



DAILY EDITORIAL ANALYSIS

TOPIC

**GENDER NEUTRALITY UNDER
THE POCSO ACT**

www.nextias.com

GENDER NEUTRALITY UNDER THE POCSO ACT

Context

- The Supreme Court of India is currently reviewing a petition challenging the **gender-specific interpretation of the POCSO Act, 2012**, in a case where a woman is accused of penetrative sexual assault against a minor boy.

Understanding the POCSO Act, 2012

- The Protection of Children from Sexual Offences (**POCSO**) **Act, 2012** defines a '**child**' as **any person below the age of 18**, without reference to gender.
- It criminalizes a range of sexual offences — such as penetrative and non-penetrative sexual assault, sexual harassment, and pornography — **regardless of the gender** of the victim or the perpetrator.
 - Penetrative Sexual Assault** is defined under Section 3 of **POCSO Act, 2012**, and **applies to all genders**.
- Section 5(k) and Section 9(k) of the **POCSO Act** address aggravated penetrative sexual assault, especially when the **child has a mental or physical disability**.
- Section 6** prescribes stringent **punishment**: minimum 20 years of rigorous imprisonment, which may extend to life imprisonment or even the death penalty in extreme cases.
 - The **Amendment to the POCSO Act (2019)** further strengthened penalties and clarified procedural safeguards for child victims.
- It is intentionally broad to cover various forms of abuse, and does not specify the gender of either the victim or the perpetrator, making it gender-neutral by design.

Child & Constitution of India

- Article 23**: Prohibition of Human Trafficking and Forced Labour
- Article 24**: Prohibition of Child Labour in Hazardous Jobs.
 - No child **below the age of 14 years** shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Directive Principles of State Policy (DPSP)

- Article 39(e)**: Directs the state to ensure that children are not forced by economic necessity to enter vocations unsuited to their age or strength.
- Article 39(f)**: Mandates that children grow up in conditions of freedom and dignity and are protected against exploitation and moral abandonment.

Legislative Intent & Interpretation

- Pronoun 'He' Includes 'She'**: Section 13(1) of the General Clauses Act, 1897 makes it clear that **words importing the masculine gender include females** unless the statute indicates otherwise.
 - Thus, the **use of 'he' in Section 3 of POCSO** does **not** limit the offence to male perpetrators.
- Scope of Section 3 Extends Beyond Penile Acts**: Section 3 of POCSO covers a broad range of penetrative acts, including **digital penetration; object penetration; and oral penetration**;
 - These acts can be committed by individuals of **any gender**, including women.
 - The provision includes situations where a person compels a child to perform such acts on themselves or a third person — again reinforcing **gender neutrality**.

Related Concerns & Issues

- Contrast With the Gender-Specific Rape Provision**: The **Bharatiya Nyaya Sanhita (BNS)** provision on **rape (Section 63)** explicitly states 'a man commits rape against a woman'.

- ♦ Its choice not to do so reflects a **deliberate intent to keep POCSO gender-neutral for perpetrators and victims alike**.
- **Criminalization of Consensual Adolescent Relationships: POCSO Act** is increasingly used to prosecute consensual relationships between adolescents.
 - ♦ **POCSO Act**, in its current form, does not distinguish between exploitative abuse and consensual teenage intimacy.
- **Mandatory Reporting and Its Consequences: Section 19 of the Act** mandates that any knowledge of a sexual offence involving a child must be reported to the police.
 - ♦ It can **infringe on the right to health** of adolescent girls, especially in cases involving consensual sex and access to reproductive healthcare, and **discourages minors** from seeking medical help or counseling for fear of legal repercussions.
- **Delays in Investigation and Prosecution:** The **Gujarat High Court** highlighted the procedural lapses and lack of diligence in a case where POCSO charges were invoked eight years after the original FIR.
- **Judicial Discretion:** The **Supreme Court** declined to impose a sentence on a man convicted under POCSO, citing that the victim was now in a relationship with the accused.
 - ♦ It invoked **Article 142** to ensure 'complete justice'.

Endorsements of Gender Neutrality

- **Legislative Endorsements:**
 - ♦ **Official Government Clarifications:** The Ministry of Women and Child Development (MWCD), in multiple Parliamentary responses, has expressly stated that **POCSO is a gender-neutral law**.
 - ♦ **Parliamentary Records:** The Statement of Objects and Reasons, at the time of POCSO Amendment in 2019, explicitly reaffirmed the gender-neutral character of POCSO.
- **Judicial Endorsements:**
 - ♦ **The Supreme Court of India**, in *Sakshi v. Union of India* (2004), stressed that child sexual abuse includes conduct far beyond penile-vaginal intercourse.
 - Limiting the **law based on gender** would undermine this reality.
 - ♦ **Karnataka High Court** ruled that a woman can be prosecuted for penetrative sexual assault under the POCSO Act.
 - ♦ **Delhi High Court** stated that the POCSO Act is a gender-neutral legislation and that its application cannot be limited by assumptions about the gender of offenders.

Conclusion

- The core objective of POCSO is to **protect minors from sexual harm**, regardless of the gender identity of the perpetrator. A gender-neutral application is therefore consistent with the law's protective purpose.
- Both statutory interpretation and legislative intent clearly indicate that **women can be prosecuted for penetrative sexual assault under Section 3 of POCSO**.
- A gender-neutral approach best serves the Act's overarching goal of safeguarding all children from sexual abuse.

Source: TH

Daily Mains Practice Question

[Q] Examine the principle of gender neutrality under the POCSO Act, 2012. How has the judiciary interpreted this principle, and what are the broader implications for child protection and legal equity in India?

