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AN ANALYSIS OF PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 (POCSO ACT)

AUTHORED BY - VANDANA

Abstract

The Protection of Children from Sexual Offences Act, 2012 commonly known as POCSO Act is a comprehensive law to provide for the protection of children from the offences of sexual assault, sexual harassment and pornography, while safeguarding the interests of the child at every stage of the judicial process by incorporating child-friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts. The inadequacy of Indian Penal Code and absence of any stringent legislation for addressing and tackling heinous crimes such as sexual exploitation and sexual abuse of children along with due compliance of Article 15 of Constitution of India which mandates the states to protect the children of India and the United Nations Conventions on the Rights of the Child which prescribes the set of standards to be followed by state parties in securing the best interest of the child, birthed the commencement of POCSO Act, 2012. The paper enumerates both the substantive part of the Act, where it talks about the various sexual offences that is committed against the child victim along with their punishments and also the procedural part of the Act, which contains the procedure required to be followed to report the case with special mention to the process of medical examination of the victim. The paper also deals with The Protection of Children from Sexual Offences (Amendment) Bill, 2019 which enhanced the punishment for various offences along death penalty due to the steep rise in the cases registered under the Act.

INTRODUCTION

The very inadequacy of Indian Penal Code and absence of any stringent legislation for effectively addressing and tackling heinous crimes such as sexual exploitation and sexual abuse of children birthed the commencement of POCSO Act, 2012 as the very intention of Government establishments was to protect the children from offences of sexual assault, sexual harassment and pornography and to facilitate adequate legal machinery by establishing special courts for trial of such offences and matters incidental connected with child sexual abuse crimes. This was in due compliance of Article 15 of Constitution of India which mandates the

states to protect the children of this nation and in lieu of United Nations Conventions on the Rights of the Child which prescribes the set of standards to be followed by state parties in securing the best interest of the child. Though this legislation is general in nature and applies to everyone irrespective of their caste, creed, gender, religion etc. particularly, it punishes the offender committing crimes against the children in rural as well as urban areas of the country.

IMPORTANT PROVISIONS OF THE ACT

- POCSO Act defines child as any person below 18 years of age,
- There are five types of sexual offences against children under POCSO Act. These are: penetrative sexual assault; aggravated penetrative sexual assault; sexual assault; aggravated sexual assault; and sexual harassment,
- Abetment of an offence or an attempt to commit an offence is also punishable under the Act,³
- Using a child for pornographic purposes such as representation of the sexual organ of a child, usage of a child engaged in real or stimulated sexual acts, the indecent or obscene representation of a child is an offence under POCSO Act and is punishable,
- A Special Court is a court to be set up under section 28 of the POCSO Act for providing speedy trial and to try the case in a child friendly atmosphere.
- The Special Court shall complete the trial within a period of one year from the date of taking cognizance of the offence.

THE SEXUAL OFFENCES WHICH ARE RECOGNIZED UNDER THE POCSO ACT AND PUNISHMENTS FOR THOSE OFFENCES

[Comparative overview of 2012 Act and 2019 Amendment Act]

- **Penetrative sexual assault:** Under the Act, a person commits “penetrative sexual assault” if he: penetrates his penis into the vagina, mouth, urethra or anus of a child, or (ii) makes a child do the same, or (iii) inserts any other object into the child’s body, or (iv) applies his mouth to a child’s body parts. The punishment for such offence is imprisonment between seven years to life, and a fine. The Bill increases the minimum punishment from seven years to ten years. It further adds that if a person commits penetrative sexual assault on a child below the age of 16 years, he will be punishable with imprisonment between 20 years to life, with a fine.
- **Aggravated penetrative sexual assault:** The Act defines certain actions as aggravated penetrative sexual assault”. These include cases when a police officer, a member of the armed

forces, or a public servant commits penetrative sexual assault on a child. It also covers cases where the offender is a relative of the child, or if the assault injures the sexual organs of the child or the child becomes pregnant, among others. The Bill adds two more grounds to the definition of aggravated penetrative sexual assault. These include: (i) assault resulting in death of child, and (ii) assault committed during a natural calamity, or in any similar situations of violence. Currently, the punishment for aggravated penetrative sexual assault is imprisonment between 10 years to life, and a fine. The Bill increases the minimum punishment from ten years to 20 years, and the maximum punishment to death penalty.

- **Aggravated sexual assault:** Under the Act, “sexual assault” includes actions where a person touches the vagina, penis, anus or breast of a child with sexual intent without penetration. “Aggravated sexual assault” includes cases where the offender is a relative of the child, or if the assault injures the sexual organs of the child, among others. The Bill adds two more offences to the definition of aggravated sexual assault. These include: (i) assault committed during a natural calamity, and (ii) administering or help in administering any hormone or any chemical substance, to a child for the purpose of attaining early sexual maturity.

- **Pornographic purposes:** Under the Act, a person is guilty of using a child for pornographic purposes if he uses a child in any form of media for the purpose of sexual gratification. The Act also penalises persons who use children for pornographic purposes resulting in sexual assault. The Bill defines child pornography as any visual depiction of sexually explicit conduct involving a child including photograph, video, digital or computer generated image indistinguishable from an actual child. In addition, the Bill enhances the punishments for certain offences as shown the below mentioned table.

PROCEDURE FOR REPORTING OF CASES UNDER THE ACT

- Reporting of offence to the SJPU or the local police
- In case, child is in need of care and protection, SJPU/ local police to provide such care within 24 hours of the report
- SJPU/ local police to report the matter to CWC and Special Court within 24 hours
- Obligation of media, studio and photographic facilities report cases to SJPU/ local police
- Failure to report commission of offence punishable with imprisonment of six months or with fine or both
- Failure to record an offence also punishable with imprisonment of six months or with fine or both

- Failure to report by a person, who is in charge of any company or an institution, in respect of offence committed by subordinate under his control, also punishable with imprisonment of one year and fine
- Failure to report not punishable in case of a child
- False complaint against any person with malicious intent punishable with imprisonment of 6 months or with fine or both
- False complaint against child, punishable with imprisonment of one year or with fine or with both
- No civil or criminal liability for giving information in good faith
- Media not to disclose the identity of the child, except when permitted by the Special Court
- Identity includes: name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child
- Punishment in case of contravention is imprisonment for not less than 6 months which may extend to one year

Measures to be taken by Special Court during trial

- The identity of the child should not be disclosed.
- Frequent breaks during trial should be permitted to the child
- Create a child-friendly atmosphere by allowing a family member or any person the child trust to be present
- Ensure that the child is not summoned to testify time and again
- Ensure that the dignity of the child is maintained by disallowing aggressive questioning or character assassination of the child.
- Ensure that the child victims should not be brought through the common corridor and from the same entrance as the abuser into the Courtroom which undermines the dignity of the child victim
- Ensure the identity of the child is not disclosed during the investigation or trial as far as possible, ensure that the trial is completed within one year from the date of taking cognizance of the offence.
- The trial at the Special Court must be conducted in-camera and in the presence of the child's parents or any other person of the child's choice.

- During the course of the trial, all questions that the Special Public Prosecutor or the counsel for the accused, have for the child should be communicated to the Special Court, who in turn will put the questions to the child.
- Under Section 35 of the Act, the evidence of the child should be recorded within a period of thirty days of the Special Court taking cognizance of the offence. Any reasons for delay in doing so, should be recorded.
- The Special Court should ensure that the child is not exposed to the accused, and arrange for the accused to hear the child's statement and communicate with his lawyer. This is typically done by recording the evidence through video-conferencing or by using single visibility mirrors or curtains.
- While recording the evidence of a child with mental or physical disability, the assistance of a qualified special educator or a person familiar with the manner of communication of the child or an expert in that field, can be sought as stated in Section 26 of the Act.

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