



*A quarterly insight to the POSH Law!*

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**POCSO LIVE** brings you update and information relating to matters of protection of children from sexual abuse irrespective of gender. This is an effort to create awareness amongst all stakeholders having access to children about their duties and obligations towards protecting children from sexual abuse and keeping them safe.

## Protection of Children from Sexual Offences Act, 2012 (POCSO ACT) - SALIENT FEATURES

### INTRODUCTION

In the last newsletter we discussed the rights of child, types of abuses, laws relating to child protection and etc. An introductory note on sexual offences was also given in the last newsletter. Now let's learn more about the sexual offences and other salient features of POCSO Act, 2012.

### Definitions of sexual offences and their punishment

- 1. Aggravated sexual assault:** Any act committed with sexual intent by a person who is a police officer or armed force officer, staff of a jail, hospital, or educational institute, or a stakeholder of a child, but does not involve penetration of a body part or object, is known as aggravated sexual assault.
- 2. Penetrative aggravated sexual assault:** Any act committed with sexual intent by a person who is a police officer or armed force officer, a member of the staff of a jail, hospital, or educational institute, or a stakeholder of a child; the act is known as penetrative aggravated sexual assault.
- 3. Sexual assault:** Sexual assault is defined as any act that involves physical touch or contact without penetration but with sexual intent. For example, touching private parts of child or making child to do sexual activity with person.

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### Disclaimer

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## GOOD TO KNOW!

The Protection of Children from Sexual Offences Act, 2012 was enacted to provide a robust legal framework for the protection of children from offences of sexual assault, sexual harassment and pornography, while safeguarding the interest of the child at every stage of the judicial process.

3 things to know about this law are –

1. Court procedures are child friendly.
2. A medical examination is mandatory within 24 hours of the reporting of a sexual offence under the POCSO Act 2012.
3. Matters of false complaint are punishable under the act.

**4. Sexual Harassment:** Any act which is followed by sexual intent, which includes

- 1- Uttering any word or making any sound or gesture or exhibiting any part of body with sexual intent which shall be seen or heard by the child.
- 2- Making a child exhibit his body part that is being seen by such person
- 3- Showing pornographic content.
- 4- Stalking or contacting a child either directly or through any other means
- 5- Threatening the child with the real or morphed depiction of sexual content through digital medium or any other medium for pornographic purposes.

The table below explains the type of abuse and its punishment section wise

Sections	Type of abuse/assault	Punishment
<b>Sections 4 &amp; 6</b>	Penetrative Sexual Assault and Aggravated Penetrative Sexual Assault	Min 10 yrs. of imprisonment, which may extend up to life imprisonment & fine
<b>Sections 8 &amp; 10</b>	Sexual Assault and Aggravated Sexual Assault	Imprisonment of 3 to 7 yrs. with fine
<b>Section 12</b>	Sexual Harassment	Imprisonment up to 3 yrs. with fine
<b>Sections 14 &amp; 15</b>	Using child for pornographic purpose	Imprisonment of 3 to 7 yrs. with fine
<b>Sections 17 to 22</b>	Abetment, attempt to commit offence, reporting offences	Imprisonment for 1 yr. to 1.5 yrs. Of longest term of imprisonment provided for that offence

The POCSO Act serves as a powerful tool in the fight against child sexual abuse, aiming to protect the rights of children and ensure that offenders face strict legal consequences for their actions. By understanding the salient features and offences defined under this Act, stakeholders can better advocate for and protect the well-being of children in their care.

### CONFIDENTIALITY AND MANDATORY REPORTING

#### a. Protecting the Identity of the Child

The POCSO Act mandates that the identity of the child, including their name, address, photograph, family details, school, neighbourhood, or any other particulars that may lead to the disclosure of the child's identity, must be protected, and not disclosed. This measure is essential to ensure the child's safety, privacy, and dignity while minimizing the risk of stigmatization, retaliation, or further harm.

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### **b. Role of stakeholders in Reporting Abuse**

Stakeholders play a crucial role in reporting instances of child sexual abuse. Provision of mandatory reporting states that any person, with knowledge that a child is a victim of sexual abuse or is likely to be a victim, must report the incident to the Special Juvenile Police Unit (SJPU) or the local police.

### **c. Punishment for Failure to Report or Record a Case**

The POCSO Act emphasizes the significance of mandatory reporting and imposes severe penalties on those who fail to report or record a case of child sexual abuse. Failure to report or record a case is punishable under Section 21 of the Act by up to 6 months in prison, a fine, or both. This provision ensures that individual who witness or suspect abuse report the incident appropriately, ultimately protecting the child's best interests and promoting a safe environment for all children.

## **REPORTING MECHANISMS AND AUTHORITIES**

Effective reporting mechanisms and competent authorities are crucial for addressing child sexual abuse cases and ensuring the child's safety and well-being.

In India, several authorities are responsible for handling such cases and ensuring that appropriate action is taken.

The primary authority for reporting child sexual abuse is the Police or the Special Juvenile Police Unit (SJPU). They are responsible for investigating the case, making urgent arrangements for the care and protection of the child, providing emergency medical treatment, and placing the child in a shelter home if required. The police must also report the case to the Child Welfare Committee (CWC) within 24 hours of receiving the report and make further arrangements for the child's safety and security.

The Child Welfare Committee is another essential authority involved in addressing child sexual abuse cases. The CWC is responsible for ensuring the care, protection, treatment, and rehabilitation of the child victim. They work closely with the police, non-governmental organizations, and other stakeholders to ensure that the child receives the support they need.

CHILDLINE 1098 is a national helpline that aids to children in distress. It provides a 24-hour toll-free service, allowing children and concerned individuals to report cases of any abuse or seek help and support. The helpline connects callers to appropriate authorities, such as the police or child protection services, and assists in addressing the reported issue.

The State Commission for Protection of Child Rights (SCPCR) and the National Commission for Protection of Child Rights (NCPCR) are two additional authorities that play a vital role in safeguarding children's rights. They oversee and monitor the implementation of child protection laws, including the POCSO Act, and ensure that children's rights are upheld. These commissions also handle complaints, conduct inquiries, and recommend appropriate action in cases of child sexual abuse.

### **POLICE: PROTECTOR OF CHILD**

In cases of child sexual abuse, the police have a crucial role to play in ensuring the safety and well-being of the victim. One of the primary duties of the police is to take immediate action upon receiving a report of child sexual abuse. This involves making arrangements for the child's care and protection, providing emergency medical treatment when necessary, and placing the child in a shelter home if required. The police must also report the case to the Child Welfare Committee (CWC) within 24 hours; make further arrangements for the child's safety and security. If necessary, the medical examination of the child should be conducted in accordance with the procedure laid down by the law. A child should not be detained in a police station late at night. The officer must guarantee that the child's identity is not divulged.

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The child's statement is to be recorded at his or her place of residence, usually by a female police officer. Wherever necessary, the assistance of translators or interpreters should be taken. The police officer who is to record the child's statement should not be wearing a uniform. During the examination, the officer should make certain that the child does not come into contact with the alleged perpetrator.

## **SPECIAL COURTS AND PROCEDURES**

The legal system has implemented special courts and procedures to ensure child-friendly trials. These trials take place in camera, meaning that they are closed to the public to protect the child's identity and privacy. The child may have a parent or trusted person present during the proceedings, and they are not required to testify in court repeatedly. Additionally, the option of testifying through video-link is available to minimize the potential trauma of facing the accused in the courtroom. During the trial, frequent breaks are permitted. During the trial, aggressive questioning of the child is strictly prohibited.

The special court must focus on ensuring that the child is not summoned to appear in the trial court on multiple occasions. These special courts are also required to dispose of child sexual abuse cases within one year. The last seen theory may be used in child sexual abuse trials.

Essentially, the last seen theory states that the person who was last seen with the victim is presumed to be the perpetrator/accused. The last seen theory is only acceptable when the time gap between the offence perpetrated, and the last seen time is minimal, and no other person can commit the crime during that time period.

They have the authority to award compensation to the victims, which is paid by the state government from the Victims Compensation Fund for the child's recovery and rehabilitation.

## **CONCLUSION**

In conclusion, the Protection of Children from Sexual Offences (POCSO) Act has been a transformative piece of legislation in the realm of child protection in India. It acknowledges the unique vulnerabilities of children and offers a comprehensive framework to address child sexual abuse through the definition of various offenses, the establishment of child-friendly procedures, and the allocation of appropriate punishments. The POCSO Act has also enhanced the roles and responsibilities of stakeholders, police and courts in responding to child sexual abuse cases, ensuring a coordinated and child-centric approach in handling such cases.

## **NEWS CORNER – The Bombay High Court to the State Government: Ensure a juvenile unit at every police station.**

The Bombay High Court highlighted the following guidelines for the juvenile justice system which are mentioned in the Juvenile Justice (Care and Protection of Children) Act, 2015:

1. The Maharashtra government must ensure that every police station has a juvenile justice unit.
2. The director general of police (DGP) of Maharashtra must request reports on compliance with law and court requirements from the superintendent of police (SP) of each district and the police commissioner of each city.
3. The Maharashtra government would make sure that the juvenile justice board's case-assessing panel includes a member who is a psychologist by profession.
4. A psychologist's report is required in the report on the mental health of a child in conflict of law (CLL), which must be presented to the Juvenile Justice Board.

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Advocate Vaishali Bhagwat, is amongst the first technology lawyers in the country with prior qualification and working experience in the field of Computer Science, Cyber Defense and Information Assurance.

Her work also focuses on women and children's rights and has worked extensively on cases relating to violence against women and children including sexual violence. Vaishali is an external member on various ICC committees and has conducted several complex inquiries relating to sexual harassment at workplace. POSH awareness and capacity building workshops conducted by her are rich in content as she discusses various cases and draws on her experience dealing with inquiries and POSH related court litigation including criminal cases.

Vaishali has advised several organizations across varied sectors on POSH compliance, safety in virtual workplaces, cyber safety and is also regularly invited as an expert speaker/ panelist on this subject by various organizations providing POSH services.

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*Thank you for reading!*