

# THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012





# **THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012**

## **INTRODUCTION**

POCSO Act, 2012 is the abbreviation of Protection of Children from Sexual Offences Act, 2012. If an attempt or commission of sexual assault/offence/harassment happens against a child (male or female) under the age of 18 years, then such cases are filed under POCSO Act, 2012. This law protects children from sexual assault, sexual harassment and use of pornographic material for the purpose of sexual offence against children. Special courts have been established for the purpose of dealing with these offences. This Act has been amended on 6th August 2019 and came into effect from 16th August 2019.

Some of the key points of this Act are:

- It covers all children below the age of 18 years
- It is a gender neutral Act
- Provides child friendly processes for reporting, recording and trial keeping best interest of child as top priority
- Burden of proof is on the accused in cases of penetrative sexual assault, aggravated penetrative sexual assault, sexual assault and aggravated sexual assault
- Makes reporting of child sexual abuse cases mandatory

### **Where to file a complaint and to whom (process of filing a complaint regarding the offences)**

1. To report the offences
  - If any person, including child, has any doubt that such offence can happen or has the knowledge that such offence has been committed, can give the information to the following authorities-
    - i. Special Juvenile Police Unit formed in all police stations;
    - ii. Local police

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For not reporting such type of offence or filing a false report shall be liable for punishment.

In every report-

- i. A written report shall be filed
  - ii. The report should be read out to the person filing the report
  - iii. Entry of the report in the register of police unit
2. If the report has been filed by a child, then it should be registered in simple language, so that the child can understand the elements of report. If the report has been registered in a language, which the child is unable to understand, then a translator or an interpreter shall be provided.
3. Where a special juvenile police unit or local police after investigation finds that the child against whom the offence has been committed, needs care and protection, then the reasons shall be recorded in writing, after which within the limits of 24 hours police will arrange for his/her care and protection (which includes sending the child to a protection home or a nearby hospital as per needs).
4. Special juvenile police unit or local police without any further delay shall inform about the cases to Child Welfare Committee and to the Special Court or to the Sessions Court where the Special Court have not been named.
5. If any person gives any information regarding such offences with good intentions, then no action shall be taken against that person.

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Section	Provision	Punishment
4	<p>Punishment for penetrative sexual assault- if any person inserts or penetrates any private body part or any object in child's body or makes the child to do so with him/her, then it is called as penetrative sexual assault.</p>	<p>Shall be punished with an imprisonment of minimum ten years which may extend upto imprisonment for life, and shall also be liable to fine. If penetrative sexual assault is done on child below 16 years then the punishment will be minimum 20 years and can extend to life imprisonment and shall also be liable to fine. (Section 6, sub section 1)</p>
6	<p>Punishment for aggravated penetrative sexual assault- any police officer, teacher, hospital staff or any other person, under whose care and protection the child is or on whom the child trusts, if that person commits penetrative sexual assault with the child or two or more people commit the act, then it is called as aggravated penetrative sexual assault.</p>	<p>minimum 20 years and can be also life imprisonment or death penalty and shall also be liable to fine. The fine imposed will be reasonable and paid to the victim to meet the medical expenses and rehabilitation of the victim. (Section 6, sub section 2)</p> <p>The fine paid will be used to meet medical and rehabilitation expenses of victim.</p>

8	<p>Punishment for sexual assault-</p> <p>If any person touches with sexual intent any private part of child's body or make the child touch his/her private body part, then it is called as sexual assault.</p>	<p>Shall be punished with an imprisonment of minimum three years which may extend upto five and shall also be liable to fine</p>
10	<p>Punishment for aggravated sexual assault- any police officer, teacher, hospital staff or any other person, under whose care and protection the child is or on whom the child trusts, if that person commits sexual assault or two or more people commits sexual assault using a weapon, then it is called as aggravated sexual assault.</p>	<p>Shall be punished with an imprisonment of minimum five years which may extend upto seven years, and shall also be liable to fine</p>
12	<p>Punishment for sexual harassment- if any person with malice commits any act which can be considered sexual in front of a child or makes the child exhibit his/her body, shows any form of media or pornographic content, then it is called as sexual harassment.</p>	<p>Shall be punished with an imprisonment of upto three years, and shall also be liable to fine</p>

14	<p>Punishment for using child for pornographic purposes- if any person uses a child for pornographic (obscene media, movies or picture) purposes (which includes T.V. channels or advertisements or internet or any other electronic form or printed form, whether or not such programme or advertisement is used for personal purpose or distribution or not), it is a serious offence</p>	<p>Using a child for pornographic purposes is punishable with imprisonment for a period not less than 5 years and is also liable to fine, and in case of repeated offence, punishment will be not less than 7 years of imprisonment and is also liable to fine. (Section 14, 1).</p>
15	<p>Punishment for storage of pornographic material involving child- any person, who stores, for commercial purposes any pornographic material in any form which includes a child, is punishable.</p>	<p>Any person who stores any pornographic material involving a child and fails to report or destroy it is punishable with a fine of not less than five thousand rupees., and repeat offence will be punishable with fine of not less than ten thousand rupees. If the material is stored for further transmitting or propagating, then along with fine, it is punishable with upto three years of imprisonment. For storing child pornographic material for commercial purpose is punishable with three to five years of imprisonment, and in subsequent conviction, upto seven years of imprisonment. (Section 15)</p>

17	Punishment for abetment- to abet or instigate for aforementioned offences is also an offence. If any offence is committed in consequence of abetment, then it is punishable.	Shall be punished with imprisonment of any description provided for the offence
18	Punishment for attempt to commit an offence- whoever attempts to commit any offence punishable under this act or helps in committing the act and does an act in the commission of such act, then it is punishable.	Shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the punishment had the act been actually committed or with fine or both
21	Not reporting any offence committed under the provisions of this act.	Shall be punished with an imprisonment of upto six months and/or with fine



22	<p>Any person, who reports a wrong complaint of offences committed under Section 3 (penetrative sexual assault), Section 5 (aggravated penetrative sexual assault), Section 7 (sexual assault), Section 9 (aggravated sexual assault) with an intention of insulting, intimidating or for defamation lies about it or gives wrong information.</p> <ol style="list-style-type: none"><li>1. If the person filing false complaint is a child, then no punishment shall be imposed on such child.</li><li>2. If the false complaint has been filed by a person, not being a child, against a child, knowingly gives the false information or information which he/she has ground to believe is false, thereby victimizing such child in any offence under this act, is punishable.</li></ol>	<p>Shall be punished with an imprisonment of upto six months or with fine or both</p> <p>Such person shall be punished with an imprisonment of upto one year or with fine or both</p>
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23	<p>Any person, who makes any report or present comments on any child in any form of media without any authentic information, which can lower the reputation or infringe the privacy of child.</p> <p>Or</p> <p>Through any report of media publishes child's identity, like name, address, photograph, family details, school, neighbourhood or any other particulars.</p>	<p>Shall be punished with an imprisonment of six months which may extend to a term of one year or with fine or both.</p>
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According to this act all the offences are considered as grievous offences. These offences are non- bailable and cognizable offences.

### Process for Media (Section 23)

#### Restrictions on media, studio or photographic facilities on reporting an offence

If any person who is working with media, hotel, lodge, hospital, club, studio or photography has the knowledge that through any object, element or medium, sexual harassment of a child is happening, then that person should provide the information to special juvenile police unit or to local police.

For child's complete development and respect, during all the steps of legal procedure child's information needs to be kept confidential. It is necessary to-

- i. Not to make any report or present comments related to child which can violate the confidentiality of child's information. Media shall not disclose any information without any authentic proof.
- ii. If through media's report, no information of child shall be disclosed like name, address, photograph, family details, neighbourhood or any other particulars; until the capable court haven't released any order permitting the same.

### Process of recording the statement of child

#### Recording of statement of child by police (Section 24)

1. Child's statement shall be recorded at the residence of child or at place where child is comfortable in presence of a woman officer not below the rank of sub-inspector.
2. While recording the statement of child, police officer shall not be in uniform.
3. The police officer investigating the case shall make sure that the child at no point comes in contact with the accused.
4. Under no circumstances the child shall be detained in police station in the night.
5. Police officer shall ensure that child's identity is protected from public and media, unless otherwise directed by the Special Court in the interest of child.<sup>1</sup>

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1 According to section 74 of The Juvenile Justice (Care and Protection) Act, 2015, (1) No report in any newspaper, magazine, news-sheet or audio-visual media or other forms of communication regarding any inquiry or investigation or judicial procedure, shall disclose the name, address or school or any other particular, which may lead to the identification of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime, involved in such matter, under any other law for the time being in force, nor shall the picture of any such child be published: Provided that for reasons to be recorded in writing, the Board or Committee, as the case may be, holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the best interest of the child. (2) The Police shall not disclose any record of the child for the purpose of character certificate or otherwise in cases where the case has been closed or disposed of. (3) Any person contravening the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to two lakh rupees or both.

### Recording of a statement of child by Magistrate (Section 25)

1. Magistrate shall record the statement as spoken by the child.

### Additional provisions regarding statement to be recorded (Section 26)

1. Magistrate or police officer shall record the statement of child in presence of his/her father or mother or any other person in whom the child has trust or confidence.
2. Wherever necessary, Magistrate or Police Officer may take the assistance of a translator or an interpreter.
3. If the child has mental or physical disability then the assistance of special educator or person familiar with the manner of communication of child may be taken to record the statement.

Wherever possible, Magistrate or Police officer shall ensure that the statement of child is also recorded by audio-visual means.

### Medical examination of child (Section 27)

- i. Medical examination of child in respect of whom any offences has been committed under this Act, shall be done whether First Information Report has been filed or not.
- ii. If the victim of offence is a girl child, then the medical examination shall be conducted by a woman doctor
- iii. Child's medical examination shall be conducted in the presence of parents or guardian, and if they are not present, then in presence of any other person in whom the child has trust or confidence
- iv. If during medical examination of child, his/her parents or any other person whom the child trust cannot be present, for any reason, then the medical examination shall be conducted in presence of a woman nominated by the head of medical institution.

### Designation of special courts (Section 28)

For the purpose of speedy trial, State Government shall in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, appoint a Special Court i.e. Sessions Court in each district.

If any person attempts to commit an offence under the POCSO Act during the provision of Sessions court, protection of Child Rights Act, 2005 or any rule applicable at that time, then such Court shall be deemed to be a Special Court under this section.

Special Court formed under this Act has the right to decide on cases which involves online exploitation of a child through any act, or conduct or manner.

### Presumption as to certain offences (Section 29)

#### Estimation of certain offences

If any person is facing criminal charges related to sexual offence on a child or abetting others to commit sexual offence on that child, then the Special Court shall believe that the person has committed the offence, unless proven otherwise.

### Presumption of culpable mental state (Section 30)

Special Court shall believe that the offender has the knowledge of offence and the person has the intention and motive of committing the offence, unless it is proven otherwise, that the person mental state was different.

### Special Public Prosecutors (Section 32)

- i. To conduct cases of state government, in every court a Special Public Prosecutor shall be appointed.
- ii. A person shall be eligible as a Special Public Prosecutor only when he/she had been in practice as an advocate for not less than 7 years.

### Procedure and Powers of Special Courts (Section 33)

1. Any Special Court can take the cognizance of any offence, upon receiving a complaint of facts which constitute such offence, or on police report
2. The Special Public Prosecutor or any advocate appointed by accused, shall submit the questions to the Special Court that need to be asked to the child during examination-in-chief, cross-examination or re-examination, which the Special Court shall in turn put those questions to the child
3. If Special Court finds it necessary, then it can permit frequent breaks to the child during trial
4. Special Court shall create a child-friendly atmosphere in the court by allowing any member, care taker, friend or relative, in which the child has trust or confidence
5. Special Court shall ensure that the child is not called repeatedly in the court
6. Special court shall not permit aggressive questioning or character assassination of child and shall ensure the dignity of child is maintained throughout the trial
7. Special Court shall ensure that at no time during the trial identity of child is disclosed
8. If found necessary or in best interest of child, Special Court shall give the permission for revealing the identity of child

Explanation: child's identity shall include the child's family, school, relatives, neighbourhood or any other information through which the identity of child can be found.

9. Special Court can also order to provide compensation to the child for physical and mental injuries caused for the immediate rehabilitation of child
10. Special Court, for the purpose of trial, has all the powers of Sessions Court, and can also ask for the reason of delay in trial

## RECORDING OF EVIDENCE (Section 35)

Period for recording of evidence of child and disposal of case

- i. Evidence of child shall be recorded by the Special Court within a period of 30 days of cognizance of offence
- ii. Special Court shall complete the trial, as far as possible, within a period of one year from the date of cognizance of the offence

## Child not to see accused at the time of testifying (Section 36)

- i. Special Court shall ensure that the child is not exposed to the accused while giving statement, and shall also ensure that the accused is in a position to hear the child's statement and communicate with his/her advocate
- ii. Special Court shall record the statement of child through video conferencing or by using single visibility mirrors or curtains

## Trials to be conducted *in camera* (Section 37)

- i. Special Court shall try cases *in camera* where child's mother, father or any other person on whom the child has trust or confidence is present.

## Monitoring of the implementation of the Act

The Act shall be properly followed, to ensure this National Child Rights Protection Commission and State commission for Protection of Child Rights is formed.

For the protection of child rights, National Child Rights Protection Commission (N.C.P.C.R.) was established during March 2007 under Protection of Child Rights Act, 2005.

- ❖ National Child Rights Protection Commission (N.C.P.C.R.) and State Commission for Protection of Child Rights (S.C.P.C.R.) has been formed as an authority to monitor the Juvenile Justice (Care and Protection of children )Act,2015, The Prevention of Children from Sexual Offences Act, 2012 and The Right of Child to Free and Compulsory Education Act, 2009.

- ❖ POCSO cell- monitoring the implementation of Section 44 of The Prevention of Children from Sexual Offences, 2012.

#### Rights of child to take assistance of legal practitioner

#### Guidelines for child to take assistance of experts (Section 39)

State government will provide the child assistance of non-governmental organizations, professional and experts or any person having the knowledge of psychology, social work, mental health and child development

#### Rights of child to take assistance of legal practitioner (Section 40)

Family or the guardian or child has the right to refer to their choice of legal practitioner, but if they are unable to bear the cost, then according to the provision they shall be provided with a legal practitioner.

#### Public awareness about Act (Section 43)

Central government and State government shall take all measures to ensure that-

1. The provisions of this act shall reach the general public, children as well as their parents and guardians and make them aware about it through media including television, radio and print media.
2. Central government and State government and other concerned persons (which include police officers) are imparted with periodic training concerning the implementations of provision of the Act.



# NOTES

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