault and making sure that the accused is punished by the law. The assault leaves a grey area in the mental health of the victim, the victims must not only be taken care of the physical body but also the mental health of the victim should also be taken into account and make sure that the victim gets the proper treatment in both the aspects of physical and mental Health.

Aggravated Penetrative Sexual Assault has been defined under the Section 5 of the POCSO Act and also under which circumstances will the said be categorised as or mentioned as aggravated penetrative sexual. Now the punishment for said crime is mentioned in Section 6¹⁰ of the POCSO Act, whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall be not less than 20 years, but which may extend upto life imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death . The aggravated penetrative sexual assault holds a difference from the aggravated sexual assault because of the word penetrative as in one there is penetration and in the other there is not and so does the punishment vary in the aggravated penetrative sexual assault where the accused is said to be punished upto life or death. The punishment stated for such assault is very much adequate as the crime itself is very heinous and cruel. The provision also outlines severe penalties for those convicted of aggravated penetrative sexual assault

⁹ Section 10 :- Punishment for Aggravated Sexual Assault, POCSO Act, 2012

¹⁰ Section 6 :- Punishment for Aggravated Penetrative Sexual Assault, POCSO Act, 2012

against children. It emphasizes the gravity of the offence and aims to deter such heinous crimes by imposing significant punishment.

Protection of victims:-

The POCSO Act aims to provide and includes provisions that are to protect the victims including those who are the victims of aggravated sexual assault. The Protection of Children from sexual offences POCSO Act, mandates the use of child friendly procedure during the investigation, trial and proceedings in order to reduce the trauma, stress and strain that the child victim has endured. There are various methods regarding this that are recording the victims statement¹¹ in a manner that is comfortable and conducive to the age of theirs and also understanding often through the help of child psychologists or social worker or with the use of video conferencing. The child victims identity and the identity of the family members are protected throughout the legal proceedings. The POCSO Act prohibits the publication of any information that may lead to the identification of the victim ensuring their privacy and safety. The child victim is entitled to the presence of a support person such as their parent, guardian, trusted adult¹² during the trial proceedings and investigation. This support person is meant to give emotional support, assistance and assurance to the victim throughout the legal proceedings. The POCSO Act instructs the establishment of Child Welfare Committees in every district and at district level in order to ensure the welfare, well being, protection of the child victims. The child welfare committee is responsible for coordinating support services for child victims and including medical, counselling, rehabilitation, legal aid. The act also provides for interim relief to the child victims in order to meet with their medical and rehabilitation needs, allows payment of compensation by the state government to the victims to aid their recovery and rehabilitation. The POCSO Act prohibits victim blaming and stigmatisation of the child victims, It mandates that no inappropriate questions be asked and no questions must be asked that are intended to disgrace the child victim and imply that the victim are unworthy of belief and that the victim is at fault. The POCSO Act has established special courts for the trial of offences under the Act, in order to process the legal proceedings sooner and ensure timely justice for the child victims. The defendant cannot directly cross examine the victim during the trial, as it is prohibited under the act rather they can make questions and pose it through the judge or the prosecutor this done to protect the child victim from further trauma or intimidation.

¹¹ Section 24 :- Recording of a statement of a child

¹² Section 33 (4) allowing a family member, Guardian, relative, a friend that the child confides in

The trial proceedings are to be conducted in a child friendly environment for the victim to feel safe. The child friendly environment includes special courtroom designed to make the child feel safe and reduce stress and intimidation¹³. This includes including measures like providing comfortable seating, toys and colours to create a non-threatening environment.

¹³ Section 33 Procedures and Powers of Special Court