



Analysis: POCSO Act

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In News: POCSO Act overrides Muslim Personal Laws - Karnataka HC; POCSO Act against Adivasis in Nilgiris

Why the Topic is so Important?

Ten years after the enactment of The Protection of Children from Sexual Offences (POCSO) Act, which deals specifically with child sexual abuse, an analysis of POCSO cases across India has found gaps in its implementation – including increasing pendency of cases and a high rate of acquittals.

What is POCSO Act?

Protection of Children from Sexual Offences Act, 2012. This act is applicable to the whole of India and provides protection to children under the age of 18 years against sexual offences.

What are all the salient features?

Definition of sexual abuse – 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-a-vis the child, like a family member, police officer, teacher, or doctor.

- It has raised the age of consensual sex from 16 years as per Indian Penal Code, 1860 to 18 years. This means that –
- Any person (including a child) can be prosecuted for engaging in a sexual act with a child irrespective of whether the latter consented.
- A husband or wife can be prosecuted for engaging in a sexual act with his or her spouse under the age of eighteen years.
- The burden of proof lies on the accused – punishment has been provided for false complaints or false information with malicious intent.
- People who traffic children for sexual purposes are also punishable under the provisions relating to abetment in the Act.
- In keeping with the best international child protection standards, the Act also casts a legal duty upon a person who has knowledge that a child has been sexually abused to report the offence; if he fails to do so, he may be punished with six months’ imprisonment and/ or a fine.
- The Act further makes provisions for avoiding the re-victimisation of the child at the hands of the judicial system. It provides for special courts that conduct the trial in-camera and without revealing the identity of the child, in a manner that is as child-friendly as possible.
- The police are also required to bring the matter to the attention of the Child Welfare Committee (CWC) within 24 hours of receiving the report, so the CWC may then proceed where required to make further arrangements for the safety and security of the child.

What is the need for a separate Act?

The Constitution of India has incorporated several provisions to protect the rights of children and India has also been a signatory to landmark international instruments, such as the Convention on the Rights of the Child, the Protocol to the Convention on the Rights of the Child on the Sale of Children, etc., However, India lacked any dedicated provision against child sexual abuse. Cases would be tried under different provisions of the Indian Penal Code, which was found to be ill-equipped.

Before the passage of the POSCO, 2012 Act – there were only two punishable sexual offences in the IPC – rape, which is peno-vaginal penetration, and outraging the modesty of a woman, e.g. groping or taking indecent photographs. In *State vs Pankaj Chaudhary* (2011), the accused had inserted his fingers inside the vagina and anus of a five-year-old girl. He was accused of ‘outraging the modesty of a woman’ as there was no concept of penetration with fingers in Indian law. The defence had won in this case.

Also, the law did not distinguish between an adult and a child. However, in POCSO – all types of sexual offences against children as well as their corresponding punishments have been listed in detail.

After POCSO Act, In *State vs Manoj Shah and Pradeep Kumar* (2013), two men could face life imprisonment under POCSO for sexually assaulting a five-year-old girl. This case began in April 2013.

Why in News Recently?

1. Aleem Pasha had approached the court for bail after being booked by K R Puram police in Bengaluru as he had married and impregnated his 17-year-old wife. The defendants seeking bail contended that the accused had not committed any offence under provisions of the Child Marriage Restraint Act, as under “Mohammedan Law, the puberty is the consideration for marriage and normal puberty age is treated as 15 years...” Justice Rajendra Badamkar, however, ruled that “such arguments cannot be accepted in view of the fact that the POCSO Act is a Special Act and it overrides personal law and under the POCSO Act, the age for involving in sexual activities is 18 years.”
2. The analysis, titled ‘A Decade of POCSO’, was carried out by the Justice, Access and Lowering Delays in India (JALDI) Initiative at Vidhi Centre for Legal Policy, in collaboration with the Data Evidence for Justice Reform (DE JURE) program at the World Bank. It analysed a total of 230,730 cases from 486 districts spanning 28 states and Union Territories, from 2012 to February 2021. Case laws, policy interventions and case metadata was collected from the eCourts, the digital platform which gives information on pending cases, court orders, etc.

Important Findings of the Report:

- The study has found on average, it takes 509.78 days for a POCSO case to be disposed of – whereas it has been stipulated under the Act that such cases need to be disposed of within a year.
- The analysis has found that 43.44% of trials under POCSO end in acquittals while only 14.03% end in convictions. For every one conviction in a POCSO case, there are three acquittals.
- As per data published by the National Crime Record Bureau in 2021, in 96% of the cases filed under the POCSO Act, 2012, the accused was a person known to the child victim – in 48.66% of cases, the accused is either a friend or a romantic partner of the victim.
- Delhi has the highest number of POCSO trials in the country with 13.54 cases per 100,000 population in 2018 – which does not necessarily mean the number of incidents of sexual offences is higher, but that there is increasing awareness and reporting of cases.
- Chandigarh and West Bengal are the only states where the average time taken for convictions is within one year. States like Chhattisgarh, Haryana, Kerala, Sikkim, Chandigarh and the NCT of Delhi seem to have a much higher reporting of POCSO cases.
- Uttar Pradesh has the highest pendency with more than three-fourths (77.77%) of the total POCSO cases filed between November 2012 and February 2021 pending. On the other hand, at 80.2%, Tamil Nadu has the highest disposal percentage.