



Implementation Issues with the POCSO Act

This editorial is based on [“Judging a decade of the POCSO Act”](#) which was published in The Hindu on 20/01/2023. It talks about the issues with the POCSO Act.

For Prelims: POCSO Act, National Crime Records Bureau, Indian Penal Code, Child Abuse Prevention and Investigation Unit, Beti Bachao Beti Padhao, The Juvenile Justice (Care and Protection of Children) Act, 2015, Child Marriage Prohibition Act (2006), Child Labour Prohibition and Regulation Act, 2016, two-finger test

For Mains: POCSO Act and issues with the implementation, Issues Related to Children, Government Policies & Interventions

The Constitution of India has **incorporated several provisions to protect the rights of children and India has also been a signatory to landmark international instruments**, such as the Convention on the Rights of the Child, the Protocol to the Convention on the Rights of the Child on the Sale of Children, etc. However, India lacked any **dedicated provision against child sexual abuse**.

[Protection of Children from Sexual Offences \(POCSO\) Act, 2012](#) came into effect on 14th November 2012 which was enacted in consequence to India's ratification of the [UN Convention on the Rights of the Child in 1992](#). The aim of this special law is to **address offences of sexual exploitation and sexual abuse of children**, which were either not specifically defined or in adequately penalised.

What are Some Important Features of the POCSO Act?

- **Gender-Neutral Nature:**
 - The Act recognizes that **both girls and boys can be victims of sexual abuse** and that such abuse is a crime regardless of the gender of the victim.
 - This is in line with the principle that all children have the right to protection from sexual abuse and exploitation, and that laws should not discriminate based on gender.
 - Even though the [National Crime Records Bureau \(NCRB\)](#) has not published data on male and female victims separately, in Chhattisgarh, **male child victims accounted for about eight in every 1,000 POCSO cases (0.8%)**.
 - It shows that the **sexual exploitation of male children is also a serious issue** that has been largely unreported which is addressed by this act.
- **Ease in Reporting Cases:**
 - There is **sufficient general awareness now to report cases of sexual exploitation of children not only by individuals** but also by institutions as non-reporting has been made a specific offence under the POCSO Act. This has made it comparatively difficult to hide offences against children.

▪ **Explicit Definition of Terms:**

- The storage of child pornography material has **been made a new offence**.
- Further, the **offence of 'sexual assault' has been defined in explicit terms** (with increased minimum punishment) unlike an abstract definition of 'outraging modesty of a woman' in the [Indian Penal Code](#).

What are the Related Initiatives?

- [Child Abuse Prevention and Investigation Unit](#)
- [Beti Bachao Beti Padhao](#)
- [The Juvenile Justice \(Care and Protection of Children\) Act, 2015](#)
- [Child Marriage Prohibition Act \(2006\)](#)
- [Child Labour Prohibition and Regulation Act, 2016](#)

What are the Issues with the POCSO Act?

▪ **Issue with the Investigation:**

- **Low Representation of Women in the Police Force:**
 - The POCSO Act **provides for recording the statement of the affected child by a woman sub-inspector** at the child's residence or place of choice.
 - But it is **practically impossible to comply with this provision when the number of women in the police force is just 10%**, and many police stations hardly have women staff.
- **Lapses in the Investigation:**
 - Though there is a provision to record statements using audio-video means, however, **there are still reports of lapses in the investigation and preservation of crime scenes** in some cases,
 - In *Shafhi Mohammad vs The State of Himachal Pradesh (2018)*, the Supreme Court held in cases of heinous crimes, it is the duty of the investigating officer to photograph and videograph the scene of crime and to preserve the same as evidence.
 - In the **absence of proper infrastructure to ensure the integrity of electronic evidence**, the admissibility of evidence recorded using any audio-video means will always remain a challenge.
- **No Examination by Judicial Magistrates:**
 - Another provision of the act **mandates the recording of the statement of the prosecutrix by a judicial magistrate**.
 - Though such statements are recorded in most cases, **judicial magistrates are neither called for cross-examination** during trial nor are those who retract their statement punished. In such a scenario, such statements get nullified.

▪ **Issue of Age Determination:**

- Though age determination of a juvenile delinquent is guided by the [Juvenile Justice \(Care and Protection of Children\) Act](#), no such provision exists under the POCSO Act for juvenile victims.
 - In *Jarnail Singh vs State of Haryana (2013) case*, the **Supreme Court held that the given statutory provision should also be the basis** to help determine age even for a child who is a victim of crime.
 - However, in absence of any change in the law or even specific directions, **the investigating officers (IOs) continue to rely on the date of birth recorded in school admission-withdrawal registers**.
 - In most cases, parents (in the absence of hospital or any other authentic records) are not able to defend the age in the court.
- Age estimation **based on medical opinion is generally so wide in scope** that in most cases minors are proved to be major.
 - Once a minor is proved to be a major, **the probability of acquittal increases based on other factors** such as consent or no injury to private parts.

- **Delays in the Filing of Charges:**
 - As per the POCSO Act, **the investigation of a case under the act is to be completed within a period of one month** from the date of the commission of the offence, or from the date of the reporting of the offence.
 - However, in practice, the **completion of investigation often takes longer than one month due to various reasons** such as lack of adequate resources, delays in obtaining forensic evidence, or the complexity of the case.
 - This can **result in delays in the filing of charges and the commencement of trial**, which can affect the speed and effectiveness of justice for the victim.
- **No Conditions to Prove Recent Intercourse:**
 - Courts are required to presume that the **accused committed the offence under the POCSO Act**.
 - The POCSO Act does not impose any conditions on the prosecution, contrary to the [Indian Evidence Act](#), which clearly requires the prosecution to establish recent intercourse, as well as the consent of the prosecutrix.
 - However, **it has been observed that even after the minor age of the victim is proved**, no such presumption is taken up by the court during trial.
 - Under such circumstances, **the expected increase in the conviction rate is unlikely to be achieved**.

What should be the Way Forward?

- **Adequate Resources:**
 - The government **should provide adequate resources such as funding and personnel to investigating agencies** handling POCSO cases. This will help to ensure that investigations are conducted in a timely and efficient manner.
- **Training for Investigating Officers:**
 - Investigating officers **should be provided with proper training on the handling of POCSO cases**. This can include **training on the proper techniques for collecting and preserving evidence**, interviewing child victims and witnesses, and the legal requirements of the POCSO Act.
- **Special Courts for POCSO Cases:**
 - Setting up **special courts for POCSO cases can help to ensure that cases are handled promptly and efficiently**. This will also **help to speed up the trial process**, which can be important for the victim and their family.
- **Timely Medical Examination:**
 - The **medical examination of a child victim should be conducted as soon as possible after the abuse**, in order to establish recent intercourse.
- **Public Awareness:**
 - Raising public awareness about the POCSO Act, the importance of reporting child sexual abuse, and the rights of child victims can help to increase the reporting of cases and improve the investigation process.
- **Interagency Coordination:**
 - Coordination between different agencies such as police, child welfare committee, and medical professionals can help to ensure that cases are handled in a comprehensive and coordinated manner.
- **Monitoring and Review:**
 - The government **should establish a system of monitoring and review to ensure that investigations are conducted in accordance** with the POCSO Act and that the rights of child victims are protected.

Drishti Mains Question

What are the challenges faced in the implementation of the Protection of Children from Sexual Offences (POCSO) Act in India since its inception?

UPSC Civil Services Examination Previous Year Question (PYQ)

Q. Examine the main provisions of the National Child Policy and throw light on the status of its implementation. **(2016)**

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