

## ALL YOU NEED TO KNOW ABOUT PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT<sup>i</sup>

### 1) Why was the POCSO Act enacted?

The POCSO Act (hereinafter referred to as ‘The Act’) was enacted on 14 November 2012 throughout India, except the state of Jammu and Kashmir. The Act was enacted to protect children from offences of sexual assault, sexual harassment and pornography and to provide a child-friendly system for the trial of these offences. Data from a study undertaken by the Ministry of Women and Child Development on ‘*Child Abuse*’ in 2007 had revealed that 53.22% of children had faced one or more forms of sexual abuse. The increasing incidence of sexual offences against children had to be addressed through a separate legislation, as the Indian Penal Code, did not specifically provide for sexual offences against children, particularly boys. It recognized limited forms of sexual violence against girls, and considered all physical sexual acts other than rape as amounting to “outraging the modest of women” and which was punishable with a maximum term of two years and/or fine.

The controversially worded Section 377, IPC which criminalized voluntary acts of intercourse against the order of nature, was the only provision available to address penetrative sexual assault against boys.

### 2) What are the sexual offences which are recognized under the POCSO Act? And punishments for those offences?

**List of offences and Punishments**

OFFENCE	MINIMUM	MAXIMUM	FINE
Penetrative Sexual Assault	7 years	Life Imprisonment	✓
Aggravated Penetrative Sexual Assault	10 years (Rigorous Imprisonment)	Life Imprisonment	✓
Sexual Assault	3 years	5 years	✓
Aggravated Sexual Assault	5 years	7 years	✓
Sexual Harassment		3 years	✓
Use of child for pornographic purposes		5 years	✓
<ul style="list-style-type: none"> <li>• Second Conviction</li> </ul>			✓
<ul style="list-style-type: none"> <li>• Penetrative Sexual assault for pornographic purposes</li> </ul>	10 years	7 years Life Imprisonment	✓
<ul style="list-style-type: none"> <li>• Aggravated penetrative sexual assault for pornographic purposes</li> </ul>	Life Imprisonment (Rigorous)		✓

<ul style="list-style-type: none"> <li>Sexual assault for pornographic purposes</li> </ul>	6 years	8 years	✓
<ul style="list-style-type: none"> <li>Aggravated Sexual Assault for pornographic purposes</li> </ul>	8 years	10 years	✓
Storage of Pornographic materials involving a child		3 years	And/or
Abetment of an offence	If abetment offence is committed, punishment for abetment is same as that provided for the offence		

### 3) What are the reliefs available to child victims of sexual offences?

The term 'child' has been defined to mean "any person below the age of eighteen years". The Act offers several procedural and substantive reliefs to a child victim. They are as follows:

**a) Child friendly processes:** The Act requires respect for the dignity and autonomy of the child at every stage of the legal process. It provides for child-friendly procedures for medical examination, recording the statement of the child by the Police and Magistrate, as well as during the examination of the child in court. Cases reported by a child must be recorded by the police/Special Juvenile Police Unit (Hereinafter referred to as SPJU) in simple language so that the child understands what is being recorded. A qualified translator/interpreter must be provided to the child if the statement is recorded other than the preferred language of the child. The child must be accompanied by a parent, guardian, or any other person whom the child trusts or has confidence in, during procedures involving medical examination, recording statements, or giving testimonies in court. Before any medical examination is conducted, consent by or on behalf of the child must be obtained. Medical examination can be conducted irrespective of whether a First Information Report/Complaint has been filed. Where the victim is a girl, examination must be done by a woman doctor. Also, the child must not be brought face to face with the accused while giving his/her statement to the police or magistrate, or while testifying in court. If necessary, a support person must also be provided to a child to assist him/her during the investigation and trial. Under no circumstances can the child be asked to remain in the police station at night.

**b) Emergency medical care:** Child victims who are found to be in need of urgent medical attention are entitled to receive emergency medical care within 24 hours of the Police/ SPJU receiving information about the crime.

**c) Care and protection:** If the police/SPJU have reasonable grounds to believe that the child is in need of care and protection, they must immediately make arrangements to give the child such care and protection and also alert the Child Welfare Committee ( Hereinafter referred to as CWC), the statutory authority vested with this responsibility. The CWC can take steps to ensure that care and protection is extended to the child. For instance, it can provide the child with a support person to render assistance during the investigation and trial. It can also order that the child be taken out of the custody of her/his family if she/he has been or is likely to be sexually abused there.

**d) Compensation:** It is not essential that the accused needs to be convicted in order to receive compensation, a child victim may receive interim compensation for immediate needs for relief of rehabilitation and final compensation for the loss or injury caused to her/him. The State Government must pay the compensation to the victim within 30 days from the date of the order of the Special Court.

**e) Punishment:** The Act prescribes punishment for offenders who commit sexual offences against children.

#### 4) Who are the key authorities under The Act and what are their duties?

The key authorities and their duties are as follows:

POLICE/ Special Juvenile Police Unit	<ul style="list-style-type: none"> <li>Record information</li> <li>Preliminary assessment</li> <li>Report case within 24 hours</li> <li>Produce before CWC within 24 hours, if required</li> <li>Adhere to the medical needs of the child</li> <li>Keeping parent/guardian informed</li> </ul>
CWC	<ul style="list-style-type: none"> <li>Placement of child, if required</li> <li>Provide support person</li> </ul>
District Child Protection Unit	<ul style="list-style-type: none"> <li>Maintain register and make it available to authorities.</li> <li>Make payments for services of interpreters/translators.</li> </ul>
Magistrate	<ul style="list-style-type: none"> <li>Record Statement</li> </ul>
Special Court/Judge	<ul style="list-style-type: none"> <li>Conduct in-camera trial</li> <li>Ensure child-friendly atmosphere</li> <li>Respect dignity of child</li> <li>Maintain anonymity of child</li> <li>Record evidence of child within 30 days</li> <li>Complete trial within 1 year</li> </ul>
Special Public Prosecutor	<ul style="list-style-type: none"> <li>Prosecution of cases exclusively under The Act</li> </ul>
Support Person	<ul style="list-style-type: none"> <li>Maintain confidentiality</li> <li>Keeping parent/guardian informed</li> <li>Inform child of his/her role in the judicial process</li> </ul>
Central Government	<ul style="list-style-type: none"> <li>Provide publicity to The Act</li> <li>Impart training to authorities</li> <li>Framing rules and guidelines.</li> <li>Pass orders to remove difficulties that may arise in giving effect to the provisions of the Act, within two years from the commencement of the Act, i.e 13 November 2014.</li> </ul>
State Government	<ul style="list-style-type: none"> <li>Designate a court as special court</li> <li>Appoint special public prosecutor</li> <li>Provide publicity to the Act</li> <li>Impart training to authorities</li> <li>Framing rules and guidelines</li> </ul>
National Commission for Protection of Child Rights/ State Commission for Protection of Child Rights	<ul style="list-style-type: none"> <li>Monitor implementation of the Act</li> <li>Calling for reports from the CWC on specific cases.</li> <li>Reporting on the implementation of the Act by way of separate chapter in its annual report.</li> </ul>

5) **What is Penetrative Sexual Assault and Aggravated Penetrative Sexual Assault?**

<u><b>Penetrative Sexual Assault</b></u>	<u><b>Aggravated Penetrative Sexual Assault</b></u>
<p>According to section 3 of The Act, a penetrative sexual assault involves some form of penetration with a body part (penis, finger etc.) or an object into the body (vagina, urethra, anus or mouth) of a child. Making a child penetrate the accused, another adult or another child is also an offence.</p> <p>For instance, a person who makes a child insert her/his finger into the vagina of another child or woman is liable for having committed penetrative sexual assault. Similarly, insertion of the tongue into the child's vagina, mouth, urethra or anus, or making the child do the same with the accused, another adult, or child is also an offence.</p>	<p>According to section 5 of the Act, Aggravated Penetrative Sexual Assault is distinguished from Penetrative Sexual Assault based on factors such as 'how', 'when', 'by whom' and 'what act'. Aggravating factors are the <b>status of the offender</b> ( police officer, member of the armed forces or security forces, public servant, management or staff of any custodial institution for children, management or staff of a hospital, management or staff of an educational/religious institution, relative of the child through blood, adoption, marriage, guardianship, foster care, or having a domestic relationship with parent, or living in the same or shared household, management or staff of an institution providing services to children, person in a position of trust or authority of a child in an institution, home of the child, or any other place, person having been previously convicted of a sexual offence.), <b>status of the victim</b> ( a disabled child, a child below 12 years of age, a pregnant child.), <b>the impact on the victim</b> ( grievous hurt or bodily harm or injury to any part of the body of the child, physical incapacitation, mental illness, or temporary/permanent impairments because of the assault, pregnancy), or <b>the nature of the assault</b> ( penetrative sexual assault by a gang, use of deadly weapons, repeated penetrative sexual assaults, assault followed by an attempt to murder a child, assault in the course of communal or sectarian violence, assault followed by stripping and parading of the child naked in public.)</p>

**6) What is sexual assault and aggravated sexual assault?**

<u>Sexual Assault</u>	<u>Aggravated Sexual Assault</u>
<p>According to Section 7 of The Act, sexual assault is an offence which does not involve penetration. It is commonly referred as a non-penetrative touch based offence. The key ingredients of this offence are</p> <ul style="list-style-type: none"> <li>• Touching the vagina, penis, anus or breast of the child or making the child touch one or more of these parts of the accused or that of another adult or child, and</li> <li>• Doing so with a sexual intent.</li> </ul> <p>Therefore, in order to constitute sexual assault, The Act must be done with sexual intent. For instance, if a child is taken to a doctor with a complaint of burning sensation in her vagina and the doctor examined the vagina, the doctor has not committed an offence. But, if the doctor asks a child complaining only of an ear ache to undress and then touch the child's private parts, he/she can be charged with sexual assault.</p>	<p>According to Section 9 of The Act, Aggravated Sexual Assault is distinguished from Sexual Assault based on factors such as status of the offender, status of the victim, the impact on the victim, the nature of the assault etc. Refer to the list above under the Aggravated Sexual Assault column to understand more on these factors.</p>

**7) What is meant by Sexual Harassment?**

A person commits an offence of sexual harassment against a child under Section 11 if she/her does any of the following with a sexual intent.

- i) Says any word or makes a sound or gesture or shows any part of the body or object to the child.
- ii) Makes the child show her/his body, or part of her/his body.
  - a) To the person, or
  - b) To any other person
- iii) Shows any object in any form for pornographic purposes.
- iv) Follows the child repeatedly or watched or contacts a child directly or through other means (stalking).
- v) Threatens to use a real or fabricated depiction of any part of the child's body or involvement of the child in a sexual act in the media ( e.g., a threat to circulate a morphed picture with child's face and body of another child on the internet).
- vi) Entices the child for pornographic purposes or gives gratification for such purpose.

Sexual harassment is a non-penetrative and non-touch based sexual offence. The distinct feature of this offence is that it does not involve penetration of body parts or insertion of objects or physical contact, but requires a sexual intent while doing any of the acts listed above.

**8) Can a child be charged with an offence under The Act?**

Yes, a child can be charged with a sexual offence under The Act. However, cases against a child will lie before the Juvenile Justice Board as per procedures laid down under the Juvenile Justice ( Care and Protection of Children) Act, 2000 ( JJ Act). The child cannot be tried by the Special Court and cannot be punished under The Act. If the child is found to have committed an offence under The Act, the Juvenile Justice Board could pass any of the following orders as per provisions listed under the JJ Act:

- Advice and admonish the child and send her/him home with parents or guardian after counselling.
- Direct the child to participate in group counselling and similar activities.
- Order the child to perform community service.

- Order the parent or the child to pay a fine, if such child is working and is above 14 years of age.
- Release the child on probation of good conduct after executing a bond and place the child in the custody of parent or guardian or fit person.
- Release the child on probation of good conduct and place the child in the custody of a fit institution for good behaviour and wellbeing of a child for not more than three years.
- Send the child to a special home for reformation for a maximum period of three years.

**9) Who is under an obligation to report offences under This Act?**

All persons are under an obligation to report offences under The Act. According to Section 19 (1), anyone who knows that an offence is committed or believes that it is likely to be committed or where there is an apprehension that a sexual offence is likely to be committed against a child will have to inform the SJPU or the local police. Failure to report the commission of an offence is punishable under section 21 (1) with imprisonment for a maximum term of six months and/or fine. Children too are under an obligation to report offences under This Act. However they cannot be punished for failure to report an offence.

**10) Do the personnel in media, studios, photographic facilities, hotels or hospitals have a special duty to report sexual offences against children?**

Yes, a special duty has been imposed upon personnel working in the media hotels, clubs, studios, photographic facilities, and hospitals to report cases. If they find materials or objects that are sexually exploitative of children, they must report it to the police or the SPJU. For instance, if the housekeeping personnel come across pornographic pictures of children in a hotel room, they must notify the local police or the SJPU about it. The failure to report will attract imprisonment for a maximum term of six months and/or fine.

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<sup>i</sup> Excerpts from the book, *Frequently Asked Questions on the Protection of Children from Sexual Offences Act, 2012-*

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