

Editorial

A Review of the Protection of Children from Sexual Offences Act, 2012: Recent Amendments and Implications

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Abstract

The POCSO Act of 2012 stands as a pivotal legal instrument in India's efforts to combat child sexual abuse. This review article critically examines the Act, with a specific focus on the amendments made since its inception. The analysis delves into the important points of the Act, the effects of recent amendments, enforcement strategies, challenges encountered, and the potential future direction of child protection within this legal framework.

Keywords: POCSO Act, sexual offenses, child protection, amendments, legal framework.

Introduction:

India signed the Convention on the Rights of the Child (CRC) on 11 December 1992, marking a comprehensive declaration of children's rights that must be recognized and upheld. The CRC incorporated the ten principles of 1959 Declaration of Rights of Child and expanded them to fifty four articles of which forty one were related specifically to the rights of children covering almost every aspect of child's life. 1, 2

Among its various provisions, Article 19 of the UNCRC called for legislative, administrative, social, and educational measures to shield children from all forms of violence, including physical or mental injury, abuse, neglect, maltreatment, or exploitation, whether under the care of parents or any other responsible individuals. 1, 2

Article 34 of the UNCRC further emphasized the security of children from sexual exploitation, including preventing their involvement in unlawful sexual activities, prostitution, and participation in pornographic performances. 1, 2

In light of the outline of the UNCRC and the commitment to creating an environment, free from sexual exploitation for children, the POCSO Act, 2012 was enacted. This law specifically addresses sex related crimes against children—whether boys, girls, or third gender—committed by perpetrators of any gender, including men, women, and third gender individuals. 3

Children are vulnerable group, subjected to various crimes where in they are either pushed into committing crimes or crimes are conducted against them. They may be pushed into beggary, petty thefts or even engage in heinous crimes like robbery, murder or rapes. The crimes when committed against them are also manifold like kidnapping or more heinous ones like incest, sodomy or rape. Children being defenceless, clueless victim, not understanding what is happening when subjected to crimes or are convinced by deceitful explanation of no wrong doing despite their gut saying the opposite. The National Crime Research Bureau data (NCRB) 2022 has reported that children related crimes are increasing day by day and is on higher side by 8.7% compared to the year 2021. The majority of these cases involved kidnapping and abduction (45.7%), while 39.7% were registered under the POCSO Act. In 2021, these also saw a significant rise of 16.2% compared to 2020, with 1.28 lakh cases reported. (4)

The POCSO Act, 2012, was passed on 16 July 2012. Before this Act, there was no specific law addressing the heinous sexual crimes committed against children. Such offences were loosely covered under various sections of the Indian Penal Code (IPC), including Section 322, which addresses grievous hurt, (5) and Section 350, which defines the use of criminal force (6). Due to less clear definitions for crimes against children, these sections were applied indiscriminately. For more severe punishments, offenders were charged under Section 354 for assaulting a woman with purpose to outrage her modesty (7), Section 375 for rape (8), and Section 377 for unnatural offences (9). However, these sections were often vague; for instance, rape was only recognized as traditional penile-vaginal penetration, excluding other brutal forms of sexual assault, such as the insertion of objects into the vagina or anus. Additionally, these provisions were not gender-neutral, typically identifying only girls as victims. In 2012, the POCSO Act was introduced to address these gaps and prioritize the safety of children. (3)

The POCSO Act, 2012, consists of nine chapters and 46 sections. It outlines a child as any individual under the age of 18, making the Act gender-neutral, meaning victims can be boys, girls, or of any gender. The Act outlines various crimes, including sexual assault, penetrative sexual assault, sexual harassment, and their aggravated forms, with specific punishments prescribed for each offence. Additionally, it criminalizes the child pornography and specifies the corresponding penalties. (3)

The POCSO Act also details the ways for reporting crimes against children, how their statements should be recorded, and the legal process for handling such cases in special courts designated with the authority to deal with offences under it. The initial act was not found to be much effective before its amendments in the act that came into force on 5th August 2019 along with the POCSO rules of 2020. (3,)

The Act with its 2019 amendment, introduced a specific definition for "child pornography" under Section 2, clause 'da' of Chapter I, as "any visual depiction of sexually explicit conduct involving a child, including photographs, videos, digital or computer-generated images that are indistinguishable from an actual child, as well as images that are created, adapted, or modified but appear to depict a child."

In Chapter II, the Act categorizes sexual offences against children into three main groups, with corresponding punishments:

A. Penetrative Sexual Assault (Section 3): A accused is considered to commit penetrative sexual assault if:

Penetration	Vagina	Mouth	Urethra	Anus	Penis
Penis	Yes	Yes	Yes	Yes	---
Any object or part of the body, other than the penis	Yes	Yes	Yes	Yes	---
Any part of the child's body or other	Yes	Yes	Yes	Yes	---
His mouth or others mouth	Yes	No (kiss)	Yes	Yes	Yes

Table 1 showing representation of Penetrative Sexual Assault.

This definition ensures that both the victim and the perpetrator are gender-neutral, except for clause 3(a), where the perpetrator is assumed to have a penis.

B. Sexual Assault: defined under Section 7 as "Whoever, with sexual feelings touches the breast, anus, vagina or penis of the child or makes the child touch the breast, anus, vagina or penis of such person or any other person, or does any other act with sexual feelings which involves actual contact without penetration is said to commit sexual assault.

C. Aggravated Forms of Sexual Offences can be grouped on following basis:-

1) On basis of Perpetrator: Police officers, armed forces, or individuals in positions of authority (e.g., staff of remand homes, hospitals, educational institutions) who abuse their position; relatives or persons trusted by the child; gang rape; individuals previously convicted of similar offences under POCSO.

2) On basis of nature of the Offence: Use of deadly weapons, Infliction of grievous hurt or harm, Coercion or enticement to consume drugs or chemicals, Public humiliation by making the child naked during penetrative sexual assault.

3) On the basis of consequences of the Offence: Physical incapacitation, Transmission of HIV or pregnancy (specific to Aggravated Penetrative Sexual Assault), Death of the child.

4) On the basis of victim profile: Mentally or physically challenged children, Victims of repeated assaults, Children under 12 years of age, Previously pregnant children who are assaulted again.

5) On the basis of context of the offence: During instances of sectarian or communal violence, During natural calamities.

Punishments as incorporated for various categories are:

- a. For crimes categorised under Penetrative Sexual Assault, a minimum of 10 (20 if age of victim is under 16 years) years and a fine, which may extend to life imprisonment and a fine.
- b. For crimes categorised under Aggravated Penetrative Sexual Assault, the punishment described is 20 years and a fine, which may extend to life imprisonment and a fine. The fine collected is allocated for the child's treatment and rehabilitation.
- c. For crimes categorised under Sexual Assault, punishment is 3 years and a fine, which may extend to 5 years imprisonment and a fine.
- d. For crimes categorised under Aggravated Sexual Assault, punishment is 5 to 7 years and a fine.

As per Section 11 and its amendments (3, 10): Sexual harassment of a victim child is defined as any act performed with sexual thinking, including: Verbal or Non-Verbal Harassment, Exhibitionism, Stalking and Enticement or Threats: Using media (fabricated or real) to entice or threaten the child for pornography or to display their body parts. Sexual harassment of a victim child is punished up to 3 years and/or a fine.

The Section 13 defines the use of a victim child in pornography as involving media Representation, Depictions and its punishment for first offence is Imprisonment for up to 5 years and a fine and Imprisonment for up to 7 years and a fine for subsequent offences.

As per Section 14 and its amendments provides punishments for victimizing a child for pornography and if offender also commits an offence like penetrative sexual assault or aggravated sexual assault while participating in pornographic acts involving the child, they will be punished under their sections and child pornography section punishment.

The Section 15 and its amendments prescribes punishments for storing pornographic material involving children.

The Section 16 defines abetment as aiding, instigating, or facilitating the harbouring, employment, or transport of a victim child through coercion, force, deception, or fraud. The abettor is punishable under Section 108 of the Indian Penal Code (IPC).

The Section 17 defines the punishment for attempting to abet as half of the longest term prescribed for the offence. If the offence carries a life sentence, the punishment for the attempt will be up to 10 years, as explained in Section 57 of IPC.

The Section 18 provides additional details on abetment and attempt as outlined in the preceding sections.

The Section 19 to 23 describes procedure of telling of case under Chapter V of this Act. This describes that the communication of the child will be taken by special police unit meant for this act or nearest jurisdiction police in a friendly way and provide treatment and security to the child if in need within 24 hours in the nearest shelter home or hospital. They will also tell the

matter to Child welfare committee or the special court of if not constituted, session court. Also the person who reports the said act will not be held liable if done in good faith.

The section 20 states that if such incidence comes under the notice of any institution, media, studio, that includes the obligation to report to Police. If they failed to report, they would be held responsible and liable for punishment under section 21 from 6 months to 1 year with fine.

The section 22 provides for false implication under this act and has made it punishable from 6 months to 1 year with fine. Similar punishment is suggested for reporting the recognition of child by any means in media vide section 23.

Section 24, 25 and 26 describes procedure for recording of the divulgence of child by police and magistrate respectively in a child conducive environment at home or at any place in security of his parents/trusted persons provided the accused is away from sight.

Section 27 describes that the examination (medical) of the child will be done as per section 164A of Cr PC irrespective of FIR/Complaint had been lodged or not and a Lady doctor will only do examination (Medical) of girl victim child in presence of child's parent.

The Section 28 describes the provision of special courts for this act.

Under Sections 29 and 30, if someone is accused of offences under Sections 3, 5, 7, or 9, the court presumes the accused as guilty, and then he/she must prove their innocence beyond a reasonable doubt.

The Sections 31 and 32 outline that cases are handled in special sessions courts, with a public defender acting as the public prosecutor and the provision for a special prosecutor if needed. The Sections 33 outline the procedures and powers of Special Courts in handling cases. The Special Court can start proceedings even if the accused hasn't been formally charged. It ensures that accused should be away, atmosphere is conducive to the child and he/she is given unlimited breaks. The defence lawyer cannot ask aggressive and character assassination questions and questions have to be asked through special court. The Sections 34 outlines that if the accused is a child then he/she will be trialled under the Juvenile Justice (Care and Protection of Children) Act, 2015.

The Sections 35 outlines that evidence must be recorded within 30 days of the case being taken up, and the trial must be completed within 1 year.

The Sections 36 ensures that the accused should not be present near the child when giving evidence or anytime during court proceedings. The Sections 37 outlines that the trial should be conducted under the camera in presence of his parents/trusted guardians. The Sections 38 outlines that the court can take special translator or educator on paid basis for better understanding from the the child. Sections 39 to 46 outline the support and legal help to the victim. It describes that the specific sections (3 to 13) is not applicable while undergoing medical examination or treatment, provided this is done with the consent of the child's parents or guardian.

In 2012, rules were made to support this Act, and these were further updated in 2020 with the Act amendment. It provided detailed guidelines for medical examination (11):

- 1) Emergency Medical Care: On Police information about a child crime, he gives priority to the child needs especially emergency medical needs, and take the child to the nearest hospital within 24 hours.
- 2) Privacy: Emergency medical care should be provided after protecting the child's privacy, and a parent, guardian, or trusted person should be present.
- 3) No Documentation Required: Medical facilities cannot ask for legal or official documents before providing emergency care.
- 4) Treatment: The medical professional must: Treat any injuries, including those to the genital area., Provide treatment for sexually transmitted diseases (STDs) and HIV, including preventative medication if necessary. Discuss pregnancy and emergency contraceptives with the child (if she is old enough) and her guardian. Arrange for

mental health or psychological counselling if needed. Any forensic evidence collected during emergency medical care must follow the guidelines in section 27 of the Act.

The Act, was a landmark legislation aimed at providing a robust legal framework to shield children from sexual exploitation and manhandling. It not only defined various sex related offences against children but also laid down stringent penalties for offenders. However, recognizing the evolving criminality against children, several amendments were introduced to strengthen and enhance the effectiveness of the Act. These amendments, made in subsequent years, have tried to sought and address gaps in the original legislation and align it more closely with international standards and best practices in child security.

Discussion:

1. **Key Provisions of the POCSO Act:** The POCSO Act, in its original form, defined a range of sex related offences against child victims, including but not limited to sexual harassment, sexual assault and pornography involving children. It also prescribed penalties for offenders, with provisions for imprisonment and fines. Additionally, the Act laid down child-friendly procedures for reporting, investigation, and trial of such offences, ensuring that the victim's rights and dignity are upheld throughout the trial of the case.

2. **Latest Amendments:** It have been instrumental in addressing emerging challenges and strengthening the safeguard of children from sex related crimes. Important amendments include:

- **Widening the Definition of Sexual related crimes:** The amendments have expanded the definition of sexual related crimes to encompass a broader range of acts, thereby closing potential loopholes and ensuring a more comprehensive legal coverage.

- **Enhanced Punishment for Offenders:** The amendments have increased the punishment for certain sexual offences, reflecting society's recognition of the gravity of such crimes and thus discouragement.

- **Strengthening Child-Friendly Procedures:** The amended Act places greater emphasis on child-friendly procedures during investigations and trials, including ways for recording child divulgence in a safe environment and avoiding re-traumatization of the victim.

- **Stricter Provisions for Bail:** The amendments have introduced stricter provisions regarding bail for offenders, considering the risk they pose to society and the need to prevent their potential re-offending or tampering with evidence.

These amendments collectively contribute to a more robust and effective legal framework for addressing child sex related crimes and its justice.

3. **Enforcement Mechanisms:** Effective implementation of the POCSO Act requires a multi-faceted approach involving law enforcement agencies, judiciary, child welfare organizations, and the community at large. Specialized training programs for police personnel and judicial officers, establishment of dedicated special courts for POCSO cases, and provision of victim support services are crucial components of the enforcement mechanism. Evaluating the implementation of these mechanisms is essential to gauge the Act's efficacy in practice.

4. **Challenges and Criticisms:** Despite its significance, the POCSO Act faces several challenges and criticisms that merit attention. These include delays in the justice delivery system, low conviction rates, under-reporting of cases due to stigma and fear, lack of adequate support services for victims, and the need for better coordination among stakeholders. Addressing these challenges is imperative to ensure that the Act achieves its intended objectives and provides meaningful security to children.

5. **Future Prospects:** Looking ahead, the future of child security under the POCSO Act hinges on continued reforms, proactive measures to address challenges, and sustained efforts to raise awareness and promote a culture of child safety. Strengthening prevention strategies, enhancing victim support services, improving investigation and prosecution procedures, and fostering collaboration among stakeholders are key areas that warrant focus.

Additionally, leveraging technology and innovation in combating online sexual exploitation of children is a growing concern that requires targeted interventions within the legal framework.

Summary:

In summary, this review article has provided an in-depth ins and outs of the POCSO Act 2012, focusing on the recent amendments and their implications. The Act, along with its amendments, plays a crucial role in safeguarding children from sexual related crimes and ensuring justice for victims. However, ongoing efforts are needed to address critical issues, strengthen enforcement mechanisms, and enhance the Act's effectiveness in safeguarding children's rights and well-being.

Conflict of Interest

Nil

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