

The Protection of Children from Sexual Offences (POCSO) Act & Rules

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Introduction

- POCSO Act was enacted in 2012
- Prior to 2012, the Indian Penal Code (IPC) used to apply
- Child and adult victims were treated the same.
- Offenders could only be male and not female persons.
- Male children were not adequately protected under IPC.



What is the POCSO Act?

POCSO was enacted to:

- Address sexual offences against children
- Lay down a child-friendly legal process
- Bring in more stringent punishment for offenders
- Have Special Courts for conducting the trial



Features of POCSO Act

- Gender neutral – both male and female - offenders and victims
- Privacy and confidentiality of the child is protected
- Best-interest and well-being of the child is paramount
- Sensitive legal process
- Age of consent for engaging in sexual relations – 18 years
- Grey area in “consensual sexual relationship between two minors” – the question of who is the victim and who is the offender?
- Speedy trial



Evolution of the age of consent

Year	Age of consent under Section 375, 5 th Clause of IPC	Age mentioned in the Exception to Section 375 of IPC	Minimum age of marriage under the Child Marriage Restraint Act, 1929
1860	10 years	10 years	-
1891(10 of 1891) (after the amendment of IPC)	12 years	12 years	-
1925 (after the amendment of IPC)	14 years	13 years	-
1929 (after the passing of the Child Marriage Act)	14 years	13 years	14 years
1940 (after the amendment of Penal Code and the Child Marriage Act)	16 years	15 years	15 years
1978	16 years	15 years	18 years
2006 (after enactment of Prohibition of Child Marriage Act, 2006)	16 years	15 years	18 years for female and 21 years for male

2013 (after Criminal Law Amendment Act, 2013 which amended IPC and followed shortly after enactment of POCSO)	18 years	15 years	18 years for female and 21 years for male
2017 (After the Supreme Court's decision in Independent Thought v. UOI)	18 years (even in case of a married woman under 18 on account of reading down of Exception 2 of Section 375 in light of POCSO)	15 years however the same was read down	18 years for female and 21 years for male

Source: Law Commission 283rd report



Offences

CHAPTER II

- A – Penetrative sexual assault
- B – Aggravated penetrative sexual assault
- C – Sexual assault
- D – Aggravated sexual assault
- E – Sexual Harassment

CHAPTER III

- Using child for pornographic purposes
- Storage of pornographic material involving child

CHAPTER IV

- Abetment
- Attempt

CHAPTER V

- Non-reporting
- False complaint or false information
- Violation of procedure for media



Penetrative
sexual assault.

3. A person is said to commit "penetrative sexual assault" if—

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.



5. (a) Whoever, being a police officer, commits penetrative sexual assault on a child —
- (i) within the limits of the police station or premises at which he is appointed; or
 - (ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or
 - (iii) in the course of his duties or otherwise; or
 - (iv) where he is known as, or identified as, a police officer; or
- (b) whoever being a member of the armed forces or security forces commits penetrative sexual assault on a child—
- (i) within the limits of the area to which the person is deployed; or
 - (ii) in any areas under the command of the forces or armed forces; or
 - (iii) in the course of his duties or otherwise; or
 - (iv) where the said person is known or identified as a member of the security or armed forces; or
- (c) whoever being a public servant commits penetrative sexual assault on a child; or
- (d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or



(e) whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution; or

(g) whoever commits gang penetrative sexual assault on a child.

Explanation.—When a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

(h) whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or



(j) whoever commits penetrative sexual assault on a child, which—

(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (b) of section 2 of the Mental Health Act, 1987 or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; ~~or~~

14 of 1987.

(ii) in the case of female child, makes the child pregnant as a consequence of sexual assault;

(iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or (iv) causes death of the child; or

(k) whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or

(l) whoever commits penetrative sexual assault on the child more than once or repeatedly; or

(m) whoever commits penetrative sexual assault on a child below twelve years; or

(n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or



(o) whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or

(p) whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or

(q) whoever commits penetrative sexual assault on a child knowing the child is pregnant; or

(r) whoever commits penetrative sexual assault on a child and attempts to murder the child; or

(s) whoever commits penetrative sexual assault on a child in the course of communal or sectarian violence; or during any natural calamity or in any similar situations; or

(t) whoever commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or

(u) whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public,

is said to commit aggravated penetrative sexual assault.



Sexual assault.

7. Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.



9. (a) Whoever, being a police officer, commits sexual assault on a child—

(i) within the limits of the police station or premises where he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known as, or identified as a police officer; or

(b) whoever, being a member of the armed forces or security forces, commits sexual assault on a child—

(i) within the limits of the area to which the person is deployed; or

(ii) in any areas under the command of the security or armed forces; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits sexual assault on a child; or

(d) whoever being on the management or on the staff of a jail, or remand home or protection home or observation home, or other place of custody or care and protection established by or under any law for the time being in force commits sexual assault on a child being inmate of such jail or remand home or protection home or observation home or other place of custody or care and protection; or



(e) whoever being on the management or staff of a hospital, whether Government or private, commits sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution or religious institution, commits sexual assault on a child in that institution; or

(g) whoever commits gang sexual assault on a child.

Explanation.—when a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

(h) whoever commits sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) whoever commits sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

(j) whoever commits sexual assault on a child, which—

(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (l) of section 2 of the Mental Health Act, 1987 or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or

(ii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or



- (k) whoever, taking advantage of a child's mental or physical disability, commits sexual assault on the child; or
- (l) whoever commits sexual assault on the child more than once or repeatedly; or
- (m) whoever commits sexual assault on a child below twelve years; or
- (n) whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or shared household with the child, commits sexual assault on such child; or
- (o) whoever, being in the ownership or management or staff, of any institution providing services to the child, commits sexual assault on the child in such institution; or
- (p) whoever, being in a position of trust or authority of a child, commits sexual assault on the child in an institution or home of the child or anywhere else; or
- (q) whoever commits sexual assault on a child knowing the child is pregnant; or
- (r) whoever commits sexual assault on a child and attempts to murder the child; or
- (s) whoever commits sexual assault on a child in the course of communal or sectarian violence; or during any natural calamity or in any similar situations; or
- (t) whoever commits sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or
- (u) whoever commits sexual assault on a child and makes the child to strip or parade naked in public,
- is said to commit aggravated sexual assault.

(v) Whoever persuades, induces, entices or coerces a child to get administered or administers or direct anyone to administer, help in getting administered any drug or hormone or any chemical substance, to a child with the intent that such child attains early sexual maturity,



11. A person is said to commit sexual harassment upon a child when such person with sexual intent,—

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

(ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or

(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or

(vi) entices a child for pornographic purposes or gives gratification therefor.

Explanation.—Any question which involves “sexual intent” shall be a question of fact.



Use of child for pornographic purposes.

13. Whoever, uses a child in any form of media (including programme or advertisement telecast by television channels or internet or any other electronic form or printed form, whether or not such programme or advertisement is intended for personal use or for distribution), for the purposes of sexual gratification, which includes—

(a) representation of the sexual organs of a child;

(b) usage of a child engaged in real or simulated sexual acts (with or without penetration);

(c) the indecent or obscene representation of a child,

shall be guilty of the offence of using a child for pornographic purposes.

Explanation.—For the purposes of this section, the expression “use a child” shall include involving a child through any medium like print, electronic, computer or any other technology for preparation, production, offering, transmitting, publishing, facilitation and distribution of the pornographic material.

“child pornography” means any visual depiction of sexually explicit conduct involving a child which include photograph, video, digital or computer generated image indistinguishable from an actual child, and image created, adapted or modified, but appear to depict a child



Punishments

Penetrative sexual assault – child above 16 years

- Min. – 10 years & Max. – life imprisonment
- Fine

Penetrative sexual assault – child below 16 years

- Min. – 20 years & Max. – life imprisonment
- Fine

Aggravated penetrative sexual assault

- Min. – 20 years & Max – life imprisonment / death penalty
- Fine



Punishments

Sexual assault

- Min. – 3 years & Max. – 5 years
- Fine

Aggravated sexual assault

- Min. – 5 years & Max. – 7 years
- Fine

Sexual harassment

- No min. prescribed; Max – 3 years
- Fine



Punishments

Using child for pornographic purposes

- Min. – 5 years & fine for first conviction
- Min. – 7 years & fine for second/subsequent conviction

Failure to report/delete/destroy pornographic material involving child while storing or possessing

- Min. fine of 5k (1st conviction)
- Min. fine of 10k (2nd/subsequent)

Transmitting/propagating/displaying/distributing pornographic material involving child

- No min. punishment prescribed. Max. – 3 years
- Fine

Storage or possession of pornographic material involving a child for commercial purpose

- Min. 3 years & Max. 5 years for first conviction + fine
- Min. 5 years & Max. 7 years for second/subsequent conviction + fine



Punishments

Abetment

- Same as that of the offence

Attempt

- Max. – one-half of the longest term of imprisonment for the offence and/or fine.

Failure to report

- Max. 6 months and fine
- Superior in a company/institution – Max. 1 year + fine

False complaint / false information

- To defame/threaten the accused – Max. 6 months
- Against a child leading to victimization – Max. 1 year

Violation of procedure by media

- Min. 6 months
- Max. 1 year



Important Aspects

- **Reporting –**
 - Any person including the child
 - Special Juvenile Police Unit (SJPU) or local police
 - Recorded in writing, read over to the informant and entered in diary
 - Read to the child in a simple language
 - Translator or interpreter where necessary
 - SJPU or local police shall make immediate arrangement to give the child care and protection (shelter homes where needed) within 24 hours
 - SJPU or local police to report to CWC and Special Court within 24 hours



Important Aspects

- **CSAM (Child Sexual Abuse Material)–**
 - Any personnel of the media or hotel or lodge or hospital or club or studio or photographic facilities on coming across any material or object which is sexually exploitative of the child (including pornographic, sexually related or making obscene representation of a child or children) through the use of any medium shall provide information to the SJPU or the local police.
 - Storage, transmission, distributing, for commercial purpose or otherwise are offences.



Important Aspects

- **Procedure for media –**
 - No report without complete and authentic information, which may lower reputation or infringe upon the privacy of the child.
 - No report that discloses the identity of the child including his name, address, photograph, family details, school, neighbourhood or any other particular that may lead to disclosure of identity of the child.



Important Aspects

- **Recording of statement of the child by police –**
 - Place of residence or place of choice.
 - By a woman police officer not below the rank of SI as far as practicable.
 - Police officer not to be in uniform.
 - Police officer, while examining the child, to ensure that the child does not come in contact with the accused.
 - Child not to be detained in the police station in the night for any reason.
 - Police officer to ensure that identity of the child is protected.
 - Recorded in the presence of parents or trusted person



Important Aspects

- **Recording of statement of the child by Magistrate –**
 - Any Magistrate.
 - Need not be in the presence of the advocate of the accused.
 - In the presence of parents or trusted person.
 - Assistance of translator or interpreter where necessary.
 - Child with mental or physical disability – assistance of expert or special educator or any person familiar with the manner of communication of the child.
 - Statement of the child to be recorded by audio-video means wherever possible.



Important Aspects

■ **Medical examination–**

- Registered medical practitioner (MP) in a govt. hospital or run by a local authority and in the absence of such a practitioner, any other registered medical practitioner.
- Consent of the parents to be taken before examination
- To be sent to MP within 24 hours
- MP to prepare report with reasons for the conclusions arrived at.
- Time of commencement and completion to be recorded
- Report to be forwarded to the Investigating Officer who will forward to Magistrate
- In the presence of parents or trusted person
- Girl child – woman doctor



Important Aspects

- **Presumption–**

- Presumption of guilt (in offences of penetrative sexual assault, aggravated penetrative sexual assault, sexual assault, aggravated sexual assault)
- Presumption of a guilty mind/intention/motive/knowledge



Important Aspects

■ Powers of Special Court–

- Special Public Prosecutor or defence lawyer to put questions to the Court, which will put them to the child.
- Permit frequent breaks to the child if necessary.
- Child-friendly atmosphere by allowing a family member or guardian or friend or relative to be present in court.
- Child not to be called repeatedly to testify.
- No aggressive questioning or character assassination of the child.
- Identity of the child not disclosed at any time during investigation or trial.



Important Aspects

■ Powers of Special Court—

- Direct payment of compensation to the child for physical or mental trauma or for immediate rehabilitation.
- Child offenders to be tried as per Juvenile Justice Act.
- Evidence of the child to be recorded within 30 days of taking cognisance; reasons for delay to be recorded.
- Completion of trial within 1 year of taking cognisance as far as possible.
- Ensure child does not need to face the accused while also ensuring that the accused can hear the statement of the child.



Important Aspects

■ Powers of Special Court–

- Trial to be ‘in-camera’ (public shall not be allowed inside the court).
- If the child needs to be examined at a place other than the court, a commission for examination of the child may be issued.
- Assistance of translator or interpreter where necessary.
- Child with mental or physical disability – assistance of expert or special educator or any person familiar with the manner of communication of the child.
- The right to be represented by an advocate of their choice.
- Entitled to legal aid if cannot afford an advocate.



Important Aspects

- The POCSO Act to have overriding effect – When there is a discrepancy between POCSO Act and any other law, provisions of the POCSO Act would prevail.
- Central and state government to take measures to ensure public awareness about the Act.
- National Commission for Protection of Child Rights to monitor the implementation of the Act.



POCSO Rules, 2020

- **Duty of SJPU or local police** with whom it was reported –
 - Record and register FIR and give a copy
 - Arrange for emergency medical care
 - Take the child to the hospital for medical examination
 - Samples for forensic tests are sent to the laboratory immediately
 - Inform about support services including counselling and assist them in contacting the persons who are responsible for providing these services
 - Inform about right to legal advice and counsel
 - Produce before the CWC when offence committed at home or child is homeless.
 - To inform about the developments of the case



POCSO Rules, 2020

■ **Duty of CWC–**

- To decided within 3 days whether the child needs to be taken out of his home and placed in a shelter home after conducting an inquiry and taking into account the child's opinion and other factors.
- Provide a support person to render assistance to the child in all possible manner throughout the process of investigation and trial, if necessary.
- To terminate the support person if so requested by the child.
- Seek monthly reports from the support person.



POCSO Rules, 2020

CWC to ensure that the child is provided with:

- Translators, special educators and interpreters
- Legal aid and assistance
- Lawful options of medical termination of pregnancy if child is pregnant.
- Special reliefs like food, clothes, transport and other essential needs.
- To ensure that the fine imposed by the Court to be paid to the victim is in fact paid to the child.
- Facilitate opening of bank account, etc.



POCSO Rules, 2020

■ **Compensation–**

- Interim compensation – relief or rehabilitation – after FIR registered
- Factors to be considered:
 - Type of abuse, gravity of offence and severity of mental or physical harm
 - Expenditure incurred for medical treatment
 - Loss of educational opportunity
 - Loss of employment
 - Relationship of child with the offender
 - Repeated or single instance
 - Pregnancy, STD, HIV, disability
 - Financial condition



Victim Compensation Scheme

The data received from the SLSAs, with regard to passing of award by the Legal Services Authorities for payment of Compensation to the Victims under Victim Compensation Schemes under section 357A of the Criminal Procedure Code during the last three Financial years throughout the country, is as under:

Years	Applications received Directly by Legal Service Institutions (A)	Applications / orders marked / directed by any Court (B)	Applications received including Court Orders (A+B)	Applications Decided	Compensation Awarded (in Rs.)
2020-21	8765	4050	12815	9786	1,45,62,36,012
2021-22	8715	8267	16982	15173	2,21,87,47,426
2022-23	15196	14740	29936	20900	3,47,80,37,352

Source: Press Information Bureau (Posted on 04/08/2023)



Impact of POCSO Act

- Age of consent increased from 15 years to 18 years (Man with his own wife).
- Preventing trafficking in the garb of child marriage.



Judicial intervention

- **Bail to minor** accused persons in consensual romantic relationships – High Courts.
- **Termination of pregnancy** – Registered medical practitioners not to insist to reveal the name while reporting under S. 19, if pregnancy arose out of a consensual relationship.



Law Commission's recommendations

- To add grooming (inclusive of online grooming).
- To amend the Juvenile Justice Act to include the trial of minors in consensual relationships charged with POCSO offences.
- Judicial discretion in sentencing minor offenders and where the age gap between child and adult is less than 3 years (where there is consent).

