

EXPANDING THE SCOPE OF POCSO

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Over the last nine years, India has sought to “protect children from offences of sexual assault, sexual harassment and pornography” through the Protection of Children from Sexual Offences Act (POCSO). But POCSO has not been without controversy or deficiency. Recently, the Supreme Court had to injunct an interpretation of ‘skin-to-skin contact’ given by the Bombay High Court. Another fundamental defect of POCSO is its inability to deal with historical cases. With growing international jurisprudence around these issues, and in line with the UN Convention on the Rights of the Child, India must revise its legal and procedural methods to deal with historical child sexual abuse.

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Historical child sexual abuse refers to incidents that are reported late. Historical abuse is not just confined to institutions but also includes intra-familial abuse where it is difficult for the child to report the offence or offender at the earliest point in time. It often takes time for the child to recognise and comprehend the gravity of what transpired and become confident to report the offence. At first glance, this may seem to run counter to the established principle of criminal law: that every act of crime must be reported at the earliest and any delay in filing the complaint dilutes the efficacy of the prosecution’s case.

Provisions in the Criminal Procedure Code (CrPC) prohibit judicial magistrates from taking cognisance of cases beyond a specific time period. Cases involving child sexual abuse not amounting to rape as defined under Section 376 of the Indian Penal Code (IPC), and prior to the enactment of POCSO in 2012, would presumably be classified under the lesser, and somewhat frivolous, offence of outraging the modesty of a woman (Section 354 of the IPC). As such, any reporting of an offence, under Section 354 of the IPC, more than three years after the date of incident would be barred by the CrPC. Such a scenario renders historical reporting of child sexual offences which took place before 2012 legally implausible. This presents an insurmountable legal barrier against the registration of historical child sexual offences which took place before 2012.

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While the limitation provisions were incorporated into the CrPC to avert delayed prosecution, the circumstances around child sexual abuse cannot and must not be viewed in the same manner as other criminal offences. Therein lies a compelling case to allow delayed reporting and prosecution with regard to incidents of child sexual offences. It is also now understood that delays in reporting sexual abuse after a considerable passage of time from the date of offence may be due to factors such as threats from the perpetrator, fear of public humiliation, and absence of trustworthy confidant. Another theory, proposed by Roland C. Summit, Professor of Psychiatry, is the accommodation syndrome — where the child keeps the abuse as a secret because of the fear that no one will believe the abuse, which leads to accommodative behaviour. As such, with growing research and empirical evidence pointing to behaviour justifying delayed reporting, there is a need to amend the law to balance the rights of the victims and the accused.

One of the major drawbacks of delayed reporting is the lack of evidence to advance prosecution.

It is believed that there would be less than 5% chance for gathering direct physical and medical evidence in such cases. India, in particular, suffers from a lack of procedural guidance as to how to prosecute historical cases of child sexual abuse. In contrast, the U.K. has issued detailed Guidelines on Prosecuting Cases of Child Sexual Abuse under the Sexual Offences Act of 2003 to assist the police in such cases.

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Also, in 2018, an online petition based on the plea of a child sexual abuse survivor gathered tremendous support. The survivor-petitioner, Purnima Govindarajulu, had unsuccessfully tried to register a complaint against her abuser after a delay of more than 40 years. After having failed to get traction with the police, she had launched an online campaign to raise awareness. Consequently, the Union Ministry of Law and Justice, at the request of the then Minister for Women and Child Development, clarified that no time limit shall apply for POCSO cases. Though this was a welcome clarification and would help strengthen the POCSO jurisprudence, it still fails to address the plight of children who were victims of sexual abuse before 2012. There is an urgent need to reform and revise our laws to account for various developments such as historical reporting of child sexual abuse. At the very least, the Union government must frame guidelines to direct effective and purposeful prosecution in cases which are not covered by the POCSO.

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To reassure Indian Muslims, the PM needs to state that the govt. will not conduct an exercise like NRC

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