



## **Study of The Protection of Children from Sexual Offences Act (POCSO Act) and its provisions**

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**Abstract :** POCSO or The Protection of Children from Sexual Offences Act (POCSO Act) 2012 was established to protect the children against offences like sexual abuse, sexual harassment and pornography. It was formed to provide a child-friendly system for trial underneath which the perpetrators could be punished. The Act defines a child as any person below eighteen years of age. It also makes provisions for avoiding the re-victimization of the child at the hands of the judicial system. Protection of Children from Sexual Offences Act, 2012 received the President's assent on June 19, 2012. It was notified in the Gazette of India on June 20, in the same year.

**Key Words :** The Protection of Children from Sexual Offences Act

**Introduction :** The Act provides for punishment against false complaints or untrue information. It describes strict action against the offender according to the gravity of the offence. It prescribes rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and also fine as punishment for aggravated penetrative sexual assault. It also prescribes punishment to the people who traffic children for sexual purposes.

### **Protection of Children from Sexual Offences Act**

- The Act defines a child as any person below eighteen years of age, and regards the best interests and well-being of the child as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child.
- It defines different forms of sexual abuse, including penetrative and non-penetrative assault, as well as sexual harassment and pornography, and deems a sexual assault to be “aggravated” under certain circumstances, such as when the abused child is mentally



ill or when the abuse is committed by a person in a position of trust or authority vis-à-vis the child, like a family member, police officer, teacher, or doctor.

- People who traffic children for sexual purposes are also punishable under the provisions relating to abetment in the Act. The Act prescribes stringent punishment graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life, and fine.

### **Punishments for Offences covered in the Act**

- Penetrative Sexual Assault (Section 3) on a child — Not less than seven years which may extend to imprisonment for life, and fine (Section 4)
- Aggravated Penetrative Sexual Assault (Section 5) — Not less than ten years which may extend to imprisonment for life, and fine (Section 6)
- Sexual Assault (Section 7) i.e. sexual contact without penetration — Not less than three years which may extend to five years, and fine (Section 8)
- Aggravated Sexual Assault (Section 9) by a person in authority — Not less than five years which may extend to seven years, and fine (Section 10)
- Sexual Harassment of the Child (Section 11) — Three years and fine (Section 12)
- Use of Child for Pornographic Purposes (Section 13) — Five years and fine and in the event of subsequent conviction, seven years and fine Section 14 (1)

### **Provisions related to conduct of trial of reported offences**

- The Act provides for the establishment of Special Courts for trial of offences under the Act, keeping the best interest of the child as of paramount importance at every stage of the judicial process.
- The Act incorporates child friendly procedures for reporting, recording of evidence, investigation and trial of offences. These include:
  - Recording the statement of the child at the residence of the child or at the place of his choice, preferably by a woman police officer not below the rank of sub-inspector.
  - No child to be detained in the police station in the night for any reason.
  - Police officer to not be in uniform while recording the statement of the child.
  - The statement of the child to be recorded as spoken by the child.



- Assistance of an interpreter or translator or an expert as per the need of the child.
  - Assistance of special educator or any person familiar with the manner of communication of the child in case child is disabled
  - Medical examination of the child to be conducted in the presence of the parent of the child or any other person in whom the child has trust or confidence.
  - In case the victim is a girl child, the medical examination shall be conducted by a woman doctor. 13. Frequent breaks for the child during trial. Child not to be called repeatedly to testify.
  - No aggressive questioning or character assassination of the child in-camera trial of cases.
- The Act recognizes that the Intent to commit an offence, even when unsuccessful for whatever reason, needs to be penalized.
  - The attempt to commit an offence under the Act has been made liable for punishment for up to half the punishment prescribed for the commission of the offence.
  - The Act also provides for punishment for abetment of the offence, which is the same as for the commission of the offence.
  - The Act makes it mandatory to report commission of an offence and also the recording of complaint and failure to do so would make a person liable for punishment of imprisonment for six months or / and with fine. 18. It is a Punishable action if Police / Special Juvenile Police Unit fails to report a commission of the offence under this act [Section- 2141)]
  - For the more heinous offences of Penetrative Sexual Assault, Aggravated Penetrative Sexual Assault, Sexual Assault and Aggravated Sexual Assault, the burden of proof is shifted to the accused. This provision has been made keeping in view the greater vulnerability and innocence of children.
  - To prevent misuse of the law, punishment has been provided for making false complaint or proving false information with malicious intent. Such punishment has been kept relatively light (six months) to encourage reporting. If false complaint is made against a child, punishment is higher (one year) (Section 22).



- The media has been barred from disclosing the identity of the child without the permission of the Special Court. The punishment for breaching this provision by media may be from six months to one year (Section 23).
- For speedy trial, the Act provides for the evidence of the child to be recorded within a period of 30 days. Also, the Special Court is to complete the trial within a period of one year, as far as possible (Section 35).
- To provide for relief and rehabilitation of the child, as soon as the complaint is made to the Special Juvenile Police Unit (SJPU) or local police, these will make immediate arrangements to give the child, care and protection such as admitting the child into shelter home or to the nearest hospital within twenty-four hours of the report. The SJPU or the local police are also required to report the matter to the Child Welfare Committee within 24 hours of recording the complaint, for long term rehabilitation of the child.
- The Act casts a duty on the Central and State Governments to spread awareness through media including the television, radio and the print media at regular intervals to make the general public, children as well as their parents and guardians aware of the provisions of this Act.
- Where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370,370A, 375, 376, 376A, 376C, 376D, 376E or section 509 of the Indian Penal Code (45 of 1860), then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment under this Act or under the Indian Penal Code as provides for punishment which is greater in degree."
- The Provisions of this Act is in addition to and not in derogation of any other provisions of any other Law. In case of any consistency the provisions of this act will have an overriding effect on any other provisions.
- The POCSO Act is only applicable to child survivors and adult offenders. In case two children have sexual relations with each other, or in case a child perpetrates a sexual offence on an adult, the Juvenile Justice (Care and Protection of Children) Act, 2000, will apply.

The Act defines different forms of sexual abuse which includes penetrative and non-penetrative assault. It also involves sexual harassment, pornography, etc. Under certain



specific circumstances POCSO states a sexual assault is to be considered “aggravated if the abused child is mentally ill or when the abuse is committed by a member of the armed forces or security forces or a public servant or a person in a position of trust or authority of the child, like a family member, police officer, teacher, or doctor or a person-management or staff of a hospital — whether Government or private.”

The Act also makes it mandatory to report such cases. It makes it the legal duty of a person aware of the offence to report the sexual abuse. In case he fails to do so, the person can be punished with six months’ imprisonment or fine. The Act further states that the evidence of the child should be recorded within a period of thirty days. The Special Court taking cognizance of the matter should be able to complete the trial within the period of one year from the date of taking cognizance of the abuse. It provides that the Special Court proceedings should be recorded in camera and the trial should take place in the presence of parents or any other person in whom the child has trust or confidence.

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