Decade of the POCSO Act 2012

Why in news?

Ten years have passed since the Protection of Children from Sexual Offences (POCSO) Act, 2012 came into effect on November 14, 2012. So, it is time to evaluating its impact on the ground.

What is the POCSO Act?

- The Protection of Children from Sexual Offences (POCSO) Act, 2012 was enacted in consequence to India's ratification of the UN Convention on the Rights of the Child in 1992.
- The POCSO Act is the first comprehensive law in the country dealing specifically with sexual abuse of children.
- The aim of this law is to **address offences of sexual exploitation and sexual abuse of children**, which were either not specifically defined or in adequately penalised.
- The Act increased the scope of reporting offences against children, which were not earlier covered under the Indian Penal Code.
- It also defined the procedure for reporting of cases, including a provision for punishment for failure to report a case or false complaint.
- It provided procedures for recording of the statement of a child by the police and court, laying down that it should be done in a child-friendly manner, and by the setting up of special courts.

What are the important features of the POCSO Act?

- A significant feature of the POCSO Act is its **gender-neutral nature**.
- The POCSO Act endorses society's worry that the sexual exploitation of male children is also a serious issue that has been largely unreported.
- There is sufficient awareness 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.
- **Storage of child pornography material** has been made an 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 issues with the investigation?

- A large part of the investigation of offences under the Act is still guided by the Code of Criminal Procedure (CrPC).
- The investigation of penetrative sexual assault cases generally involves

    - recording the statement of the prosecutrix by a judicial magistrate,
    - a medical and forensic science laboratory (FSL) examination, and
    - determination of the child's age.
- **Inadequate women SIs** - 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.
- **Lack of infrastructure** - Under the POCSO Act, there is a provision to record statements using audio-video means.
- 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.

In Shafhi Mohammad vs The State of Himachal Pradesh case (2018), the Supreme Court talked about capturing and preserving the scene of crime of heinous offences using audio-video means.

What is the issue with the prosecutrix?

- Though the statements of the prosecutrix 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.
- Medical examination of prosecutrix is conducted as per the CrPC.
- Medical examination of a girl child is conducted by a female doctor (as specified in the POCSO Act). But, as observed by the Supreme Court of India, there are instances where the banned two-finger test is still in use.

What is the issue with the FSL examinations?

- There have been no attempts to upgrade the FSLs in States to expedite the examination of exhibits.
- The fact is that many cases have a charge sheet without an accompanying FSL report, which is then decided by courts.

What is the issue with age determination?

- Though the age determination of a juvenile delinquent is guided by the Juvenile Justice Act, there is no such provision for age determination of juvenile victims under the POCSO Act.
- In Jarnail Singh vs State of Haryana (2013), 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.

- These dates, in most cases, parents (in the absence of hospital or any other authentic records) are not able to defend 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 as a major, the probability of acquittal increases based on other factors such as consent or no injury to private parts.
- Thus, the POCSO Act has made no difference in investigation when it comes to proving juvenility.

What is the issue with the period of investigation?

- The time mandated to complete investigation of rape (as in the CrPC, without a similar provision in the POCSO Act) is **two months**.
- So, there is much pressure on the IOs to somehow submit a charge sheet in two months irrespective of what stage the investigation is at. This reduces the quality of investigation.
- If a charge sheet was not put up in 90 days of the arrest of the accused, s/he was granted bail.
- Now, when a charge sheet is put up in 60 days of the FIR (and not arrest), the accused may seek bail immediately after the filing of the charge sheet.
- Thus, it is the accused, and not the victim, who gets the benefit of completing an investigation in a shorter time.

What is the presumption condition?

- The POCSO Act provides that the court shall presume that the accused has committed the offence.
- No conditions are laid down in the POCSO Act in contrast to the Indian Evidence Act that provides for prosecution to prove recent intercourse, and the prosecutrix to state in court that she did not consent.
- However, it has been observed that even after the minor age of the victim is proved, no such presumption (howsoever small a relevance it may have) is taken up by the court during trial.
- Under such circumstances, the expected increase in the conviction rate is unlikely to be achieved.

It is time that there is a review of the way the POCSO Act is implemented to see how far it has helped victims of sexual exploitation and what more needs to be done to ensure justice.

Reference

1. The Hindu | Judging a decade of the POCSO Act



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