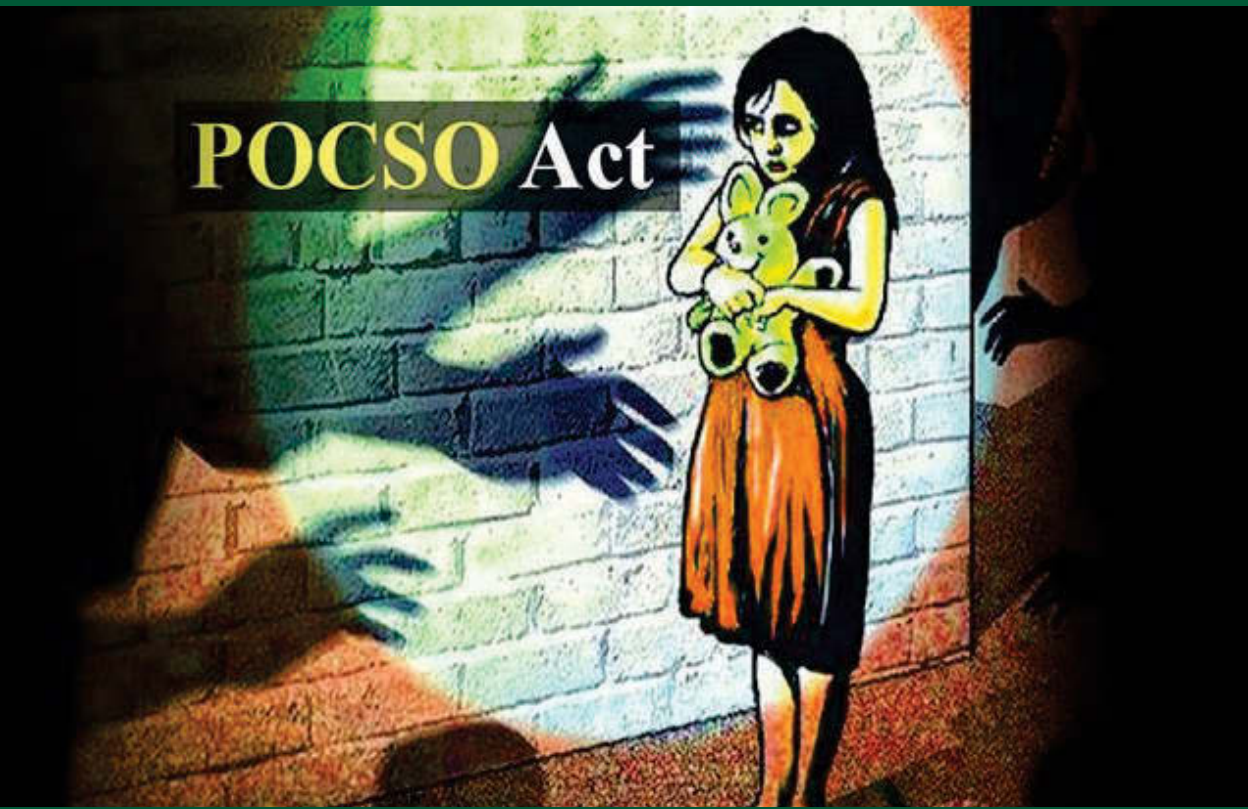




POCSO



**National Human Rights Commission
India**

POCSO

(PROTECTION OF CHILDREN FROM SEXUAL OFFENCES)



TRAINING & RESEARCH DIVISION

**NATIONAL HUMAN RIGHTS COMMISSION
INDIA**

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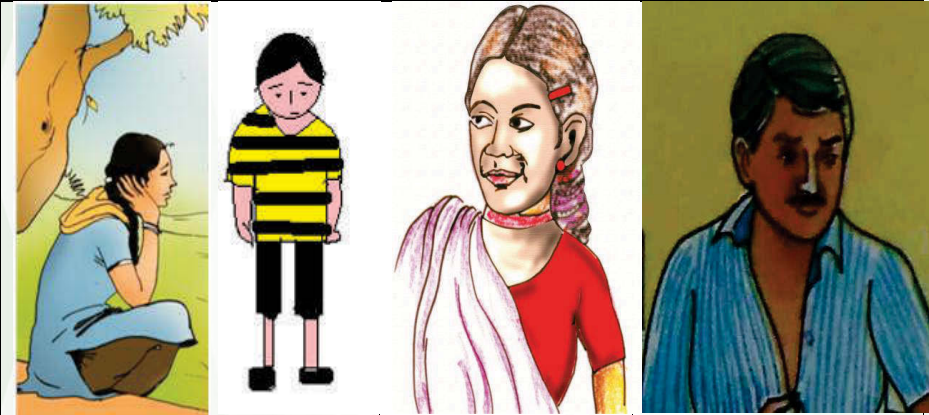
Ph.: 9810520802

E-mail: smatforms@gmail.com

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES

The Protection of Children from Sexual Offences Act (POCSO for short) was passed in 2012 to comprehensively deal with the issue of sexual offences against children. POCSO not only spells out the punishments for offences, but also sets out a system for support of victims and improved methods for catching offenders.

The Protection of Children from Sexual Offences Act (POCSO) is a gender neutral law



Both boys and girls can be victims under POCSO

Both males and females can be punished for committing an offence under POCSO

Under POCSO 'child' means any person below the age of 18 years. The child could be male or female. The offender too could be male or female. POCSO is thus a gender neutral law – the child victim of sexual offence could be a boy or a girl.

As for the person who commits the crime – it does not matter whether the person is male or female. Both genders are equally punishable for offences under this law.

There are 3 broad categories of sexual offences punishable under POCSO: **sexual assault**, **sexual harassment** and **using a child for pornography**. Sexual assault itself has various degrees of seriousness. Let us look at all these categories one by one.

SEXUAL ASSAULT

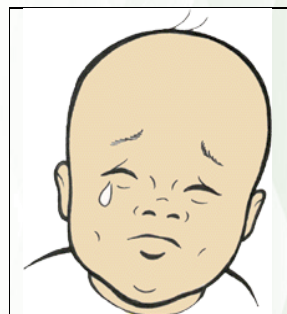
Touching the private parts of a child with sexual intent is sexual assault.

If a person with sexual intent makes a child touch the private parts of another person, this is also sexual assault.

Sexual assault does not involve penetration. Penetration is where an object or a part of a body is

inserted into the child. Penetration is an even more serious offence and has been dealt with separately under POCSO.

Any act done with sexual intent on a child involving physical contact is also sexual assault.



Under POCSO, 'child' means any person below the age of 18 years. Sadly, even babies have been subjected to severe sexual assault

16 year old Sarla uses the public bus to go to school. The bus is always crowded at that time and she rarely ever gets a place to sit. One day, while she is standing in the crowded bus, a man behind her presses himself against her. She tries to move away, but there is not much space for her to move. He then puts his hand on her breast and starts fondling it. Sarla screams at him and pushes his hand away. The man says that he has done nothing wrong, and that he held her only to keep from falling.

The man committed the offence of sexual assault under POCSO.

The punishment for committing sexual assault on a child is minimum 3 years imprisonment, which can extend to 5 years imprisonment, as well as payment of fine.

PENETRATIVE SEXUAL ASSAULT

Penetrative sexual assault is a more serious offence than sexual assault. It involves any person :



Penetrating his penis to any extent into the vagina, mouth, anus or urethra of a child. Or makes the child do so with him or any other person. OR,

[The urethra is a tube that connects the urinary bladder for the removal of urine from the body. In males, the urethra travels through the penis. In females, the urethra connects to the vagina].



Penetrating any object or any part of the body into the vagina, mouth, anus or urethra of a child. Or makes the child do so with him or any other person. OR



Applying one's mouth into the vagina, mouth, anus or urethra of a child. Or makes the child do so with him or any other person.

The punishment for committing penetrative sexual assault on a child is minimum 7 years imprisonment, which can extend to life imprisonment, as well as payment of fine.

AGGRAVATED SEXUAL ASSAULT OR PENETRATIVE SEXUAL ASSAULT

Where the offence sexual assault or penetrative sexual assault is committed by certain persons or in certain circumstances, the offence is said to become **aggravated** i.e. it becomes more serious and the punishment is much greater.

Where the offence of sexual assault is committed by any of the persons or in any of the circumstances listed below, it becomes a case of **aggravated sexual assault**.

In the following cases, the offence of **sexual assault or penetrative sexual assault BECOMES AGGRAVATED**:



The offence is committed by a police officer.



The offence is committed by a member of the armed forces or security forces.



*Sexual assault committed by a police officer, a public servant, or any staff of a hospital amounts to **AGGRAVATED SEXUAL ASSAULT**.*

*Penetrative sexual assault committed by a police officer, a public servant, or any staff of a hospital amounts to **AGGRAVATED PENETRATIVE SEXUAL ASSAULT**.*



The offence is committed by a public servant.



Sexual assault/penetrative sexual assault of an inmate by a person on the management or staff of a jail, remand home, protection home, or other place of custody or care.



The offence is committed by a person on the management or staff of any hospital (private or government) on a child in that hospital.



The offence is committed by a person on the management or staff of an educational institution or religious institution on a child in that institution.



Gang sexual assault or gang penetrative sexual assault on a child i.e. sexual assault or penetrative sexual assault of a child by one or more persons of a group.



The offence is committed using dangerous weapons or causing physical harm to the child, or trying to kill the child.



The offence committed causes the child to become physically or mentally disabled, or inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection.



The offence is committed on a child with physical or mental disability.



Repeated sexual assault or repeated penetrative sexual assault of a child.



The offence is committed on a child below 12 years of age.



The offence is committed by a relative or by a person who is living in the same or shared household with the child.



The offence is committed by the owner or someone on the management or staff of any institution providing services to the child.



The offence is committed by a person in a position of trust or authority.



The offence is committed on a child known to be pregnant.



The offence is committed in the course of communal or sectarian violence.



The offence is committed by a repeat offender (i.e. a person who has been previously convicted of an offence under POCSO or for any sexual offence under any other law).



Committing sexual assault or penetrative sexual assault on a child and then making the child strip or parade naked in public.



Sexual assault committed on a child below 12 years of age amounts to AGGRAVATED SEXUAL ASSAULT.

Penetrative sexual assault committed on a child below 12 years of age amounts to AGGRAVATED PENETRATIVE SEXUAL ASSAULT.

The punishment for committing AGGRAVATED SEXUAL ASSAULT on a child is minimum 5 years imprisonment, which can extend to 7 years imprisonment, as well as payment of fine.

The punishment for committing AGGRAVATED PENETRATIVE SEXUAL ASSAULT on a child is minimum 10 years of rigorous imprisonment, which can extend to life imprisonment, as well as payment of fine.

ENHANCED PUNISHMENT

The punishment has been increased in cases of rape under the Indian Penal Code and the higher punishment will apply even in offences under POCSO. The higher punishment is as follows:

- For penetrative sexual assault on a girl child by a man the punishment is a minimum of ten years imprisonment which may extend to life imprisonment plus fine.

- For aggravated penetrative sexual assault on a girl child by a man the punishment is a minimum of ten years imprisonment which may extend to life imprisonment plus fine. Life imprisonment means punishment till the remainder of the person's natural life.

- For penetrative sexual assault on a girl child less than 16 years of age by a man, the punishment is minimum imprisonment for twenty years which can be extended to life imprisonment plus fine. Life imprisonment means punishment till the remainder of the person's natural life. The fine imposed must be reasonable to meet the medical and rehabilitation expenses of the victim and must be paid to the victim.

- For penetrative sexual assault on a girl child less than 12 years of age by a man the punishment is minimum imprisonment of 20 years which may increase to life plus fine or death. Life imprisonment means punishment till the remainder of the person's natural life. The fine imposed must be reasonable to meet the medical and rehabilitation expenses of the victim and must be paid to the victim.

- For penetrative sexual assault on a girl child by a man which inflicts an injury on the child which causes death or causes a woman to be in a vegetative state the punishment will be minimum imprisonment for a period of twenty years and which may extend to life or with death. Life imprisonment means punishment till the remainder of the person's natural life.

- For gang rape of a girl child the punishment is minimum imprisonment for a term of 20 years or which may extend to life plus fine. Life imprisonment means punishment till the remainder of the person's natural life. The fine imposed must be reasonable to meet the medical and rehabilitation expenses of the victim and must be paid to the victim.

- For gang rape of girl child less than 16 years of age the punishment is life imprisonment which will be for the remainder of natural life of the person plus fine.

- For gang rape of a girl child less than 12 years of age the punishment is life imprisonment which will be for the remainder of the convict's natural life of the person, plus fine or with death .

LIFE IMPRISONMENT TILL THE REMAINDER OF A PERSON'S LIFE

When a person is given punishment of imprisonment for life, usually after 14 years in prison the government may release the convict saying he has completed his term of punishment. But in cases where the law says that the punishment is for the natural life then the person cannot be released after 14 years and he will have to remain in prison till he die.

SEXUAL HARASSMENT

A person is said to commit sexual harassment upon a child when such person ***with sexual intent:***



Utters any word or makes any sound so as to be heard by the child



Makes any gesture, or exhibits any object or part of body so as to be seen by the child



Makes the child exhibit his or her body



Shows anything to the child for pornographic purposes



Repeatedly or constantly follows or watches or contacts the child either directly or through electronic or other media



Threatens to use in any media a real or fake depiction of any part of the body of the child, or the involvement of the child in a sexual act



Entices the child for pornographic purposes

Arun is a 25 year old man. He lives with his brother and is a trusted member of the family. He often plays with his 4 year old niece Nina. But sometimes, when his sister -in - law is busy elsewhere and he is all alone with the child, he tells Nina to remove her top and dance to her favourite song. While she does so, Arun dances along, but strokes his private parts as he does so. Seeing him, Nina also dances with her hands between her legs. He tells her that this will be their own special game, and the person who cannot stop as soon as someone else comes near, loses the game.

Arun is sexually harassing Nina.

When Nina's mother gets Nina ready to bathe, she helps Nina take off all her clothes and helps to bathe her. This is not sexual harassment as there is no sexual intent in the action.

The punishment for sexual harassment of a child is imprisonment for up to 3 years, as well as payment of fine.

USING CHILD FOR PORNOGRAPHY

Using a child in any form of media (e.g. television channels, internet, etc) for the purposes of sexual gratification amounts to the offence of using a child for pornography.

Sexual gratification includes:

- ✚ Showing the sexual organs of a child
- ✚ Using a child in real or simulated sexual acts with or without penetrative sexual assault

Showing a child in an indecent or obscene way

It does not matter whether this is done for personal use or for public consumption.

The punishment for using a child for pornography is imprisonment for up to 5 years, as well as payment of fine. If the offence is repeated, the term of imprisonment can be increased to 7 years.

Storing for commercial purposes any pornographic material involving a child is punishable with imprisonment which may extend to 3 years as well as payment of fine.

MANDATORY REPORTING OF THE OFFENCE

Any person can report an offence under POCSO. An offence can be reported after it has occurred, or even *before it has occurred*, if there is fear that such a crime *may* occur.

The child facing or fearing such abuse can also report the crime directly.

What is important is the crime **MUST BE REPORTED**. If a person fails to report an offence under POCSO, the person can be punished with imprisonment of up to 6 months and/or with fine.

Sunita is the mother of four and lives in a slum. One day while she was cooking, her 1 year old daughter began to cry. Sunita asked her brother Roshan to pick up the child and comfort her. Roshan carries the baby, saying he will take her out for some fresh air. When he doesn't return for over an hour, Sunita gets worried and goes looking for him. She also alerts her neighbours.

After some time Roshan is found in a deserted area in a state of undress, rubbing his genitals against the child. He has also stuffed a rag in the child's mouth so she cannot cry. A crowd gathers and Roshan is beaten up. He apologises profusely, saying the devil had got into him and he would never do it again.

Sunita is outraged for her child, but is pressured by her family not to report the matter as the family and the locality will get a bad reputation. Besides, Roshan has received a public beating and in that sense has already been punished.

The crime is not reported to the police. This is a violation of POCSO.

If a person is in charge of an institution and fails to report an offence under POCSO committed by a subordinate (i.e. someone over whom the person has professional control), the person can be punished with imprisonment of up to 1 year and/or with fine.

This duty also extends to people working in any media, hotel, lodge, hospital, club or studio. If they come across anything that is sexually exploitative of the child in any way (e.g. pornographic material, obscene representations of children, etc) they must report it to the Special Juvenile Police Unit or the local police.

It is *not necessary* for a child to report a crime.

FALSE CASES

Any person who makes a false complaint or gives false information regarding an offence under POCSO, can be imprisoned for up to 6 months and/or be made to pay a fine.

If such false complaint or false information is given against a child, the punishment can go up to 1 year of imprisonment.

If a false complaint or false information is provided by a child, the child *cannot* be punished under the law.

CONFIDENTIALITY

No one should make any report or make any comments on any child in any form of media without having full and accurate information, if such report or

comments may have the effect of lowering the child's reputation or invading the child's privacy.

There also can be no media reports revealing the identity of the child. Thus there can be no showing a child's photograph or mentioning the child's name, address, family details, school, neighbourhood, or any other detail that can lead to the identity of the child. Violation of this can lead to imprisonment of between 6 months (minimum) and 1 year in jail, and/or fine.

Anup and Akhil are college students. While on a trek in a hilly area, they hear someone crying aloud. They rush to where the sound is coming from, and see a little girl in tattered clothes, being molested by a man. They shout at the man and threaten him to leave the child alone.

Anup takes a picture of both the child and her oppressor so that it will help the police in making an arrest.

The man runs away and Anup and Akhil call the police for help. They are congratulated heartily by the police. All the praise gets to Anup's head and he describes the incident in a Facebook post. Some of his social media contacts don't believe him and accuse him of lying. Anup then uploads the picture of the child and her attacker as proof.

Anup has just violated the confidentiality provisions of POCSO and can be punished with up to 1 year of imprisonment.

REPORTING THE OFFENCE TO THE POLICE

If a sexual offence **has occurred** or **might occur** against a child, any person (including the child) can report this to the Special Juvenile Police Unit or the local police.

If the child requires treatment or care and protection, the Special Juvenile Police Unit (SJPU) or the local police must take the child to the hospital or shelter home within 24 hours of the report. They must also inform the Child Welfare Committee and the Special Court.

RECORDING THE STATEMENT OF THE CHILD

When an offence under POCSO is reported, the child's account of the event (i.e. the child's statement) should be recorded by the Magistrate or the police officer in the words of the child, or as spoken by the child. The statement should be recorded in the presence of the parents of the child, or in the presence of any other person whom the child trusts.

The statement should preferably be recorded by a woman police officer not in uniform. It is better if the statement is taken in the child's house, or in some place where the child is comfortable.

Where necessary, the help of a translator or interpreter should be taken, so that there is no gap in communication.

If the child has a physical or mental disability and needs assistance in communication, the help of a special educator or some other suitable expert in the field of disability should be taken.

The child should be made to feel as comfortable as possible, and given frequent breaks during the process. To the extent possible, the statement of the child should be recorded by audio – visual electronic means.



The child who has suffered under a POCSO offence should not be made to suffer yet again from a difficult legal process. The child's statement should be taken in the presence of her parents or someone she trusts. It should be recorded preferably by a woman police officer in civil dress.

MEDICAL EXAMINATION OF THE CHILD

The child will also be medically examined. This should be done as soon as possible. It can be done at the very first instance it comes to light, without having to wait for the formal recording of a complaint or First Information Report.

Girl children should be examined only by a woman doctor.

The medical examination of any child should be done only in the presence of the parents of the child, or in the presence of some other person whom the child has trust in.

If the parents or such trusted person cannot be found, the hospital should ensure that some woman is present at the examination.

TRIAL OF CASES

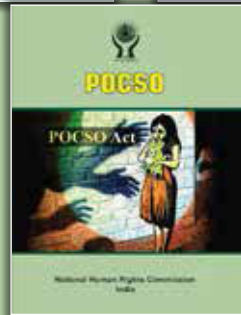
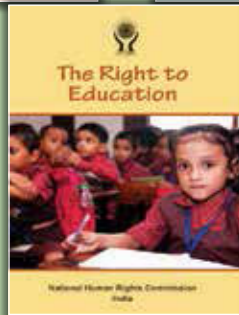
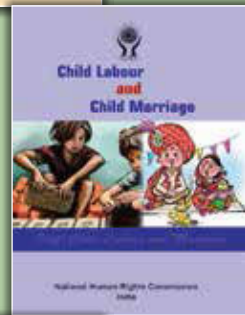
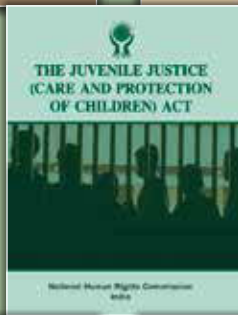
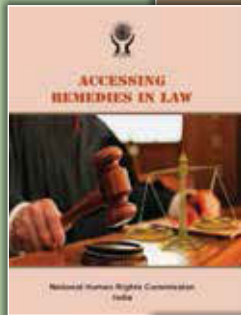
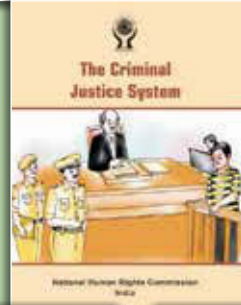
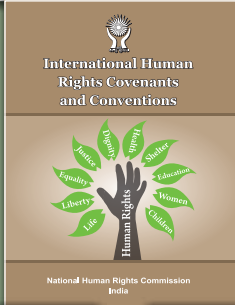
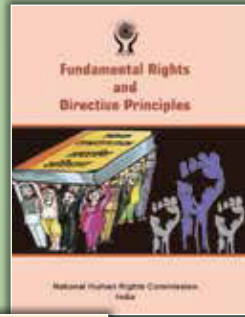
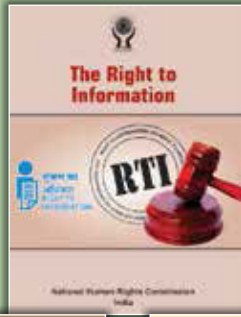
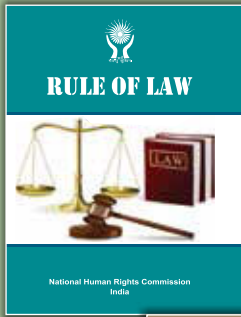
For speedy justice and to avoid the re-victimization of the child, cases are to be tried in Special Courts with Special Public Prosecutors. The trial must be held *in camera* (i.e. in private, and not in open court where the public can view proceedings), and without revealing the identity of the child.

The Special Court must be child friendly. The Court may take assistance of a translator or interpreter in recording the statement of the child. If a child has a mental or physical disability, the Special Court may take assistance of a special educator or any person familiar with the manner of communication of the child or an expert in the field.

If a *penetrative sexual assault, aggressive penetrative sexual assault, sexual assault or aggressive sexual assault is evident, the court will presume that the accused is guilty*. The accused will have to prove innocence.

Cases under POCSO must be disposed of within one year from the date of the offence is reported.

Apart from punishment of the perpetrator, the Special Court can also give directions for payment of compensation to the child.



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Manav Adhikar Bhawan, C-Block, GPO Complex
INA, New Delhi - 110 023

Email : covdnhrc@nic.in Website : www.nhrc.nic.in