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POCSO Act - Protection of Children from Sexual Offences Act (07 January, 2022)

Legal provisions

- The **Protection of Children from Sexual Offences (POCSO) Act** was enacted in **2012** especially to protect children (aged less than **18**) from sexual assault.
- **Section 7 of the POCSO Act**, inter alia, says that **whoever with sexual intent touches the breast of the child** is said to **commit sexual assault**.
- Whereas **Section 8** of the Act provides **minimum imprisonment of three years for sexual assault**
- **Section 354** of the **Indian Penal Code (IPC)** lays down a minimum of **one year imprisonment for outraging the modesty of a woman**.



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The POCSO Act, 2012

• Definitions:

1. The Act defines a child as any person below eighteen years of age.
 2. It defines different forms of sexual abuse, including penetrative and non-penetrative assault, as well as sexual harassment and pornography.
 3. It 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 like a family member, police officer, teacher, or doctor.
- The Protection of Children from Sexual Offences Act (POCSO Act) 2012 was formulated in order to effectively address sexual abuse and sexual exploitation of children.

• Role of police:

1. The Act casts the police in the role of child protectors during the investigative process.
2. Thus, the police personnel receiving a report of sexual abuse of a child are given the responsibility of making urgent arrangements for the care and protection of the child, such as obtaining emergency medical treatment for the child and placing the child in a shelter home, and bringing the matter in front of the Child Welfare Committee (CWC), should the need arise.

• Safeguards:

1. The Act further makes provisions for avoiding the re-victimisation of the child at the hands of the judicial system.
2. 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.
3. Hence, the child may have a parent or other trusted person present at the time of testifying and can call for assistance from an interpreter, special educator, or other professional while giving evidence.

IPC and POCSO: Differences

- The definition of 'assault or criminal force to woman with intent to outrage her modesty' given in the IPC is generic whereas in POCSO, the acts of sexual assault are explicitly mentioned such as touching various private parts or doing any other act which involves physical contact without penetration.
- **'Sexual assault' in POCSO specifically excludes rape which requires**

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penetration; otherwise the scope of 'sexual assault' under POCSO and 'outraging modesty of a woman' under the IPC is the same.

- Whereas the **IPC provides punishment for the offence irrespective of any age of the victim**, POCSO is specific for the protection of children.
- **Higher punishment is provided under POCSO** not because more 'serious allegations' of sexual assault are required but because the legislature wanted punishment to be more deterrent if the victims are children.
- Therefore, once the act of 'outraging modesty with the use of assault or criminal force', which is nothing but 'sexual assault', is proved, the requisite punishment must be slapped under POCSO if the victim is a child.
- It is overseen by [NCPCR \(National Commission for Protection of Child Rights\), 2005](#).

Important Judgements

- In **Vishaka v. State of Rajasthan (1997)** the Supreme Court held that the offence relating to modesty of woman cannot be treated as trivial.
- In **Pappu v. State of Chhattisgarh (2015)**, the High Court of Chhattisgarh, though it **acquitted the accused under Section 354** of the IPC as the **offence was found lacking in use of 'criminal force or assault'**, convicted him for **sexual harassment under Section 354A** which requires 'physical contact' and advances as a necessary element.
 - This case also pertained to squeezing the limbs and breasts of a 13-year-old girl but the High Court did not venture into the area of skin-to-skin contact.

Global examples

- It will not be out of place to mention here that **Sexual Offences Act 2003** of the **U.K.** says that touching (with sexual intent) includes touching with any part of the body, with anything else or through anything.

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- with a provision of death penalty.
- According to the amendment act, those **committing penetrative sexual assaults on a child below 16 years of age would be punished with imprisonment up to 20 years**, which might **extend to life imprisonment** as well as fine.
 - In case of **aggravated penetrative sexual assault**, the act increases the **minimum punishment from ten years to 20 years**, and the **maximum punishment to death penalty**.
 - To **curb child pornography**, the Act provides that those who use a child for pornographic purposes should be punished with imprisonment up to five years and fine.
 - However, in the event of a second or subsequent conviction, the punishment would be up to seven years and fine.
 - The government has also sanctioned over one thousand **fast track courts** for speedy disposal of pending cases under POCSO.

Child Pornography

- The new act defines child pornography as: “any visual depiction of sexually explicit conduct involving a child which includes a photograph, video, digital or computer-generated image (that is) indistinguishable from an actual child.”
- Additionally, “an image created, adapted, modified” to depict a child would also be treated as child pornography. This would also include cartoons, animated pictures, etc.
- The Cabinet has also enhanced the fine for possessing child porn but not deleting or reporting it to 5,000 from the earlier proposal of Rs. 1,000. If a person stores such content for distributing it further, except for when presenting it in court as evidence, he could face a punishment of upto three years.
- Henceforth, there will be zero tolerance for child pornography.
- Some of these provisions were also contained in the Protection of Children from Sexual Offences (POCSO) Amendment Act, 2019, but lapsed.

Significance of POCSO Amendment Act 2019

- The amendment is expected to discourage the trend of child sexual abuse by acting as a deterrent due to strong penal provisions incorporated in the Act.
- It intends to protect the interest of vulnerable children in times of distress and ensures their safety and dignity.
- The amendment is aimed to establish clarity regarding the aspects of child abuse and punishment thereof.
- It is gender-neutral and thus looks into the sexual assault of both minor boys and girls.

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Introduction of Death Penalty

- The bill seeks for the death penalty for aggravated sexual assault on children to create deterrent effect.
- It refers to the judgments of the Supreme Court in Machhi Singh (1983) and Devender Pal Singh (2002) in which the court had held that the death penalty can be awarded only in rarest of rare cases.

Concerns over death penalty

- Often, the perpetrators of abuse are family members and having such penalty may discourage the registration of the crime itself. Also, it may threaten the life of the minor as the maximum punishment for murder is also the death sentence.
- The Justice J.S. Verma Committee, which was constituted in 2013 in the aftermath of the Nirbhaya case, after due deliberations found itself against the imposition of death penalty in rape cases.
- The 262nd Report of the Law Commission of India, 2015, also provides for abolition of the death penalty except in terror cases.

Other Concerns

- According to the National Crime Records Bureau(NCRB) data of 2016, the conviction rate in POCSO cases is 29.6% while pendency is as high as 89%. The prescribed time period of two months for trial in such cases is hardly complied with.
- As per the NCRB data of 2016, less than three per cent of child rape cases that came up before the courts ended in convictions.

Problems

- The introduction of the death penalty may backfire in cases of child sexual abuse and even have a catastrophic effect. Often, perpetrators of abuse are family members and having such penalties may discourage the registration of the crime itself.
- It may threaten the life of the minor as the maximum punishment for murder is also the death sentence.
- Justice J.S. Verma Committee was against the imposition of the death penalty in rape cases. The 262nd Report of the Law Commission of India also provides for the abolition of the death penalty except in terror cases.
- The death penalty diverts attention from the core issues of infrastructural apathv. procedural lapses and trial delays.
- It is the certainty of punishment rather than its severity which has deterrence in real sense.
- Even a year-and-a-half after the passage of the Criminal Law (Amendment)

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Bill, 2018, which introduced the death penalty for rape of a minor girl, such incidents have not been under check.

- Robin Conley in his book, *Confronting the Death Penalty*, has observed that the death penalty may seem just and appropriate in abstract but once analysed, it is less appealing practically.
- Deterrence has to be supplemented by exhaustive measures including an overhaul of the criminal justice administration.
- As per Supreme court data, 24,212 FIRs were filed across India this year. According to NCRB data of 2016, the conviction rate in POCSO cases is 29.6% while pendency is as high as 89%. The prescribed time period of two months for trial in such cases is hardly complied with.
- Supreme court has recently directed the Central Government to set up special courts in each district having more than 100 pending cases under the Act.

Way Forward

- Problems related to implementation of POCSO Act such as lack of adequate special courts, lack of sensitization for investigators and prosecutors in dealing with child victims, poor rate of convictions etc. need to be resolved urgently.
- The Supreme Court direction to set up special courts within 60 days of the order in each district having more than 100 pending cases under the act must be complied with urgently.
- The provision of death penalty should be widely discussed and debated and should be used only for the rarest of the rare cases.
- Awareness and sensitization of people is equally important to prevent the crime itself.
- Massive awareness should be created among the masses about child's dignity and about the law in place.
- POSCO Act needs to be part of school syllabus.
- Along with fast track courts, proper infrastructure and judges capacity should be looked upon.
- Need of ground level work.
- Speedy delivery of justice.
- Proper police training and a dedicated children cell at stations as that of a women cell.
- Need of accountability at each and every level.
- Many Indians men and women refuse to believe that sexual violence is a serious problem eating away at India's vitals. It is essential to recognise that the crisis lies in the precise manner in which the existing criminal justice system unfolds.
- Instant medical relief and compensations should be provided to the victim.
- Children should be given a platform and proper environment to speak against such abuse.

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Dedicated special court by POCSO

- The Supreme Court on Thursday directed the Centre to set up a dedicated special court in every district which has over 100 cases under Protection of Children from Sexual Offences (POCSO) pending.
- The apex court gave this mandate with a deadline of 60 days, as it was concerned about the slow pace at which child sexual abuse cases are being dealt with.
- A bench of Chief Justice of India Ranjan Gogoi, Justice Deepak Gupta and Justice Aniruddha Bose made these statements when they learnt that 1.5 lakh POCSO cases were pending in 670 designated courts.
- Quoting available data, the court pointed out that only 3% victims in POCSO cases received compensation in 2015, and the number increased to only 4% and 5% in 2016 and 2017 respectively.
- Per this data, a judge on an average has to go decide on 224 cases. To address this, the apex court asked for the Centre to set up special courts, which should be funded by the Centre as well.

Guidelines by the SC for Setting up of special courts:

- Such courts will be funded by the central government. The fund will not only take care of the appointment of the presiding officer but also appointments of support persons, special public prosecutors, court staff and infrastructure, including creation of child friendly environment and vulnerable witness court rooms.
- Awareness: WCD ministry shall facilitate screening of “short clips intended to spread awareness of the subject in general, namely, prevention of child abuse and prosecution of crimes against children, in every movie hall and could also be transmitted by various television channels at regular intervals.”