

## POCSO DOESN'T BROOK DILUTION

Relevant for: Developmental Issues | Topic: Rights & Welfare of Children - Schemes & their Performance, Mechanisms, Laws Institutions and Bodies

The [Protection of Children from Sexual Offences \(POCSO\) Act](#) was enacted in 2012 especially to protect children (aged less than 18) from sexual assault. The Statement of Objects and Reasons of the Act admitted that a number of sexual offences against children were neither specifically provided for in extant laws nor adequately penalised. The [UN Convention on the Rights of the Child](#), ratified by India in 1992, also requires sexual exploitation and sexual abuse to be addressed as heinous crimes. It was therefore felt that offences against children be defined explicitly and also countered through commensurate penalties as an effective deterrence.

It was in this backdrop that the recent judgment of the Bombay High Court, in *Satish Ragde v. State of Maharashtra*, in which the [accused was acquitted under the POCSO Act](#), came under [massive criticism](#). The Bench acquitted a man found guilty of assault on the grounds that he groped his victim over her clothes and there was no skin-to-skin contact between them. As this judgment was likely to set a dangerous precedent, the [apex court stayed](#) the acquittal.

Also read | [Centre notifies new POCSO rules making law for sexual offences against children more stringent](#)

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.

The difference between POCSO and IPC, as far as the offence of sexual assault is concerned, is two-fold. One, 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 penetration; otherwise the scope of 'sexual assault' under POCSO and 'outraging modesty of a woman' under the IPC is the same. Two, 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.

The essence of a woman's modesty is her sex and the culpable intention of the accused is the crux of the matter in the cases of sexual assault. 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 Singh Rajput 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.

Also read | [Bombay High Court judge quashes another POCSO conviction](#)

It will not be out of place to mention here that the 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. The POCSO Act might be silent on such niceties; it is the bodily integrity of a woman that needs to be protected. Therefore, in the absence of any specific provision in the POCSO Act which requires skin-to-skin touch as a mandatory element of an offence, any interpretation which dilutes protection to children must be declared *ultra vires*.

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