

## Forensic Psychiatry

# The Protection of Children from Sexual Offences (POCSO)

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POCSO Act provides for protection of children from offences of sexual assault, sexual harassment and pornography and safeguarding interest and well being of the child at every stage of the judicial process. The Act also boasts of incorporating child-friendly procedures or reporting, recording of evidence, investigation of trial of offences and establishment of special court and speedy trial of such cases.<sup>1</sup>

Sexual offences are currently covered under different sections of IPC. The IPC Does not provide for all types of sexual offences against children and, more importantly does not distinguish between adult and child victims. The protection of children from sexual offence (POCSO) Act, 2011 defines achild as any person below the age of 18 years old and provides protection to all children under the age of 18 years from the offence of sexual assault, sexual harassment and pornography. These offences have been clearly defined for the first time in law. The Act provides for stringent punishment, which have been graded as per the gravity of the offence. The punishment range from simple to rigorous imprisonment of varying periods. There is also provision for fine, which is to be decided by the court.

Rajya Sabha passed a bill on POCSO in 2012 to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and formatters connected therewith or incidental thereto.

The Protection of Children from Sexual Offences Act, 2012 defines achild as any person

below the age of 18 years and provides protection to all children under the age of 18 years from the offences of sexual assault, sexual harassment and pornography.

Whereas Clauses (3) of Article 15 of the constitution, inter alias, empowers the state to make special provision for children's. And whereas the government of India has acceded on the 11th December, 1992 to the convention on the rights of the child, adopted by the General assembly of the United Nations<sup>2</sup>, which has prescribed a set of Standards to be followed by all State parties in securing the best interest of the child. And whereas it is necessary for the proper development of the child that his or her right to privacy and confidentiality be protected and respected by every person by all means and through all stages of a judicial process involving the child. And whereas it is imperative that the law operates in a manner that the best interest and well being of the child are regarded as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child.

### **Punishments for offences covered in the Act are<sup>3</sup>**

- Penetrative sexual Assault (Section 3) – Not less than sevenyears which may extend to imprisonment for life, and fine (Section 4)
- Aggravated penetrative sexual assault (section 5) – Not less than 10 Years which may extent to imprisonment for life, and fine (section 6)
- Sexual assault (Section 7) – Not less than three years which may extend to five years and fine (section 8)

- Aggravated sexual assault (section 9) – Not less than five years which may extend to seven years, and fine (section 10)
- Sexual harassment of the child (section 11)- Three years and fine (section 12)
- Use of child for pornographic purposes (section 13) – Five years and fine and in the event of subsequent conviction, seven years and fine [Section 14(1)]
- Subsequent conviction, seven years imprisonment and fine [Section 14(1)]

An offence is treated as “Aggravated” when committed by a person in a position of trust or authority of a child as a member of security forces, public servant, police officer, etc.

- For the more heinous offences of penetrative Sexual assault and aggravated Sexual assault, the burden of the proof is shifted on the accused. The provision has been made keep in view the greater vulnerability and innocence of the children. At the same time, to prevent misuse of the law, Punishment has been provided for making false complaint or providing false information with malicious intent. Such punishment has been kept relatively light (six months) to encourage reporting. If false complaint is made against a child, Punishment is higher (one year).
- For speedy trial, the Act provides the evidence of the child to be recorded within a period of 30 days. Also, the special court is to complete the trial within a period of one year, as far as possible. To provide for relief and rehabilitation of the child, as soon as the complaint is made to the Special Juvenile Police Unit (SJPU) or the local police, these will make immediate arrangements to give the child, care and protection such as admitting the child into shelter home or to the nearest hospital within Twenty four hours of the report. The SJPU or the local police are also required to report the matter to the child matter to the welfare committee within 24 hours of recording the complaint, for long term rehabilitation of the child.
- The Act provides for the establishment of Special Courts for trial of offences under the Act, keeping the best interest of the child as of paramount importance at every stage of the judicial process.
- The Act incorporates child friendly procedures for reporting, recording of evidence, investigation and trial of offences. These include: Recording the statement of the child at the residence of the child or at the place of his choice, preferably by a woman police officer not below the rank of sub-inspector.
- No child to be detained in the police station in the night for any reason. Police officer to not be in uniform while recording the statement of the child.
- The statement of the child to be recorded as spoken by the child
- Assistance of an interpreter or translator or an expert as per the need of the child.
- Assistance of special educator or any person familiar with the manner of communication of the child in case child is disabled
- Medical examination of the child to be conducted in the presence of the parent of the child or any other person in whom the child has trust or confidence. In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.
- Frequent breaks for the child during trial.
- Child not to be called repeatedly to testify.
- No aggressive questioning or character assassination of the child
- In-camera trial of cases.
- The Act recognizes that the intent to commit an offence, even when unsuccessful for whatever reason, needs to be penalized. The attempt to commit an offence under the Act has been made liable for punishment for up to half the punishment prescribed for the commission of the offence.
- The Act also provides for punishment for abetment of the offence, which is the same as for the commission of the offence. This would cover trafficking of children for sexual purposes.
- The media has been barred from disclosing the identity of the child without the permission of the Special Court. The punishment for breaching this provision by media may be from six months to one year.
- The Act casts a duty on the Central and State Governments to spread awareness through

media including the television, radio and the printmedia at regular intervals to make the general public, children as well as their parents and guardians aware of the provisions of this Act.

- The National Commission for the Protection of Child Rights (NCPCR) and State Commissions for the Protection of Child Rights (SCPCRs) have been made the designated authority to monitor the implementation of the Act.

### Discussion

Child rights activists say that POCSO, which has helped overcome shortcomings in the Indian Penal Code in dealing with child victims of sexual abuse, has several structural deficits that need to be addressed. Before this Act came into force, the police used provisions like IPC Section 354 like (assault or criminal force to woman with intent to outrage her modesty), a bailable offence, in cases where girls complained of being indecently touched. However, the corresponding offence under POCSO is gender-neutral. But there are complaints that the police make mistakes on charging offenders under the appropriate category.

Presently, the child has to be produced before a Child Welfare Committee (CWC) which will then offer a support person to the victim. The POCSO is lacking several important provisions that would have helped bolster the prosecution in such cases. The recording of the victim's statement before a magistrate under Section 164 of the Criminal Procedure Code happens after 2-3 days now. That is a crucial period in which the child victim and family can be influenced and threatened to withdraw his/her complaint. This is especially true in cases where accused are known to the victims. The recording of statements under Section 164 should be immediately done.

Presently, the POCSO recommends a punishment of six months imprisonment to a policeman who does not record a complaint of sexual offence by a child victim. Sensitisation of police is important to derive the maximum benefit out of POCSO.<sup>4</sup>

There are certain lacunae<sup>4,5</sup> in the Act such as definition and identification of 'culpable mental state' (i.e. sexual intent, motive and knowledge). There is provision of mandatory reporting by medical professionals to the police of actual or anticipated offences (overriding confidentiality of information), failure of which will result in punishment with a fine, with imprisonment of six months or both. It will result in under reporting by parent/s or physician who fears legal hassles. The reporting becomes troublesome when a close family member is involved. This was previously handled by family therapy and now, involvement of police will complicate the matter (may lead to increase in family conflict or may cause breakdown of family). The criminalization of trauma and separation of child to a hospital or shelter home will cause a lot of social difficulties. The Act also requires mandatory reporting of socially sanctioned "child marriages (involving sexual acts)" and male-male sexual victimization. There are problems in the implementation of Act without training police, health professionals, NGO's, officials of print and audiovisual media and people working in support agencies associated with psychosocial rehabilitation.

### References

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5. Andrade C, Rao TSS. Childhood sexual abuse and the law: more problems than solutions? (Editorial commentary). *Indian J Psychiatry* 2013; 55(3) : 214-215.