

POCSO: An Introduction

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The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) was enacted to protect children from sexual offences and introduce child-friendly judicial mechanisms for dealing with the cases of Child Sexual Abuse (CSA). The Act came into force on 14th November 2012 and is a comprehensive law to protect children from sexual harassment, sexual assault, and pornography. It safeguards the child's interests at every stage of the judicial process by incorporating child-friendly mechanisms for reporting, recording evidence, investigation, and speedy trial of offences through special courts. As per the Act, a child is 'any person below 18 years of age, of any gender, who has been sexually wronged and can access the remedies provided under the Act.

The Government of India has formulated and legislated various child-centric Acts, namely Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act), Commissions for Protection of Child Rights Act (CPCR) 2005 and the Protection of Children from Sexual Offences (POCSO) Act, 2012 for protection and promotion of child rights. While the JJ Act, 2015 ensures children's safety, security, dignity, and well-being, the POCSO Act, 2012 is a comprehensive law protecting children from sexual assault, sexual harassment, and pornography. Despite such comprehensive child sexual abuse laws in our country, child sexual abuse cases are increasing. Few states like Madhya Pradesh, Maharashtra, Uttar Pradesh, Haryana and Delhi constitute nearly 51 per cent of the country's POCSO cases, and according to a survey conducted by World Vision India in 2017, one in every two children is a victim of sexual abuse in our country (Madan, TOI, November 2021). In most cases, the perpetrators are known to the victim, and therefore the victims are reluctant to approach the authorities. The major hurdle is the inadequate knowledge about the POCSO Act.



What is covered under POCSO Act?

POCSO defines various forms of sexual abuse, including penetrative and non-penetrative assault, sexual harassment and pornography. It considers a sexual assault to be aggravated under certain circumstances, such as when the abused child is mentally ill or when a person who commits the abuse is in a position of trust or authority (like a family member, teacher, doctor, or police officer). People who traffick children for sexual purposes are also punishable under the Act. POCSO prescribes stringent punishment with a maximum rigorous imprisonment for life and fine. According to Section 44 (1), the National Commission for Protection of Child Rights (NCPCR) and State Commission for Protection of Child Rights (SCPCR) should ensure the implementation of the provisions of the Act (Firstpost, August 2021). Another prominent feature of the POCSO Act is the mandatory reporting obligation imposed (under Section 19). As per this section, every person who suspects or knows of a sexual offence being committed against a child has to report it to the local police or the Special Juvenile Police Unit (Madan, TOI, November 2021). Any person heading an institution, if fails to notify the Commission of a sexual offence, is liable to be punished. The Act, however, exempts children

from any non-reporting liabilities.

Often child sexual abuse victims do not voice their complaints immediately for multiple reasons. Recognizing this, the Union Ministry of Law and Justice in 2018 clarified that there is no age bar or time for reporting sexual offences under POCSO. Consequently, a victim can report an offence immediately or even a few years after they were abused. Therefore, organizations dealing with children cannot reject child sexual abuse complaints raised against their employees on the pretext of time-lapse.

For the victim's safety, the POCSO Act prohibits disclosing the victim's identity in any form of media (except when permitted by the courts established under the Act). This violation can attract punishments under the Act, regardless of whether such disclosures are made in good faith. Any organization dealing with children has to take care of specific rules as prescribed by the Act. Firstly, any institution working with or housing children must conduct periodic police verification and background check of the employees. Secondly, the institution must impart regular training to sensitize its employees on child safety and protection. Most importantly, it must adopt a child protection policy based on zero tolerance to violence against children.

The Protection of Children from Sexual Offences (Amendment) Bill, 2019

The Protection of Children from Sexual Offences (Amendment) Bill, 2019, seeks to provide severe punishment to those involved in sexual crimes against children, the death penalty in cases of aggravated sexual assault, and levying fines and imprisonment. The POCSO Bill recommends protecting the interest of vulnerable children in

times of distress, disaster or any natural calamity, thus ensuring their safety. The Bill was approved by Parliament- by the Rajya Sabha on 29th July 2019 and the Lok Sabha on 1st August 2019. The Bill seeks to amend the Protection of Children from Sexual Offences (POCSO) Act, 2012, and provide stringent punishments for other crimes against those below 18 years of age. The POCSO Bill pursues to award strong punishment when drugs are administered to children to develop early sexual maturity. The legislation introduced a minimum jail term of 20 years or for the entire life and death penalty in rare cases, as per the Court's decision.

The POCSO Act was amended to make it more efficacious in dealing with cases of child sex abuse in the country. The Act was notified on 6th August 2019 and came into effect from 16th August 2019.

POCSO e-Box

A study on POCSO cases in India in March 2021 conducted by Kailash Satyarthi Children's Foundation reported that child sexual abuse is one of the most pressing concerns. The rising number of cases indicates the failure of the State and society to provide children with a safe environment. The NCPCR received 354 complaints through POCSO e-Box during the last three years, i.e., 2017-18, 2018-19, 2019-20 and the current year 2020-21 (till 31st January 2021), and out of these 354 complaints, 140 complaints have been addressed conclusively (Firstpost, August 2021). The rising public consciousness, media attention, along with the proactive measures taken by the judiciary in the last few years, proves that the right of children to live with dignity is finally getting the attention it requires.

References

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