



REVIEW PAPER

The protection of children from sexual offences act, 2012: an overview and intricacies

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Exploitation is one of the most common offences in any country, and sexual exploitation is increasing yearly. Among different types of sexual exploitation, child sexual abuse is one of the most typical types affecting the marginalized group. To deal with the advancement in the cases of child sexual assault and harassment, the Protection of Children from Sexual Offences (POCSO) Act was enacted in 2012. The POCSO act focuses on protecting children's interests through every step of the judicial process. In this act, child-centric mechanisms for recording evidence, reporting, examination, investigation, and conducting speedy trials in designated special courts have been focused on and emphasized. This review article is intended to understand an overview of the protection of Children from Sexual Offences and the intricacies of the POCSO act. Five different case laws are discussed in this article. Though the POCSO Act 2012 is an excellent piece of legislation that recognizes almost every known form of sexual abuse against children as a punishable offence, a few challenges remain to be answered. A multi-dimensional, multi-agency team and multi-tier approach is needed for hours.

Keywords: Child abuse; case law; intricacies; prevention.

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INTRODUCTION

Exploitation is one of the most common offences in any country, and sexual exploitation is increasing yearly. Among different types of sexual exploitation, child sexual abuse is one of the commonest types affecting the marginalized group.

To deal with the advancement in the cases of child sexual assault and harassment, the protection of Children from Sexual Offences (POCSO) Act was enacted in 2012.¹ It is a gender-neutral law which simply means that the victim

and the accused can either be a male or a female. The POCSO act focuses on protecting children's interests through every step of the judicial process. In this act, child-centric mechanisms for recording evidence, reporting, examination, investigation, and conducting speedy trials in designated special courts have been focused on and emphasized.

Under the POCSO Act, a child is defined as any individual who has not attained the age of 18 years.¹ It elucidates different sexual offences, including penetrative

and non-penetrative assault, sexual harassment, and pornography. Under Section 19 of the protection of Children from Sexual Offences Act, every person who suspects or has knowledge of a sexual offence being committed against a child must report it to the local police or the Special Juvenile Police Unit.¹

Section 7 of the POCSO act defines the ambit of sexual abuse against children. It states that “Whoever, with sexual intent, touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.”¹

A survey conducted by World Vision India in 2017 found that one in every two children is a victim of sexual abuse in a country like India, and most of the perpetrators are known to the victims.² In another survey conducted in 2019 Economist Intelligence unit examined the responses of 60 countries and found that India’s legal framework for protecting children from sexual abuse and exploitation outranked the United Kingdom, Sweden, and Australia, the top three countries considered to have the best environment for children by the report.³ Keeping the above background in mind, this review article is intended to understand an overview of the protection of Children from Sexual Offences and the intricacies of the POCSO act.

Court judgments/observations

In a recent case Attorney General for India vs Satish, the Supreme Court (2021) quashed the controversial judgment of the Bombay high court, which held that no offence of sexual assault under the POCSO Act was made out as there was no ‘skin-to-skin’ contact between the accused and the victim.⁴ The Supreme Court stated in the judgment that the most important ingredient constituting sexual assault is sexual intent and not skin-to-skin contact with the child. Sexual intent is a question of fact that need to be determined from the varying circumstances.⁴

In Jagtar Singh versus the State of Himachal Pradesh (2014), the High Court of Himachal Pradesh negated the essential of skin-to-skin contact to attract Section 7 of the POCSO Act.⁵ The Section does not provide for touching the naked private parts of an individual. Even when the victim is wearing clothes, touching their private parts would be enough to attract the provisions of Section 7 of the POCSO act.⁵

In the case of Geetha vs the State of Kerala (2020), the High Court of Kerala set aside the bail order of the

Session Court, considering the gravity of the sexual crime would not be any less if the touch were through the victim’s dress.⁶ Therefore, the absence of skin-to-skin contact would not be a relevant indicator of the seriousness of the crime. This judgment further supports the above mentioned judgment in Jagtar Singh Versus the State of Himachal Pradesh.

The Tripura High court in 2018, while acquitting a man of charges of sexual assault, noted the statement of the survivor who her statements, did not speak about his (accused) “intention to molest”.⁷ Touching the hands of a minor without any intention to molest will not attract charges of sexual assault under Section 8 of the POCSO Act.

The Gujarat High Court (2021) recently set aside the proceedings initiated under the POCSO Act against a school principal, teacher, and others accused by a student’s mother of committing ‘sexual assault’ upon her daughter.⁸ The Court rejected the allegations the mother had that teacher, and the school principal committed sexual assault on her daughter by slapping her, using foul language, and threatening to leak a video of her adjusting her skirt in front of other students and parents.

The judge said, “...to bring home the charges under Sections 7 and 11 of the POCSO Act, ‘sexual intention’ is the foremost ingredient. In both the sections, the offender must have a ‘sexual intention’, and the offence should have been committed in furtherance of such ‘sexual intention’. Stressing that in both the sections, the legislature has laid much emphasis on the “sexual intention” of the offender, the judge opined that in the present case. However, the accused acted harshly and disproportionately. It could not be said their actions fell within the four corners of the provisions of the POCSO Act 2012.”⁸

DISCUSSION

These are a few examples of committing the offence of sexual assault under the POCSO Act, which revolve around four essential components to constitute the charges so the offence can be fixed, namely: sexual intent of the offender, touching the private parts of the child, making the child touch their private parts or of some other individual, commits any other act that entails physical contact without penetration. Therefore, establishing the sexual intent of the offender is vital, along with circumstantial evidence.⁹

Under Section 29 of the POCSO Act, the burden of proof is not on the victim but on the accused.¹ When an individual is accused of committing an offence under

Sections 3,5,7 and 9 of the POCSO Act, the Court must assume that the accused is guilty unless he can prove his innocence.¹ This is a crucial point to be discussed and debated as the mere allegation may affect the prospects of the alleged offenders. Any narrow interpretation of the provision which would defeat its object cannot be accepted. The legislature's intention cannot be affected unless a wider interpretation is given.

The reasoning for enacting a separate statute intended to decrease sexual crimes against children was undermined by the Court's interpretative methodology. The few judgments/observations of the hon'ble courts could affect the socio-legal implications for victims and offenders. Mere skin-to-skin contact is always challenging for medical examiners and legal authorities to decide and give final reports. Another difficulty a medical examiner may face in such cases where inappropriate touching the private parts through the clothes as there will be no external evidence on the examination found. The integrity of the victim and circumstantial evidence play a vital role in this kind of difficult situation to decide the fate of the case.¹⁰⁻¹³

Another point to ponder is regarding no time limit for reporting the incident is one of the areas to be discussed. Reporting the incident under this act may be carried out even after a year. This may be an area for organizations and companies to misuse for lapses in the time bounding reporting of such cases.

Identity issues are highlighted in Section 23 of the Act, which prohibits disclosure of the victim's identity in any form of media except when permitted by the special courts

established under the act. A violation of this section can invite punishments under the act, regardless of whether such disclosures are made in good faith.

Hence, the POCSO Act, while enacted to prevent sexual assaults, should not defeat its objectives; however, its misuse would not be tolerated by any means. Recent judgments considering the facts of the cases show the real essence of the act squashing the attempts of its misuse. It is important to examine such cases holistically from all angles before reaching the final verdict.

CONCLUSION

There is a need for a robust child protection policy to deal with child abuse concerns transparently and lawfully. Sexual intent is found to be an essential ingredient to punish offenders under this act. It is also important to prevent false and fabricated allegations made intentionally. At the same time, actual cases shall not escape from conviction. A golden rule for all medical professionals working with children is to report all reasonable degrees of suspicion of child sexual abuse to the legal authorities at the earliest possible. Hence, professionals need to be kept watch on sexual abuse and explore and examine the child thoroughly. Though the POCSO Act 2012 is an excellent piece of legislation that recognizes almost every known form of sexual abuse against children as a punishable offence, a few challenges remain to be answered. A multi-dimensional, multi-agency team and multi-tier approach, including access to psychosocial support, is to be made available to deliver holistic, comprehensive care under one roof for victims of child sexual abuse. It is essential to examine such cases holistically from all angles before reaching the final verdict.

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