

POCSO ACT 2012 AND JUDGMENTS: CRITICAL ANALYSIS

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ABSTRACT:

The POCSO Act, enacted in 2012, is a gender-neutral statute that recognizes a child as someone under the age of 18. The Indian Penal Code, 1860 does not recognize that sexual assault can be committed on boys as well. The Act of 2012 has a broad spectrum definition of what constitutes a sexual offence against a child. It further expands the definition of sexual assault to cover both non-penetrative and aggravated penetrative sexual assault (Sections 3–10) and is also inclusive of penalties for those in positions of trust, such as public workers, educational personnel, and police officers. The POCSO Act also established measures to make the criminal justice system more child-friendly and to prevent re-traumatization. This includes everything from how the statement of the child should be recorded, to the medical examination, to the designation of special child-friendly courts. In this article, the reader will get familiar with some of the landmark judgments under the POCSO Act, 2012 which will help them to get an idea regarding the implementation of the aforementioned statute. This research paper focus on Pocso act 2012 & 2019 with judgments.

Key Words: POCSO Act 2012, POCSO, POSCO Act 2019, and Judgements.

1. INTRODUCTION

While sexual offences are grievous in nature in themselves but the ones committed against children are considered even more heinous as children are among the most vulnerable & innocent victims of such crimes. According to a report in 2007 of the Women And Child Development Ministry, 53.2% of children have faced more than one form of sexual abuse of which 52.94% were boys.

Further, the National Crime Reports Bureau released a report in 2018 stated that the number of reported rape cases was 21,605. The worst part is that the number of reported cases is less than the number of offences as the abusers generally are people who knew the child in a personal capacity and were in a position of trust and responsibility.

The Ministry of Women and Child Development was a driving force behind the passage of the POCSO Act, which was designed to confront the egregious offences of carnal nature and sexual exploitation of minors via judicial safeguards that were comparatively less vague and more rigorous than the provisions of the Indian Penal Code.

This was done with the objective of constructively combating such activities. In a parallel vein, the Juvenile Justice Act was passed into law in order to shield minors from crimes like “sexual assault, sexual harassment, and pornography” and to provide for the institution of Special Courts to conduct special proceedings for crimes of such manner as well as connected concerns and occurrences.

The objective sought to be achieved by POCSO

POCSO was implemented in 2012 to fulfill the purpose of safeguarding minors under 18 from crimes that are sexual in nature by implementing optimistic initiatives for the dispensation of expeditious justice and increasing accountability concerning such subjects. Before the establishment of this statute, there was the absence of any special law which could be entirely designated for the offenses perpetrated against minors. Instead, the offenses were recorded under the Indian Penal Code, 1860, or the Criminal Procedure Code .

In addition, the IPC was quiet on a number of offenses and did not contain any applicable provisions for such offenses; as a result, those who committed the offenses were given a free pass, and there was a lack of implementation or even mandating punishment upon such

perpetrators. Because the regulations were not in consonance with present times, it necessitated the establishment of a new judicial procedure for minors.

This culminated in the passage of the Protection of Children from Sexual Offences Act, and there was a new inclusion to Article 15 clause (3) asserting the Government's authority to enact a specific statutory requirement for the protection of minors. Both of these modifications were deemed crucial.

2. POCSO Act, 2012

Criminal law and regulation is the hand made of justice. Although the POCSO Act qualifies as the best regulation to shield youngsters from sexual offenses, still the Act contains a few impediments to it, which are as per the following:

1. Gender Biasness or Reporting

Regardless of the way that, not at all like assault, the casualty of the POCSO Act can be any child of any gender, the denounced or an accused must be a male, and females are given a defensive safeguard.

2. Age Component

The Act exclusively inspects the child's natural age, not their biological age. The POCSO Act characterizes a child as an individual less than 18, however it is quiet on which record ought to be utilized to decide the child's age.

3. Training

The most troublesome difficulties are research, data, observing, and public mindfulness or awareness. Every single medical undergraduates and essential medical services experts should be prepared in conveying youngster well disposed interviews, coordinated appraisals, proof assortment, family advising, and normal development as well as regular follow-up.

4. Child Marriage

For the reasons for POCSO, Child marriage and its fulfillment are viewed as unlawful. Despite the fact that child marriage is unlawful under common regulation in India, it is legitimate under specific individual regulations, bringing about a contention among mainstream and individual laws and regulations.

5. Revealing or Reporting

Most of occurrences of child sexual abuse or maltreatment go unreported. For the overwhelming majority relatives as well as survivors, detailing kid sexual maltreatment is an intense and individual choice. They stay quiet for expanded timeframes on the grounds that they fear re-exploitation because of clinical assessments, the law enforcement framework, and an inadequately educated society.

3. LANDMARK JUDGMENTS UNDER THE POCSO ACT, 2012

The meaning of sex education conferred at the school level and the positive impact that it has on small child is of most extreme significance. It allows the child to separate between 'good touch' and 'bad touch'.

Under different circumstances, child's don't figure out sexual offenses, and in this manner there is a need to teach them about such offenses, while defending their inclinations at each phase of the legal process.

'Sexual Assaults' is a typical wrongdoing crime in our way of life that has long haul ramifications for individuals from varying backgrounds. By helping with instruction, local area expertise assembling, and drawing in with local area and non-benefit accomplices, policing assist with forestalling sexual assaults.

The expression "Sexual Assault" is defined under Section 7 of the POCSO Act, 2012 as:

"Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault."

1. Attorney General for India v. Satish and another (2021)

The Bombay High Court's Nagpur Bench had ruled in the case of Satish Ragde v. State of Maharashtra (2021) that grabbing a child's breasts without making "skin-to-skin contact" constituted molestation under the POCSO Act, 2021. The comment was given by a single bench led by Justice Pushpa Ganediwala. The Attorney General of India, the National Commission for Women, and the State of Maharashtra filed appeals against the High Court's controversial decision, which were heard by a bench consisting of Justices Uday Umesh Lalit,

S Ravindra Bhat, and Bela M Trivedi, in the present case of Attorney General for India versus Satish and another (2021).

The issue at hand was how should Section 7 of the POCSO Act, 2012 be interpreted so as to provide a fair and reasonable solution to the cases falling under its ambit. The present judgment observed that Section 7 covers both direct and indirect touch thereby highlighting that the logic in the High Court's opinion quite insensitively trivializes indeed legitimizes a whole spectrum of undesirable behavior which undermines a child's dignity and autonomy, through unwelcome intrusions.

Setting aside the Bombay High Court's judgment, the Apex Court observed that the matter at hand would be an appropriate situation for using the "mischief rule" of statutory interpretation. It emphasizes that courts must constantly interpret the law in order to prevent harm and promote the remedy. In this view, the top court's judgment observed that the High Court's interpretation not only restricts the implementation of the legislation but also seeks to pervert its objective.

2. Alakh Alok Srivastava v. Union of India and Others (2018)

In the case of Alakh Alok Srivastava v. Union of India and Others (2018), the Supreme Court of India laid down guidelines to be followed by Special Courts while trying a case under the POCSO Act, 2012 so that the trial is completed within a period of one year from the date of taking cognizance of the offence, as provided under Section 35 of the aforementioned Act. The guidelines are provided hereunder:

- i. The High Courts are responsible for ensuring that cases filed under the POCSO Act are heard and decided by Special Courts and that the presiding officials of such courts are trained in child protection and psychological reaction.
- ii. If not previously done, the Special Courts should be constituted and given the role of dealing with matters brought under the POCSO Act.
- iii. The Special Courts should be given instructions to expedite cases by not granting superfluous adjournments and following the procedure outlined in the POCSO Act, allowing the trial to be completed in a time-bound manner or within a certain time period set forth in the Act.

iv. The Chief Justices of the High Courts have been asked to form a three-judge committee to control and supervise the progress of the POCSO Act cases. In the event that three judges are not available, the Chief Justices of the respective courts will form a Judge Committee.

v. A Special Task Force will be formed by the Director-General of Police or a State authority of comparable rank to guarantee that the investigation is properly handled and witnesses are presented on the dates set before the trial courts.

vi. The High Courts must take appropriate efforts to create a child-friendly environment in Special Courts, keeping in mind the requirements of the POCSO Act, to ensure that the spirit of the Act is upheld.

3. Hari Dev Acharya @ Pranavanand and Ors v. State (2021)

The Delhi High Court recently stated in the case of Hari Dev Acharya @ Pranavanand and Ors v. State (2021) that as the Protection of Children from Sexual Offences (POCSO) Act, 2012 is silent on whether two separate incidents can be combined in a single First Information Report (FIR), the provisions of the Code of Criminal Procedure, 1973 (CrPC) would apply, allowing joint trial if the offences were committed during the same transaction. A single-judge bench of the Hon'ble High Court, Justice Manoj Kumar Ohri, made the remark while dismissing a number of people's petitions challenging the summons issued by a special POCSO court and the additional charge sheets.

The summons and charge sheets were issued in August 2019 in connection with an incident in which a youngster studying at a Gurukul in Delhi was reportedly raped by a superior. The accused took the youngster to the teacher's room and sexually attacked him. The boy had then informed his friend about the same. They went to the police station and renewed their complaint, but because his mother and sister had already arrived, a solution was achieved under the pressure of four people. According to Justice Ohri, Section 219 of the CrPC allows a person who commits three similar offences within a twelve-month period to be prosecuted at the same time, and because both offences are punished under the same section of the IPC and POCSO, they constitute the same transaction. Therefore, the summoning orders were upheld and the petitions were dismissed.

statement under Section 164(5-A)(a) C.r.P.C., preferably to a Lady Magistrate.

4. Gaya Prasad Pal @ Mukesh v. State (2016)

The present case of *Gaya Prasad Pal @ Mukesh v. State* (2016) that appeared before the Delhi High Court involved the appellate challenging his conviction for being charged twice because of the same offence. For raping his stepdaughter under the age of 14 and making her pregnant, the man was found guilty of penetrative sexual assault under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (hereafter, POCSO Act) read with Section 376 of the Indian Penal Code. The reason for the delay in filing the FIR was because the child was concerned about her mother and stepbrother's safety if her stepfather was convicted and sentenced to prison. Separate sentences were imposed on the appellant for offences punishable under Section 376 IPC, Section 6 POCSO Act, Section 354 IPC, and Section 506 IPC. The observations made by the Hon'ble High Court in this present case have been laid down hereunder:

i. The trial court did not put the appellant on trial for the offence of aggravated penetrative sexual assault under Section 6 of the POCSO Act. As a result, punishing him for the same offence was unconstitutional.

ii. In the case of a minor, 'rape' (Section 375 IPC) can also be considered 'penetrative sexual assault' (Section 3 POCSO Act). Acts that constitute 'penetrative sexual assault' against a girl child would also be considered rape. A person may not be punished twice for the same set of actions of conduct or omission that collectively form an offence covered by two separate articles of law. Despite the fact that the law allows for a trial on an alternative charge for both offences, the punishment can only be given for one of them, the one that is more serious.

iii. Furthermore, the Court noted that the appellant's conviction for the violation under Section 4 of the POCSO Act is in addition to his conviction for the offence under Section 376 of the IPC. And the appellant's actions are punishable under Section 376(2) of IPC which provides for a punishment of life imprisonment (imprisonment for the rest of a person's natural life) as well as a fine, which is more severe than the punishment under Section 4 of the POCSO Act. In this case, Section 42 of the POCSO Act applies, and the Court is required to penalize the offender for the offence under Section 376(2)(f)(i) and (k) of the IPC, which is more serious than the offence under Section 4 of the POCSO Act.

5. *Balaji Sarjerao Kamble v. State of Maharashtra* (2017)

The Bombay High Court observed that 'merely because the date of the crime is not given by the victim, her evidence cannot be disregarded' in the landmark case of *Balaji Sarjerao Kamble*

v. State of Maharashtra (2017). The child victim was roughly 6 to 8 years old at the time of the alleged rape. At such a young age, the victim is unlikely to have such a keen sense of time, the Court viewed. The decisions of the Hon'ble High Court have been presented hereunder:

i. Conviction and sentence of the appellant in the case, for offences punishable under Sections 4 and 8 of the POCSO Act, 2012 and Section 376 of the IPC were held to be maintainable.

ii. The sentence imposed on the accused of the offence punishable under Section 376 of the IPC was rigorous imprisonment of 7 years as well as direction to pay a fine of Rs.5,000/- and in default of such payment, further rigorous imprisonment for 3 months, was quashed and set aside.

4. THE 2019 POCSO REVISION ACT

There was a surge in the commission of violations or crimes connected with children, which required a prompt need to make discipline under the POCSO Act rigid, so it goes about as prevention for the wrongdoers. Discouragement makes dread in the general public with the goal that the wrongdoer shuns carrying out criminal demonstrations later on.

The Amendment act mainly contains provisions for increased punishments

- The amendment act takes into consideration the fine forced on the convict to be simply and sensible and should be paid to the victim to meet the clinical costs and restoration of such victim. Prior, as a rule the victim didn't have assets to return from mental and actual injury.
- The punishment for penetrative sexual assault has been expanded from seven to ten years, and where the sexual assault has been committed on a child under sixteen years old, the detainment will not be less than twenty years and may extend to the detainment until the end of the regular existence of that individual.
- By adding a subsection to section 9, regulating any medication, drug, chemical, or synthetic substance to a child with the objective that such kid accomplishes early sexual development has been included within the meaning of aggravated sexual assault.
- Amendment act puts rigorous punishment or discipline for involving a child for explicit purposes. Prior, the punishment was for a limit of five years for the first time convict, and for a maximum of seven years in case of second and ensuing conviction. After the amendment, it

amends to at least five years if there should be an occurrence of first time convict, though for at least seven years in case of second conviction.

- The Act punishes for the storing of obscene materials containing child for business purposes or for the capacity or for the carelessness in revealing it to the assigned power. The accused shall be liable for a fine of Rupees 5,000, and a detainment which might stretch out to three years, and in resulting detailing of offenses, a fine of Rupees 10,000, and a detainment which will not be under five years.

Statutes are important to be amended when the time requests in this way, to meet the speed of the present. Thinking about the current situation, there was a most extreme need to revise this law and regulation, and accordingly this current regulation came into force.

CONCLUSION

The one feature that is common in every judgment that has been discussed is the set of guidelines delivered by the concerned court which will behave as a catalyst for the functioning of the POCSO Act, 2012. The Act of 2012 is social, gender-neutral legislation in the field of criminal law which can be used to its full potential only by the courts when they apply and interpret the provision of the said Act in cases falling within the ambit of the statute. Therefore, decisions made under the Act hold immense relevance.

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