

## ERROR CORRECTED: THE HINDU EDITORIAL ON INTERPRETING POCSO ACT

Relevant for: Developmental Issues | Topic: Rights & Welfare of Children - Schemes & their Performance, Mechanisms, Laws Institutions and Bodies

The Supreme Court has done well to correct an egregious error of interpretation committed by a judge in the Nagpur Bench of the Bombay High Court in [holding that sexual assault on a child victim would require “skin-to-skin” contact](#). It has set aside two judgments that [acquitted two offenders against children from the graver charge of sexual assault](#), even while sentencing them to short prison terms for lesser offences. The High Court had construed [Section 7 of the Protection of Children from Sexual Offences \(POCSO\) Act](#), pertaining to sexual assault on children, in such a way that it concluded that the acts for which the accused were charged did not amount to sexual assault. The Attorney General of India took the initiative to challenge these two verdicts. The [NCW also questioned the Court’s understanding of a POCSO provision](#), arguing that the law does not brook the sort of dilution that led to the Court ignoring the basic fact that the entire Act is aimed at penalising actions rooted in sexual intent. The Supreme Court showed alacrity and sensitivity in staying the portions of the judgment related to the diluted interpretation earlier this year. In one case, the act of groping a 12-year-old girl’s breast over her dress and, in another, the acts preparatory to an assault on a five-year-old were proved in the trial. Even after accepting these facts, the absence of physical contact with the girl’s body part was used to absolve the accused of the charge of sexual assault. In the second case, the Court took a lenient view that the act of “holding the hands of the prosecutrix” and “opening the zip of the pant” did not fit into the definition of sexual assault.

It was quite apparent that the High Court’s understanding was flawed and out of sync with the legislative intent behind the enactment of a stringent law to protect children based on principles found in the UN Convention on the Rights of the Child. Writing for the Bench, Justice Bela M. Trivedi has said that restricting the interpretation of the words ‘touch’ or ‘physical contact’ to ‘skin to skin contact’ would be a narrow and pedantic interpretation of Section 7, and if such a narrow interpretation is accepted it would frustrate the very object of the Act. The judgment sets right not only a misinterpretation of the statute but also underscores that the core ingredient of a sexual offence is the “sexual intent” behind it. While restoring the trial court’s conviction for ‘sexual assault’ in one case, and ‘aggravated sexual assault’ in the other, the apex court has rejected attempts to interpret a law in favour of the accused when there was no real ambiguity in it. And in any case, as Justice S. Ravindra Bhat has pointed out in his concurring opinion, an interpretation should not be destructive of the law’s intention.

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