

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES
ACT, 2012

SUMMARY

The Protection of Children from Sexual Offences Act, 2012 (POCSO) is a comprehensive law that aims to protect children from sexual abuse and exploitation by providing a legal framework for the investigation, prosecution, and punishment of sexual offences against children. The act defines various sexual offences against children, including penetrative sexual assault, aggravated penetrative sexual assault, sexual harassment, and using children for pornographic purposes. It also provides for the establishment of special courts and the appointment of special public prosecutors to expedite the trial of cases under the act. The act also recognizes the need for sensitive handling of cases involving child victims and provides for their protection and rehabilitation.

TABLE OF CONTENTS

CHAPTER I: PRELIMINARY

Section 1: Short Title, Extent And Commencement

Section 2: Definitions

CHAPTER II: SEXUAL OFFENCES AGAINST CHILDREN

A: PENETRATIVE SEXUAL ASSAULT AND PUNISHMENT THEREFOR

Section 3: Penetrative Sexual Assault

Section 4: Punishment For Penetrative Sexual Assault

B: AGGRAVATED PENETRATIVE SEXUAL ASSAULT AND PUNISHMENT THEREFOR

Section 5: Aggravated Penetrative Sexual Assault

Section 6: Punishment For Aggravated Penetrative Sexual Assault

C: SEXUAL ASSAULT AND PUNISHMENT THEREFOR

Section 7: Sexual Assault

Section 8: Punishment For Sexual Assault

D: AGGRAVATED SEXUAL ASSAULT AND PUNISHMENT THEREFOR

Section 9: Aggravated Sexual Assault

Section 10: Punishment For Aggravated Sexual Assault

E: SEXUAL HARASSMENT AND PUNISHMENT THEREFOR

Section 11: Sexual Harassment

Section 12: Punishment For Sexual Harassment

CHAPTER III: USING CHILD FOR PORNOGRAPHIC PURPOSES AND PUNISHMENT THEREFOR

Section 13: Use Of Child For Pornographic Purposes

Section 14: Punishment For Using Child For Pornographic Purposes

Section 15: Punishment For Storage Of Pornographic Material Involving Child

CHAPTER IV: ABETMENT OF AND ATTEMPT TO COMMIT AN OFFENCE

Section 16: Abetment Of An Offence

Section 17: Punishment For Abetment

Section 18: Punishment For Attempt To Commit An Offence

CHAPTER V: PROCEDURE FOR REPORTING OF CASES

Section 19: Reporting Of Offences

Section 20: Obligation Of Media, Studio And Photographic Facilities To Report Cases

Section 21: Punishment For Failure To Report Or Record A Case

Section 22: Punishment For False Complaint Or False Information

Section 23: Procedure For Media

CHAPTER VI: PROCEDURES FOR RECORDING STATEMENT OF THE CHILD

Section 24: Recording Of Statement Of A Child

Section 25: Recording Of Statement Of A Child By Magistrate

Section 26: Additional Provisions Regarding Statement To Be Recorded

Section 27: Medical Examination Of A Child

CHAPTER VII: SPECIAL COURTS

Section 28: Designation Of Special Courts

Section 29: Presumption As To Certain Offences

Section 30: Presumption Of Culpable Mental State

Section 31: Application Of Code Of Criminal Procedure, 1973 To Proceedings Before A Special Court

Section 32: Special Public Prosecutors

CHAPTER VIII: PROCEDURE AND POWERS OF SPECIAL COURTS AND RECORDING OF EVIDENCE

Section 33: Procedure And Powers Of Special Court

Section 34: Procedure In Case Of Commission Of Offence By Child And Determination Of Age By Special Court

Section 35: Period For Recording Of Evidence Of Child And Disposal Of Case

Section 36: Child Not To See Accused At The Time Of Testifying

Section 37: Trials To Be Conducted In Camera

Section 38: Assistance Of An Interpreter Or Expert While Recording Evidence Of Child

CHAPTER IX: MISCELLANEOUS

Section 39: Guidelines For Child To Take Assistance Of Experts, Etc

Section 40: Right Of Child To Take Assistance Of Legal Practitioner

Section 41: Provisions Of Sections 3 To 13 Not To Apply In Certain Cases

Section 42: Alternative Punishment

Section 42A: Act Not In Derogation Of Any Other Law

Section 43: Public Awareness About Act

Section 44: Monitoring Of Implementation Of Act

Section 45: Power To Make Rules

Section 46: Power To Remove Difficulties

CHAPTER I: PRELIMINARY

Section 1: Short Title, Extent And Commencement

(1) This Act may be called the Protection of Children from Sexual Offences Act, 2012.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Simplified Act

(1) This law is known as the Protection of Children from Sexual Offences Act, 2012.

(2) It applies to all of India.

(3) It will start to be used on a date that the Central Government decides and announces in an official public document.

Explanation using Example

Imagine a scenario where a school in Mumbai discovers that a teacher has been engaging in inappropriate behavior with several students. The school administration decides to take action against the teacher. They refer to the Protection of Children from Sexual Offences Act, 2012 to understand the legal framework for addressing the situation.

As per Section 1(1) of the Act, they acknowledge that this is the specific legislation designed to protect children from sexual offenses.

Given that the school is located in Mumbai, Section 1(2) confirms that this Act is applicable as it extends to the whole of India, including all states and union territories.

The administration checks the current legal provisions and finds that the Act is indeed in force, as per Section 1(3), because the Central Government had already appointed the date of enforcement through a notification.

With this understanding, the school proceeds to report the case to the appropriate authorities under the provisions of this Act.

Section 2: Definitions

(1) In this Act, unless the context otherwise requires, -

(a) "aggravated penetrative sexual assault" has the same meaning as assigned to it in section 5;

(b) "aggravated sexual assault" has the same meaning as assigned to it in section 9;

(c) "armed forces or security forces" means armed forces of the Union or security forces or police forces, as specified in the Schedule;

(d) "child" means any person below the age of eighteen years;

(da) "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;

(e) "domestic relationship" shall have the same meaning as assigned to it in clause (f) of section 2 of the Protection of Women from Domestic Violence Act, 2005 (43 of 2005);

(f) "penetrative sexual assault" has the same meaning as assigned to it in section 3;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "religious institution" shall have the same meaning as assigned to it in the Religious Institutions (Prevention of Misuse) Act, 1988 (41 of 1988).

(i) "sexual assault" has the same meaning as assigned to it in section 7;

(j) "sexual harassment" has the same meaning as assigned to it in section 11;

(k) "shared household" means a household where the person charged with the offence lives or has lived at any time in a domestic relationship with the child;

(l) "Special Court" means a court designated as such under section 28;

(m) "Special Public Prosecutor" means a Public Prosecutor appointed under section 32.

(2) The words and expressions used herein and not defined but defined in the Indian Penal Code (45 of 1860), the Code of Criminal Procedure, 1973 (2 of 1974), the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016) and the Information Technology Act, 2000 (21 of 2000) shall have the meanings respectively assigned to them in the said Codes or the Acts.

Simplified Act

This document explains some specific terms used in The Protection of Children from Sexual Offences Act, 2012:

Aggravated penetrative sexual assault: This term is defined in section 5 of the Act.

Aggravated sexual assault: This term is defined in section 9 of the Act.

Armed forces or security forces: These are the military and police forces of India, as listed in the Act's Schedule.

Child: Any person who is under 18 years old.

Child pornography: Any sexual image or video of a child or something that looks like a child.

Domestic relationship: This term has the same meaning as in the Protection of Women from Domestic Violence Act, 2005.

Penetrative sexual assault: This term is defined in section 3 of the Act.

Prescribed: Means set out by rules of this Act.

Religious institution: This term has the same meaning as in the Religious Institutions (Prevention of Misuse) Act, 1988.

Sexual assault: This term is defined in section 7 of the Act.

Sexual harassment: This term is defined in section 11 of the Act.

Shared household: A home where the accused lives or has lived with the child in a family-like setting.

Special Court: A court that is set up specifically under section 28 of the Act.

Special Public Prosecutor: A lawyer appointed to prosecute cases under this Act, as per section 32.

Also, any terms used in this Act that are not defined here but are defined in other Indian laws, such as the Indian Penal Code, the Code of Criminal Procedure, the Juvenile Justice Act, or the Information Technology Act, should be understood as they are defined in those laws.

Explanation using Example

Imagine a scenario where a 17-year-old girl experiences unwanted sexual advances from her stepfather within their home. This situation could invoke several definitions from the Protection of Children from Sexual Offences Act, 2012:

The term "child" applies here as the girl is below the age of eighteen years.

The stepfather's actions might be classified as "sexual assault" or "sexual harassment", depending on the nature of the advances.

The home in which the advances took place could be considered a "shared household" because the stepfather lives there and is in a domestic relationship with the child.

If the case goes to trial, it would be heard in a "Special Court" designated for such offences, and the prosecution might be led by a "Special Public Prosecutor."

This Act provides specific legal terminology to address the nuances of sexual offences against children, ensuring that the legal system can appropriately respond to such cases.

CHAPTER II: SEXUAL OFFENCES AGAINST CHILDREN

A: PENETRATIVE SEXUAL ASSAULT AND PUNISHMENT THEREFOR

Section 3: Penetrative Sexual Assault

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.

Simplified Act

If someone does any of the following things, they are committing a crime called "penetrative sexual assault" against a child:

(a) If they insert their penis into the child's vagina, mouth, urethra (the tube through which urine exits the body), or anus, or they make the child do this to them or to another person.

(b) If they insert any object or a body part other than their penis into the child's vagina, urethra, or anus, or they make the child do this to them or to another person.

(c) If they move any part of the child's body in a way that causes penetration of the child's vagina, urethra, anus, or any body part, or they make the child do this to them or to another person.

(d) If they put their mouth on the child's penis, vagina, anus, or urethra, or they make the child do this to them or to another person.

Explanation using Example

Imagine a scenario where a school janitor takes a child to a secluded part of the school premises. There, the janitor coerces the child into engaging in sexual acts, which include the janitor inserting his fingers into the child's private parts. This act falls under the definition of "penetrative sexual assault" as stipulated in Section 3(b) of The Protection of Children from Sexual Offences Act, 2012, because the janitor inserted a part of his body, not being the penis,

into the child's body. The authorities are notified, and the janitor is arrested and charged with penetrative sexual assault under this law.

Section 4: Punishment For Penetrative Sexual Assault

(1) Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of the natural life of that person and shall also be liable to fine.

(3) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.

Simplified Act

(1) If someone commits a severe sexual assault that involves penetration, they will be sent to prison for at least 10 years. The prison time could be for their entire life. They will also have to pay a fine.

(2) If this type of sexual assault is committed against a child who is under 16 years old, the person who did it will face at least 20 years in prison. This sentence could also be for the rest of their life. On top of that, they will have to pay a fine.

(3) The money from the fine mentioned in part (1) must be fair and it will be given to the victim. This money is to help pay for the victim's medical treatment and help them recover from the assault.

Explanation using Example

Imagine a scenario where a 45-year-old man is convicted of committing a penetrative sexual assault on a 14-year-old child. Under Section 4 of The Protection of Children from Sexual Offences Act, 2012, the man would face a minimum of twenty years of imprisonment, which could extend to imprisonment for the remainder of his natural life. Additionally, the court

would impose a fine on the man, which is meant to be substantial enough to cover the victim's medical expenses and support their rehabilitation process.

B: AGGRAVATED PENETRATIVE SEXUAL ASSAULT AND PUNISHMENT
THEREFOR

Section 5: Aggravated Penetrative Sexual Assault

(a) Whoever, being a police officer, commits penetrative sexual assault on a child -

within the limits of the police station or premises at which he is appointed; or

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

in the course of his duties or otherwise; or

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 -

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

in any areas under the command of the forces or armed forces; or

in the course of his duties or otherwise; or

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 -

physically incapacitates the child or causes the child to become mentally ill as defined under clause 1 of section 2 of the Mental Health Act, 1987 (14 of 1987) or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently;

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

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;

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 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.

Simplified Act

This law says that if certain people use their position of power to commit a serious form of sexual assault on a child, it's considered an even worse crime. Here's who and when:

A police officer, whether on duty or not, or recognized as an officer, especially if it happens at the police station or anywhere they work.

A member of the armed forces or security forces, whether on duty or not, or recognized as such, especially in areas where they are stationed or have authority.

A public servant, which means anyone working for the government.

Someone working in a jail or a place for children's care, like a remand or protection home, who assaults a child living there.

Staff in a hospital, whether it's government-run or private, who assault a child in the hospital.

People working in educational or religious institutions who assault a child there.

Anyone involved in a group assault on a child, where each person in the group is responsible.

Someone who uses deadly weapons or dangerous substances during the assault.

Someone who causes serious injury or harm to the child's body or sexual organs.

Someone whose assault results in the child being physically or mentally disabled, makes a girl child pregnant, gives the child HIV or another serious disease, or causes the child's death.

Someone who takes advantage of a child's disability to commit the assault.

Someone who assaults the same child multiple times.

Someone who assaults a child under twelve years old.

A relative, guardian, or someone living in the same house who assaults the child.

Staff of any service providing institution who assaults a child there.

Someone in a position of trust or authority, like a teacher or caregiver, who assaults the child.

Someone who knows the child is pregnant and still assaults her.

Someone who tries to kill the child during the assault.

Someone who assaults a child during a riot, natural disaster, or other chaotic situations.

Someone who has already been convicted of a sexual crime and assaults a child again.

Someone who forces a child to undress or walk around naked in public as part of the assault.

Explanation using Example

Imagine a scenario where a police officer, while on duty at the police station, coerces a child into a private room within the station premises and commits a penetrative sexual assault. This act falls under Section 5(a) of The Protection of Children from Sexual Offences Act, 2012, as the officer has abused his position of authority and committed the crime within the limits of the police station where he is appointed.

Section 6: Punishment For Aggravated Penetrative Sexual Assault

Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death.

The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.

Simplified Act

Explanation of Punishment for Aggravated Penetrative Sexual Assault

If someone is found guilty of committing a severe form of sexual assault that involves penetration, the law requires that they be sentenced to a strict jail term. This jail time must be at least 20 years and can extend up to the individual's entire life. Additionally, the guilty party must pay a fine, or in the most extreme cases, they could face the death penalty.

Any fine that is collected from the person found guilty must be fair and is intended to help the victim. The money should cover the victim's medical costs and support their recovery and return to normal life.

Explanation using Example

Imagine a situation where a school sports coach has been found guilty of committing an aggravated penetrative sexual assault on a 12-year-old student under his training. The court, upon conviction, sentences the coach to a minimum of twenty years of rigorous imprisonment, considering the severity of the crime and the breach of trust involved. Additionally, the court imposes a significant fine on the coach, with the directive that the fine amount is to be used for the medical treatment and rehabilitation of the young victim.

C: SEXUAL ASSAULT AND PUNISHMENT THEREFOR

Section 7: Sexual Assault

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.

Simplified Act

Section 7 - Explanation: If a person, with the intention of sexual gratification, touches a child's private parts (like their vagina, penis, anus, or breasts), or makes the child touch their own or someone else's private parts, or performs any other sexual act that involves touching but not penetration, this is considered sexual assault against the child.

Explanation using Example

Imagine a scenario where a school sports coach, under the guise of providing training, inappropriately touches a student's private parts. This action is done with a sexual intent and involves physical contact without penetration. According to Section 7 of The Protection of Children from Sexual Offences Act, 2012, this behavior would be classified as sexual assault, and the coach could be prosecuted under this law.

Section 8: Punishment For Sexual Assault

Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

Simplified Act

If someone is guilty of sexual assault, they will be sent to jail for at least three years. This jail time could be as long as five years. They will also have to pay a fine.

Explanation using Example

Imagine a scenario where a school sports coach touches a 14-year-old student inappropriately during a training session. The student reports this to their parents, who then file a complaint with the police. An investigation ensues, and the coach is charged with sexual assault under the Protection of Children from Sexual Offences Act, 2012. Under Section 8 of this Act, the coach, if found guilty, would face a mandatory minimum imprisonment of three years, which could extend up to five years, along with a fine. This section ensures that those who commit sexual assault against children face a substantial period of imprisonment.

D: AGGRAVATED SEXUAL ASSAULT AND PUNISHMENT THEREFOR

Section 9: Aggravated Sexual Assault

- (a) Whoever, being a police officer, commits sexual assault on a child -
within the limits of the police station or premises where he is appointed; or
in the premises of any station house whether or not situated in the police station to which he is appointed; or
in the course of his duties or otherwise; or
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 -
within the limits of the area to which the person is deployed; or
in any areas under the command of the security or armed forces; or

in the course of his duties or otherwise; or

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, 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 -

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 (14 of 1987) or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or

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.

Simplified Act

Simplified Explanation:

- (a) If a police officer sexually abuses a child at the police station, while doing their job, or because they are recognized as a police officer, that's considered a serious crime.
- (b) Similarly, if a member of the military or security forces sexually abuses a child in an area where they are stationed, during their duties, or because they are recognized as military or security personnel, it's also a serious crime.
- (c) It's a serious offense if a public servant sexually abuses a child.
- (d) If someone who works at a jail, home for children in need, or similar place sexually abuses a child who is in their care, it's a serious crime.
- (e) The same applies to staff at hospitals who sexually abuse a child at the hospital.
- (f) It's also a serious crime if staff at schools or religious institutions sexually abuse a child there.
- (g) When a group of people work together to sexually abuse a child, each person involved is considered to have committed the crime, just as if they had done it alone.
- (h) Using deadly weapons or dangerous substances to sexually abuse a child is considered a serious crime.
- (i) If the sexual abuse causes serious injuries or harms the child's sexual organs, it's a serious crime.
- (j) If the sexual abuse causes the child to be physically or mentally disabled, or infects the child with HIV or another serious disease, it's a serious crime.
- (k) Taking advantage of a child's disabilities to sexually abuse them is a serious crime.
- (l) Repeatedly sexually abusing a child is a serious crime.
- (m) Sexually abusing a child under twelve years old is a serious crime.
- (n) It's a serious crime if a relative or someone in the child's household sexually abuses the child.
- (o) If someone who works at or manages an institution that serves children sexually abuses a child there, it's a serious crime.

(p) It's a serious crime if someone in a position of trust or authority over a child sexually abuses the child.

(q) Sexually abusing a child who is known to be pregnant is a serious crime.

(r) Sexually abusing a child and then trying to kill the child is a serious crime.

(s) Sexually abusing a child during events like communal violence, natural disasters, or other similar situations is a serious crime.

(t) If someone has already been convicted of sexual offenses and then sexually abuses a child, it's a serious crime.

(u) Forcing a child to strip or parade naked in public as part of the sexual abuse is a serious crime.

(v) Persuading, forcing, or helping a child to take drugs or hormones to make them sexually mature faster is a serious crime.

Explanation using Example

Imagine a scenario where a police officer, while on duty at the local police station, takes advantage of his position of authority and commits an inappropriate act against a child who came to the station to file a complaint. This act of sexual assault by the police officer falls under Section 9(a)(i) of The Protection of Children from Sexual Offences Act, 2012, as it occurred within the limits of the police station where he is appointed. The officer would be liable for committing aggravated sexual assault due to abusing his position and the trust placed in him by the public.

Section 10: Punishment For Aggravated Sexual Assault

Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

Simplified Act

If someone commits a severe form of sexual assault, they will be sentenced to jail for no less than 5 years, but the jail term could go up to 7 years. They will also have to pay a monetary penalty.

Explanation using Example

Imagine a scenario where a school coach engages in inappropriate touching of a 14-year-old student during practice sessions. This behavior qualifies as aggravated sexual assault under The Protection of Children from Sexual Offences Act, 2012. If the coach is found guilty, the law mandates a minimum sentence of five years in prison, which can extend up to seven years, along with a monetary penalty.

E: SEXUAL HARASSMENT AND PUNISHMENT THEREFOR

Section 11: 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, 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

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

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

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

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

entices a child for pornographic purposes or gives gratification therefor.

Explanation - Any question which involves 'sexual intent' shall be a question of fact.

Simplified Act

If an adult does any of the following things with a sexual purpose, they are sexually harassing a child:

Says something, makes a noise, gestures, shows something, or shows a part of their body intending for the child to hear or see it.

Forces a child to show their body or part of it so that the adult or someone else can see.

Shows the child any item or media that has pornographic content.

Follows, watches, or contacts the child over and over again, whether in person or using technology like the internet or phones.

Threatens to share real or fake images or videos of the child's body or the child being in a sexual act, using any kind of media.

Convinces a child to be involved in pornography or rewards them for it.

Note: Whether or not there was a 'sexual intent' behind these actions is a matter of fact that needs to be determined in each case.

Explanation using Example

Imagine a scenario where a middle-aged man in a park approaches a young girl and begins making lewd gestures at her. He might also make inappropriate comments with clear sexual undertones, intending for her to hear them. This behavior would fall under the first point of Section 11 of The Protection of Children from Sexual Offences Act, 2012, as he is exhibiting parts of his body and making sounds with a sexual intent that are meant to be seen and heard by the child.

Section 12: Punishment For Sexual Harassment

Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

Simplified Act

Anyone who sexually harasses a child can be sent to jail for up to three years and may also have to pay a fine.

Explanation using Example

Imagine a scenario where a 45-year-old man, Mr. Sharma, is caught making sexually suggestive remarks to his 14-year-old neighbor, Priya, on multiple occasions. Priya feels uncomfortable and reports this behavior to her parents, who then approach the police. The police investigate and find evidence of the

harassment, such as witnesses and possibly recorded conversations. Under Section 12 of The Protection of Children from Sexual Offences Act, 2012, Mr. Sharma can be charged with sexual harassment upon a child. If found guilty, he could face up to three years in prison along with a fine.

Section 13: Use Of Child For Pornographic Purposes

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.

Simplified Act

If someone involves a child in any kind of media, such as TV shows, advertisements, online content, or printed material, for sexual pleasure, it is a crime. This includes:

- (a) showing a child's private parts;
- (b) showing a child in actual or pretend sexual activities, whether it shows penetration or not;
- (c) showing a child in a way that is offensive or not suitable for their age,

the person doing this will be charged with the crime of using a child for pornographic purposes.

Explanation - In this law, "use a child" means to involve a child in any way, including print, online, computer, or any other technology, to create, offer, send, publish, help with, or spread pornographic content.

Explanation using Example

Imagine a scenario where a local photographer, who takes family portraits, is approached by an individual asking for a private photoshoot of their child. The photographer is asked to take pictures of the child in suggestive poses that imply sexual content. The photographer agrees, thinking it's just for the family's private collection. However, the individual later distributes these photographs on an internet forum dedicated to child exploitation.

In this case, the photographer has inadvertently used a child for pornographic purposes by taking and providing photographs that represent the child in an obscene manner, even though there was no direct sexual act involved. The act of taking such photos and the subsequent distribution of them falls under the purview of Section 13 of The Protection of Children from Sexual Offences Act, 2012. The photographer, despite not being the one distributing the images, could be held liable for the offence of using a child for pornographic purposes, as their action facilitated the creation of such material.

Section 14: Punishment For Using Child For Pornographic Purposes

Whoever uses a child or children for pornographic purposes shall be punished with imprisonment for a term which shall not be less than five years and shall also be liable to fine and in the event of second or subsequent conviction with imprisonment for a term which shall not be less than seven years and also be liable to fine.

Whoever using a child or children for pornographic purposes under sub-section (1), commits an offence referred to in section 3 or section 5 or section 7 or section 9 by directly participating in such pornographic acts, shall be punished for the said offences also under section 4, section 6, section 8 and section 10, respectively, in addition to the punishment provided in sub-section (1).

Simplified Act

Consequences for involving children in pornography

If anyone involves a child in pornography, they will be sent to jail for at least five years, fined, and if they do it again, the jail time increases to at least seven years plus a fine.

If the person not only involves a child in pornography but also commits sexual crimes against the child during the pornographic acts, they will be punished for those sexual crimes as well, in addition to the punishment for involving the child in pornography.

Explanation using Example

Here's a hypothetical scenario illustrating the application of Section 14 of The Protection of Children from Sexual Offences Act, 2012:

Imagine a situation where an individual, John, owns a website that hosts adult content. One day, John decides to increase his website's traffic by including content involving minors. He knowingly uploads videos and images involving children in sexual acts, intending to use these materials for pornographic purposes.

Upon investigation by the authorities, it is discovered that John has been actively engaging in the production and distribution of child pornography through his website. John is arrested and charged under Section 14 of The Protection of Children from Sexual Offences Act, 2012.

As this is his first offense, the court sentences John to a minimum of five years in prison and imposes a fine, as mandated by the Act. If John were to commit a similar crime again in the future, the Act specifies that he would face a minimum of seven years of imprisonment for his subsequent offense, in addition to a fine.

Section 15: Punishment For Storage Of Pornographic Material Involving Child

Any person, who stores or possesses pornographic material in any form involving a child, but fails to delete or destroy or report the same to the designated authority, as may be prescribed, with an intention to share or transmit child pornography, shall be liable to fine not less than five thousand rupees and in the event of second or subsequent offence, with fine which shall not be less than ten thousand rupees.

Any person, who stores or possesses pornographic material in any form involving a child for transmitting or propagating or displaying or distributing in any manner at any time except for the purpose of reporting, as may be prescribed, or for use as evidence in court, shall be punished with imprisonment of either description which may extend to three years, or with fine, or with both.

Any person, who stores or possesses pornographic material in any form involving a child for commercial purpose shall be punished on the first conviction with imprisonment of either description which shall not be less than three years which may extend to five years, or with fine, or with both and in the event of second or subsequent conviction, with imprisonment of either description which shall not be less than five years which may extend to seven years and shall also be liable to fine.

Simplified Act

Penalties for Keeping Child Pornography

If someone has child pornography and doesn't get rid of it, report it, or intends to share it, they must pay a fine of at least 5,000 rupees. If they do it again, the fine will be at least 10,000 rupees.

If someone has child pornography to show, send, or share it in any way (unless it's to report it or for use in court), they could go to jail for up to three years, pay a fine, or both.

If someone has child pornography for making money off it, the first time they're caught, they could go to jail for three to five years, pay a fine, or both. If they're caught again, they could go to jail for five to seven years and must also pay a fine.

Explanation using Example

Imagine John, a computer technician, finds explicit images of children on a client's computer while repairing it. Aware that possessing such material is illegal, he initially intends to report it but then hesitates, thinking he could share it with a friend who he knows is interested in such content.

Under Section 15 of The Protection of Children from Sexual Offences Act, 2012:

If John keeps the material without reporting it and with the intention of sharing it, he could be fined at least five thousand rupees, and if he does this again, the fine would be no less than ten thousand rupees.

Should he transmit, display, or distribute the material, he could face up to three years in prison, a fine, or both.

If John were to sell or distribute the material for commercial gain, he would face a minimum of three years in prison, which could extend to five years, and a fine on the first conviction. For subsequent convictions, the imprisonment would not be less than five years, which could extend to seven years, along with a fine.

CHAPTER IV: ABETMENT OF AND ATTEMPT TO COMMIT AN OFFENCE

Section 16: Abetment Of An Offence

A person abets an offence, who -First - Instigates any person to do that offence;
or

Secondly - Engages with one or more other person or persons in any conspiracy for the doing of that offence, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that offence; or

Thirdly - Intentionally aids, by any act or illegal omission, the doing of that offence.

Explanation I - A person who, by wilful misrepresentation, or by wilful concealment of a material fact, which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure a thing to be done, is said to instigate the doing of that offence.

Explanation II - Whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Explanation III - Whoever employs, harbours, receives or transports a child, by means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of any offence under this Act, is said to aid the doing of that act.

Simplified Act

If someone helps in committing a crime against children, they have abetted the crime. They can do this in three ways:

First - If they encourage someone to commit the crime.

Secondly - If they plan the crime with others, and some action is taken as part of this plan that leads to the crime.

Thirdly - If they deliberately assist in the crime, either by doing something or by failing to do something they should have done.

Explanation 1: If someone lies or hides important information they're supposed to share, and this causes or tries to cause the crime to happen, this is considered encouraging the crime.

Explanation 2: If someone does anything to make it easier for the crime to happen, whether before or during the act, they have assisted in the crime.

Explanation 3: If someone uses threats, force, lies, or other means to involve a child in a crime, they are also assisting in the crime.

Explanation using Example

Imagine a scenario where an adult, named John, encourages a teenager, named Alex, to engage in inappropriate photographs to be shared online. John tells Alex that it's a quick way to earn money and fame. In this case, John is:

First - Instigating Alex to commit an offence under the Protection of Children from Sexual Offences Act by encouraging him to engage in the act.

This fits the description of abetting an offence as per Section 16 of the Act.

Section 17: Punishment For Abetment

Whoever abets any offence under this Act, if the act abetted is committed in consequence of the abetment, shall be punished with punishment provided for that offence.

Explanation - An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy or with the aid, which constitutes the abetment.

Simplified Act

If someone encourages or helps another person to commit a crime covered by this law, and the crime does happen because of that encouragement or help, then the person who encouraged or helped will receive the same punishment as the person who committed the crime.

Simple Explanation - A crime is considered to have happened because of encouragement or help (abetment) if it was done following someone's suggestion to do it, as part of a plan made with others (conspiracy), or with the assistance that led to the crime.

Explanation using Example

Imagine a school administrator who, upon overhearing a plan by a teacher to engage in inappropriate behavior with a student, not only fails to report it but also provides the teacher with keys to an isolated classroom. If the teacher then commits a sexual offence against the student in that classroom, the administrator could be charged under Section 17 of the Protection of Children from Sexual Offences Act, 2012, for abetting the offence by providing the keys and failing to take action to prevent the crime.

Section 18: Punishment For Attempt To Commit An Offence

Whoever attempts to commit any offence punishable under this Act or to cause such an offence to be committed, and in such attempt, does any act towards the commission of the offence, shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one half of the imprisonment for life or, as the case may be, one - half of the longest term of imprisonment provided for that offence or with fine or with both.

Simplified Act

If a person tries to do something that would break the laws protecting children from sexual offences, or tries to make someone else break these laws, and they start to take action to commit the crime, they can be sent to jail. The jail time could be up to half of the maximum time they would get if they had completed the crime. This might be half of a life sentence or half of the longest jail time set for that crime. They could also be fined, or they might have to go to jail and pay a fine.

Explanation using Example

Imagine a scenario where an individual, John, is found to be engaging in conversation with a minor over the internet with the intention to meet and commit an act of sexual assault. Before the meeting can take place, the authorities are alerted and they apprehend John. Even though John did not succeed in committing the assault, his actions such as planning the meeting and initiating the conversation with the minor with the clear intent to commit the crime are considered an attempt under Section 18 of The Protection of Children from Sexual Offences Act, 2012. Consequently, John can be charged and prosecuted for attempting to commit a sexual offence against a child, and if found guilty, he could face a punishment that is up to one half of the maximum term of imprisonment prescribed for the offence he intended to commit.

CHAPTER V: PROCEDURE FOR REPORTING OF CASES

Section 19: Reporting Of Offences

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to, -

- (a) the Special Juvenile Police Unit; or
- (b) the local police.

(2) Every report given under sub-section (1) shall be -

- (a) ascribed an entry number and recorded in writing;
- (b) be read over to the informant;
- (c) shall be entered in a book to be kept by the Police Unit.

(3) Where the report under sub-section (1) is given by a child, the same shall be recorded under subsection (2) in a simple language so that the child understands contents being recorded.

(4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having

such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same.

(5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection including admitting the child into shelter home or to the nearest hospital within twenty-four hours of the report, as may be prescribed.

(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.

(7) No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub-section (1).

Simplified Act

(1) Regardless of other laws, if someone (including the child involved) thinks a child sex abuse crime might happen, or knows it has happened, they must tell:

(a) the Special Juvenile Police Unit; or

(b) the local police.

(2) When someone reports this information, it must be:

(a) given a number and written down;

(b) read back to the person who reported it;

(c) recorded in a special book by the Police Unit.

(3) If a child is the one reporting, the information must be written in simple language so the child can understand what is recorded.

(4) If the child doesn't understand the language used, or if it's necessary for other reasons, a qualified translator or interpreter must be provided, and they will be paid a fee.

(5) If the police believe the child who was abused needs immediate care or protection, they must write down why and quickly arrange for the child to be taken to a safe place, like a shelter or hospital, within 24 hours of the report.

(6) The police must also inform the Child Welfare Committee and the Special Court (or the Court of Session if there's no Special Court) about the abuse and what care or protection the child needs, all within 24 hours.

(7) Anyone who reports a child sex abuse crime in good faith, meaning they truly believe it to be true, cannot be sued or charged for making the report.

Explanation using Example

Imagine a school teacher, Mrs. Gupta, notices that one of her students, 10-year-old Rohan, has been unusually quiet and shows signs of distress for several days. She observes some bruises on his arms and becomes concerned. After gently inquiring, Rohan confides in her that his uncle has been touching him inappropriately.

Mrs. Gupta knows about the Protection of Children from Sexual Offences Act (POCSO Act, 2012) and understands that she has a responsibility to report this. She immediately contacts the Special Juvenile Police Unit and informs them about the situation, as per Section 19(1)(a) of the Act. The police officer takes down the report, assigns it an entry number, and reads it back to Mrs. Gupta to confirm the details, fulfilling the requirements of Section 19(2).

Since the information provided involves a child, the officer ensures that the language used is simple enough for Rohan to understand, as per Section 19(3). Although Rohan speaks English, it is not his first language, so an interpreter is provided to ensure he comprehends the proceedings, in line with Section 19(4).

Recognizing that Rohan needs immediate care and protection, the officer arranges for him to be taken to a safe shelter home, as per Section 19(5). Within 24 hours, the Special Juvenile Police Unit reports the incident to the Child Welfare Committee and the Special Court, detailing the protective measures taken for Rohan, as required by Section 19(6).

Mrs. Gupta is reassured that she will not face any legal consequences for reporting the abuse, as she acted in good faith, which is protected under Section 19(7).

Section 20: Obligation Of Media, Studio And Photographic Facilities To Report Cases

Any personnel of the media or hotel or lodge or hospital or club or studio or photographic facilities, by whatever name called, irrespective of the number of persons employed therein, shall, 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 such information to the Special Juvenile Police Unit, or to the local police, as the case may be.

Simplified Act

If you work in media, a hotel, lodge, hospital, club, studio, or a place that deals with photography, no matter how many people work there, you must report any content or items that sexually exploit children (like child pornography or images that are sexually offensive or show children in an obscene way) to the Special Juvenile Police Unit or the local police.

Explanation using Example

Imagine a photographer working at a photo studio who, while reviewing images from a recent photoshoot, discovers that one of the employees has taken inappropriate, sexually explicit photos of a minor. According to Section 20 of The Protection of Children from Sexual Offences Act, 2012, the photographer has a legal obligation to report this discovery to the Special Juvenile Police Unit or the local police immediately, as the material is sexually exploitative of the child.

Section 21: Punishment For Failure To Report Or Record A Case

(1) Any person, who fails to report the commission of an offence under sub-section (1) of section 19 or section 20 or who fails to record such offence under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

(2) Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.

(3) The provisions of sub-section (1) shall not apply to a child under this Act.

Simplified Act

(1) If someone knows about a child being sexually abused (as described in section 19(1) or section 20) and does not report it to the authorities, or if someone is supposed to record this information and does not, they can be sent to jail for up to six months, fined, or both.

(2) If a person in charge of an organization (no matter what it's called) doesn't report a case of child sexual abuse committed by someone under their supervision, they could face up to one year in jail plus a fine.

(3) Children are not expected to report sexual abuse crimes under this section.

Explanation using Example

Imagine a school teacher, Mr. Sharma, becomes aware that one of his students, a 12-year-old boy, has been sexually abused by a staff member. As per Section 21(1) of The Protection of Children from Sexual Offences Act, 2012, it is Mr. Sharma's legal obligation to report this incident to the police or the appropriate child welfare authority. However, if Mr. Sharma neglects to report the abuse, he could be subject to imprisonment of up to six months, a fine, or both, for failing to fulfill his duty to report the crime.

In another scenario, Mrs. Iyer, who is the principal of the school, becomes aware of the same incident. If she fails to report the abuse committed by her subordinate, she would be considered in violation of Section 21(2) and could face imprisonment for up to one year and a fine, because she is in a position of authority and did not report the offence committed by someone under her control.

However, if the abused boy himself does not report the crime, Section 21(3) clarifies that he would not be penalized for failing to report, as the provision does not apply to the child victim.

Section 22: Punishment For False Complaint Or False Information

(1) Any person, who makes false complaint or provides false information against any person, in respect of an offence committed under sections 3, 5, 7 and section 9, solely with the intention to humiliate, extort or threaten or

defame him, shall be punished with imprisonment for a term which may extend to six months or with fine or with both.

(2) Where a false complaint has been made or false information has been provided by a child, no punishment shall be imposed on such child.

(3) Whoever, not being a child, makes a false complaint or provides false information against a child, knowing it to be false, thereby victimizing such child in any of the offences under this Act, shall be punished with imprisonment, which may extend to one year or with fine or with both.

Simplified Act

(1) If someone purposefully lies about another person committing a crime under this law, just to embarrass, blackmail, threaten, or slander them, they can be jailed for up to six months, fined, or both.

(2) If a child lies about someone committing a crime, the child will not be punished.

(3) If an adult lies about a child committing a crime, knowing the accusation is false and as a result the child is treated as if they committed a crime, that adult can be jailed for up to one year, fined, or both.

Explanation using Example

Imagine a scenario where an individual, Mr. Sharma, is involved in a bitter dispute with his neighbor, Mr. Gupta. In an attempt to retaliate and cause harm to Mr. Gupta's reputation, Mr. Sharma falsely accuses Mr. Gupta of committing an offence under Section 9 of The Protection of Children from Sexual Offences Act, 2012, claiming that Mr. Gupta has sexually harassed Mr. Sharma's minor nephew. Mr. Sharma does this with the sole intention of defaming Mr. Gupta.

Upon investigation, it is found that the accusation is baseless and fabricated. In this case, Mr. Sharma would be liable under Section 22(1) of the Act, as he has made a false complaint with the intention to defame Mr. Gupta. Consequently, Mr. Sharma could face imprisonment for up to six months, a fine, or both, for his actions.

Section 23: Procedure For Media

(1) No person shall make any report or present comments on any child from any form of media or studio or photographic facilities without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy.

(2) No reports in any media shall disclose, the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child: Provided that for reasons to be recorded in writing, the Special Court, competent to try the case under the Act, may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

(3) The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omissions of his employee.

(4) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be liable to be punished with imprisonment of either description for a period which shall not be less than six months but which may extend to one year or with fine or with both.

Simplified Act

Simplified Explanation of Section 23 of The Protection of Children from Sexual Offences Act, 2012

No one is allowed to report or comment on a child in any media, including photography and broadcasting, without having accurate information. Doing so should not damage the child's reputation or invade their privacy.

Media reports must not reveal a child's identity. This includes the child's name, address, photo, family, school, or neighborhood. However, a Special Court may allow it if it's in the child's best interest and the reasons are written down.

The owner of a media company or photography service is responsible for what their employees do or fail to do regarding these rules.

Anyone who breaks the rules mentioned in points 1 or 2 can be sent to jail for six months to a year, fined, or both.

Explanation using Example

Imagine a scenario where a local newspaper reports on a case involving a 12-year-old child who was a victim of sexual assault. The reporter, without verifying the facts, publishes an article with the child's name and photograph,

as well as details about the child's family and the school he attends. This act of publishing sensitive information not only violates the child's privacy but also exposes him to potential harm and stigma.

Under Section 23 of The Protection of Children from Sexual Offences Act, 2012, such an action is prohibited. The newspaper, as well as the reporter, could be held liable for contravening the law, which aims to protect the identity and privacy of child victims of sexual offences. The Special Court, upon learning of this breach, may impose penalties on those responsible, which could include imprisonment, a fine, or both.

CHAPTER VI: PROCEDURES FOR RECORDING STATEMENT OF THE CHILD

Section 24: Recording Of Statement Of A Child

- (1) The statement of the child shall be recorded at the residence of the child or at a place where he usually resides or at the place of his choice and as far as practicable by a woman police officer not below the rank of sub-inspector.
- (2) The police officer while recording the statement of the child shall not be in uniform.
- (3) The police officer making the investigation, shall, while examining the child, ensure that at no point of time the child come in the contact in any way with the accused.
- (4) No child shall be detained in the police station in the night for any reason.
- (5) The police officer shall ensure that the identity of the child is protected from the public media, unless otherwise directed by the Special Court in the interest of the child.

Simplified Act

- (1) When a child gives their statement, it should be taken at their home, where they normally live, or a place they choose. Preferably, a female police officer of at least sub-inspector rank should record it.
- (2) The police officer recording the child's statement should not wear their police uniform while doing so.

(3) The police officer investigating the case must make sure that the child does not meet or see the accused person at any time during the investigation.

(4) Children should not be kept at the police station overnight for any reason.

(5) The police officer must keep the child's identity secret from everyone, including the news media, unless a Special Court decides it's in the child's best interest to reveal it.

Explanation using Example

Imagine a 10-year-old child named Aarav who has been a victim of sexual harassment. The police are notified and need to take Aarav's statement regarding the incident. Following the provisions of Section 24 of The Protection of Children from Sexual Offences Act, 2012:

The woman police officer, who is at least a sub-inspector, visits Aarav's home to record his statement, allowing him to stay in a comfortable and familiar environment.

The officer is careful to wear plain clothes instead of a police uniform to avoid intimidating Aarav.

During the investigation, the officer makes sure that Aarav does not have to see or interact with the accused person to prevent any further trauma.

Aarav is not required to go to the police station; especially he is not kept there overnight, ensuring his safety and well-being.

The officer also takes measures to keep Aarav's identity confidential from the media to protect his privacy and avoid unnecessary attention.

Section 25: Recording Of Statement Of A Child By Magistrate

(1) If the statement of the child is being recorded under section 164 of the Code of Criminal Procedure, 1973 (2 of 1974) (herein referred to as the Code), the Magistrate recording such statement shall, notwithstanding anything contained therein, record the statement as spoken by the child:

Provided that the provisions contained in the first proviso to sub-section (1) of section 164 of the Code shall, so far it permits the presence of the advocate of the accused shall not apply in this case.

(2) The Magistrate shall provide to the child and his parents or his representative, a copy of the document specified under section 207 of the Code, upon the final report being filed by the police under section 173 of that Code.

Simplified Act

(1) When a child's statement is taken down as per section 164 of the Code of Criminal Procedure, 1973, the Magistrate must write down exactly what the child says, even if the usual rules say otherwise.

Note: Usually, the accused person's lawyer can be present during such a statement, but this rule does not apply when a child's statement is being recorded in cases of sexual offences.

(2) After the police finish their investigation and submit their report, the Magistrate must give a copy of this report to the child and their parents or guardian.

Explanation using Example

Imagine a situation where a 10-year-old child named Rohit has been a victim of sexual assault. The police have filed a case under the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). As per the legal process, Rohit needs to give his statement to a Magistrate. According to Section 25 of the POCSO Act, when Rohit's statement is being recorded, the Magistrate is required to record exactly what Rohit says without any alterations, even though the general practice under Section 164 of the Code of Criminal Procedure might be different.

In this scenario, Rohit's statement is recorded in a child-friendly manner and without the presence of the accused's lawyer, which is an exception provided under the POCSO Act to ensure the child's comfort and security. Furthermore, once the police complete their investigation and file their report, Rohit and his parents, or a representative, will be given a copy of the police report, as is their right under the law.

Section 26: Additional Provisions Regarding Statement To Be Recorded

(1) The Magistrate or the police officer, as the case may be, shall record the statement as spoken by the child in the presence of the parents of the child or any other person in whom the child has trust or confidence.

(2) Wherever necessary, the Magistrate or the police officer, as the case may be, may take the assistance of a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, while recording the statement of the child.

(3) The Magistrate or the police officer, as the case may be, may, in the case of a child having a mental or physical disability, seek the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed, to record the statement of the child.

(4) Wherever possible, the Magistrate or the police officer, as the case may be, shall ensure that the statement of the child is also recorded by audio - video electronic means.

Simplified Act

(1) When a child needs to give a statement about a sexual offence, either the judge (Magistrate) or the police officer will write down exactly what the child says. This should be done while the child's parents or someone the child trusts is there.

(2) If needed, the judge or police officer can get help from a translator or interpreter. This person must have the right qualifications and experience, and they will be paid a fee that has been set in advance.

(3) If the child has a disability that affects their ability to communicate, the judge or police officer can ask for help from a special educator or someone who knows how the child communicates. They could also ask an expert in communicating with children who have disabilities. This person should also have the right qualifications and experience and will be paid a fee that has been set in advance.

(4) Whenever it's possible, the judge or police officer should try to make an audio or video recording of the child's statement.

Explanation using Example

Imagine a 10-year-old child named Aarav who has been a victim of sexual abuse. Aarav is brought to the police station to give his statement. Understanding the sensitive nature of the situation, the police officer decides to

have Aarav's parents present during the recording of the statement to ensure Aarav feels safe and supported.

Aarav speaks a regional language that the police officer does not understand fluently. To accurately record Aarav's statement, the officer arranges for a translator who is proficient in Aarav's language. The translator has the necessary qualifications and experience, and a nominal fee is agreed upon for their services.

Additionally, Aarav has a speech impediment that makes it difficult for him to communicate. Recognizing this, the police officer seeks the help of a special educator who is familiar with the techniques to communicate effectively with children like Aarav. This ensures that Aarav's statement is understood and recorded accurately.

Given the availability of technology, the police officer decides to use an audio-video recording setup to capture Aarav's statement. This creates a reliable and clear record of the testimony that can be used for further investigation and in court proceedings.

Section 27: Medical Examination Of A Child

(1) The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offences under this Act, be conducted in accordance with section 164A of the Code of Criminal Procedure, 1973 (2 of 1973).

(2) In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.

(3) The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.

(4) Where, in case the parent of the child or other person referred to in subsection (3) cannot be present, for any reason, during the medical examination of the child, the medical examination shall be conducted in the presence of a woman nominated by the head of the medical institution.

Simplified Act

Explanation:

Point 1: If a child has been a victim of a crime under the Protection of Children from Sexual Offences Act, they must get a medical check-up right away. This is required even if the police haven't yet filed an official report or complaint. The rules for this check-up are outlined in section 164A of the Code of Criminal Procedure from 1973.

Point 2: If the child victim is a girl, a female doctor must do the medical exam.

Point 3: The child's parent or someone else the child trusts should be there during the medical exam.

Point 4: If the child's parent or trusted person can't be there, a woman chosen by the head of the medical facility should be present during the exam.

Explanation using Example

Imagine a situation where a 10-year-old boy named Aryan has disclosed to his teacher that his neighbor has been touching him inappropriately. The teacher, aware of the seriousness of the allegation, informs the police. Although the police have not yet registered a First Information Report (FIR), they understand the necessity of a prompt medical examination and ensure that Aryan is taken to the nearest hospital.

At the hospital, the medical staff follows the guidelines of Section 27 of The Protection of Children from Sexual Offences Act, 2012. They conduct a thorough medical examination in accordance with the procedures outlined in section 164A of the Code of Criminal Procedure, 1973, even though the formal complaint process has not been initiated.

Since Aryan is a boy, there is no requirement for a woman doctor to conduct the examination, but the hospital still ensures that the examination is done sensitively and professionally.

Aryan's mother is present during the examination, providing him with the necessary support and comfort. If Aryan's mother had been unable to attend, the hospital would have arranged for a woman staff member to be present, as per the Act's provisions, to ensure Aryan's comfort during the process.

CHAPTER VII: SPECIAL COURTS

Section 28: Designation Of Special Courts

(1) For the purposes of providing a speedy trial, the State Government shall in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, designate for each district, a Court of Session to be a Special Court to try the offences under the Act: Provided that if a Court of Session is notified as a children's court under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) or a Special Court designated for similar purposes under any other law for the time being in force, then, such court shall be deemed to be a Special Court under this section.

(2) While trying an offence under this Act, a Special Court shall also try an offence other than the offence referred to in subsection (1), with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974) be charged at the same trial.

(3) The Special Court constituted under this Act, notwithstanding anything in the Information Technology Act, 2000 (21 of 2000) shall have jurisdiction to try offences under section 67B of that Act in so far as it relates to publication or transmission of sexually explicit material depicting children in any act, or conduct or manner or facilitates abuse of children online.

Simplified Act

Simplified Explanation of Section 28 of The Protection of Children from Sexual Offences Act, 2012

Speedy Trial Courts: The state government will set up special courts in each district to quickly handle cases involving child sexual abuse. This will be done with the approval of the head judge of the High Court and announced publicly.

Handling Multiple Charges: If someone is on trial for child sexual abuse, and they are also accused of other crimes, the special court can handle all these charges at once, according to established criminal procedure laws.

Online Child Abuse Material: These special courts also have the power to handle cases involving the distribution or showing of sexual images of children on the internet, even if there are other laws that usually deal with internet crimes.

Explanation using Example

Imagine a situation where a person is accused of sexually assaulting a child in the district of Springfield. To ensure a speedy trial for such a sensitive case, the State Government of Springfield, in coordination with the Chief Justice of the

High Court, has established a Special Court in the district specifically to handle cases under The Protection of Children from Sexual Offences Act, 2012. This Special Court is designated to try all offences related to child sexual abuse expeditiously.

During the trial, it is discovered that the accused is also involved in another crime, such as the possession of illegal substances. The Special Court, which was initially set up to deal solely with the sexual offence case against the child, is now also empowered to try the accused for the drug possession charge during the same trial. This is done to ensure that justice is served without unnecessary delay.

Additionally, if the accused had been sharing or distributing sexually explicit material of children online, the Special Court would also have the jurisdiction to try these offences under section 67B of the Information Technology Act, 2000. This is despite any jurisdictional limitations that might typically apply under the Information Technology Act, as the Special Court's primary focus is to address the sexual exploitation of children.

Section 29: Presumption As To Certain Offences

Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.

Simplified Act

If someone is on trial for doing, helping to do, or trying to do something illegal under sections 3, 5, 7, or 9 of this law, which deals with harming children, the Special Court will assume that the person is guilty. It's up to that person to show that they are not guilty.

Explanation using Example

Imagine a scenario where a school teacher is accused of touching a student inappropriately, which is a crime under section 7 of The Protection of Children from Sexual Offences Act, 2012. In court, because of Section 29, the judge will start with the presumption that the teacher is guilty of the act. It is now up to the teacher to present evidence to prove their innocence, rather than the prosecution having to prove the teacher's guilt beyond a reasonable doubt.

Section 30: Presumption Of Culpable Mental State

(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation - In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

Simplified Act

Simplified Explanation of Section 30 of The Protection of Children from Sexual Offences Act, 2012

Part 1: When someone is on trial for a crime under this law that involves having a guilty state of mind (like intending to do something wrong), the court will assume the person had this guilty mind. However, the person being accused can defend themselves by showing that they did not have this guilty state of mind when they supposedly committed the crime.

Part 2: For the court to believe that the accused person has proven their innocence, it must be convinced without any reasonable doubt—not just because it's more likely than not.

Clarification: When we talk about a "culpable mental state" in this law, it means things like the person's intention, motive, knowledge, or belief regarding the facts of the situation.

Explanation using Example

Imagine a scenario where a school teacher is accused of molesting a student. Under Section 30 of The Protection of Children from Sexual Offences Act, 2012, when the case goes to trial, the Special Court is required to presume that the teacher had the necessary culpable mental state, such as the intention or knowledge that his actions would constitute sexual offense against the child.

However, the teacher has the opportunity to defend himself by presenting evidence and arguments to prove that he did not have such a mental state. For instance, he might argue that any physical contact with the student was accidental and not intentional, and bring witnesses or other forms of evidence to support his claim.

The court will only accept this defense if it believes beyond reasonable doubt that the teacher truly lacked the culpable mental state. If the evidence only suggests that it's more likely than not that the teacher lacked this mental state, that is not sufficient for the court under this law.

Section 31: Application Of Code Of Criminal Procedure, 1973 To Proceedings Before A Special Court

Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.

Simplified Act

Unless this Act says something different, the rules from the Code of Criminal Procedure of 1973 (which include rules about bail and bonds) will be used in cases that are heard by a Special Court. For all intents and purposes, this Special Court is considered to be a Court of Sessions, and the lawyer who represents the government in these cases is considered to be a Public Prosecutor.

Explanation using Example

Imagine a situation where a Special Court is hearing a case under The Protection of Children from Sexual Offences Act (POCSO), 2012. In this scenario, the court follows the same procedures as outlined in the Code of Criminal Procedure, 1973, which applies to higher courts like the Court of Sessions. This means that in matters of granting bail, issuing bonds, or conducting trials, the Special Court operates in a similar fashion to a Sessions Court, ensuring that the legal process is consistent with the established criminal procedures. Furthermore, the individual leading the prosecution in

the Special Court is granted the same status and responsibilities as a Public Prosecutor in a Sessions Court.

Section 32: Special Public Prosecutors

(1) The State Government shall, by notification in the Official Gazette, appoint a Special Public Prosecutor for every Special Court for conducting cases only under the provisions of this Act.

(2) A person shall be eligible to be appointed as a Special Public Prosecutor under sub-section (1) only if he had been in practice for not less than seven years as an advocate.

(3) Every person appointed as a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 (2 of 1974) and provision of that Code shall have effect accordingly.

Simplified Act

Simplified Explanation of Section 32 - The Protection of Children from Sexual Offences Act, 2012

Appointment of Special Public Prosecutors: The government of each state is required to officially appoint a Special Public Prosecutor for each Special Court. These prosecutors are dedicated to handling cases that fall under this specific Act, which is designed to protect children from sexual offences.

Eligibility Criteria: To be eligible for the role of Special Public Prosecutor, a person must have worked as a lawyer (advocate) for at least seven years.

Status and Applicability: Once appointed, these Special Public Prosecutors are considered to be Public Prosecutors as defined by the Code of Criminal Procedure from 1973. This means that the rules and procedures from that Code apply to them as well.

Explanation using Example

Imagine a scenario where a new Special Court is established in a state to handle cases related to the sexual offences against children. In accordance with Section 32 of The Protection of Children from Sexual Offences Act, 2012, the State Government issues a notification in the local newspaper and on their

official website, announcing the appointment of Mr. Arjun Singh as the Special Public Prosecutor for this court. Mr. Singh has been a practicing advocate for over ten years, specializing in criminal law, which makes him eligible for the position as per the criteria stated in the Act. As a Special Public Prosecutor, Mr. Singh will exclusively handle the prosecution of cases under this Act, and for the purposes of these legal proceedings, he will have all the powers and rights of a Public Prosecutor as defined in the Code of Criminal Procedure, 1973.

CHAPTER VIII: PROCEDURE AND POWERS OF SPECIAL COURTS AND RECORDING OF EVIDENCE

Section 33: Procedure And Powers Of Special Court

(1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.

(2) The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.

(3) The Special Court may, if it considers necessary, permit frequent breaks for the child during the trial.

(4) The Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court.

(5) The Special Court shall ensure that the child is not called repeatedly to testify in the court.

(6) The Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial.

(7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial: Provided that for reasons

to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

Explanation - For the purposes of this sub-section, the identity of the child shall include the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed.

(8) In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.

(9) Subject to the provisions of this Act, a Special Court shall, for the purpose of the trial of any offence under this Act, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, and as far as may be, in accordance with the procedure specified in the Code of Criminal Procedure, 1973 (2 of 1974) for trial before a Court of Session.

Simplified Act

Section 33 - Simplified Explanation

(1) A Special Court can start legal proceedings for a sexual offence against children without the accused being formally sent to the court for trial. This can happen when someone complains about the offence or the police submit a report about it.

(2) The lawyer representing the government or the accused's lawyer must give their questions for the child witness to the Special Court, which will then ask the child those questions.

(3) The Special Court can allow the child to take breaks whenever needed during the trial.

(4) The Special Court will make the courtroom comfortable for the child by letting a trusted family member, guardian, friend, or relative stay with the child in the courtroom.

(5) The Special Court will try to make sure the child doesn't have to come to court to give evidence over and over again.

(6) The Special Court will protect the child from harsh questioning or attacks on their character and will keep the child's dignity intact throughout the trial.

(7) The Special Court will keep the child's identity secret during the investigation and trial, unless it writes down a good reason to share it, thinking it's best for the child.

Note: The child's identity includes the identity of their family, school, relatives, neighborhood, or any other info that could reveal who the child is.

(8) In certain cases, the Special Court may order the offender to pay compensation to the child for any physical or mental harm caused, or for the child's immediate rehabilitation.

(9) The Special Court has the same powers as a Court of Session for trying offences under this Act, and will follow the same trial procedures as outlined in the Code of Criminal Procedure, 1973.

Explanation using Example

Imagine a scenario where a 12-year-old child has been a victim of sexual assault. The case is brought to a Special Court designed to handle cases under the Protection of Children from Sexual Offences Act, 2012. Here's how Section 33 would be applied:

The Special Court directly takes cognizance of the offence based on the police report detailing the incident, without requiring a preliminary trial (Subsection 1).

During the trial, the Special Public Prosecutor formulates questions for the child witness. These questions are first presented to the judge, who then asks the child in a manner deemed appropriate, to protect the child from direct confrontation with the accused or harsh questioning (Subsection 2).

The child is allowed to take breaks if the proceedings become overwhelming, ensuring the child's comfort and reducing stress (Subsection 3).

A trusted family member is allowed to accompany the child in court to provide emotional support (Subsection 4).

The court takes measures to prevent the child from having to testify multiple times, minimizing the child's distress (Subsection 5).

The judge ensures that the questioning is respectful and does not allow any attempt to tarnish the child's reputation or dignity (Subsection 6).

To protect the child's privacy, the court prohibits revealing the child's identity or any information that could indirectly disclose it, unless it is absolutely necessary and in the child's best interest (Subsection 7).

If deemed necessary, the court may order the perpetrator to pay compensation to the child for the trauma suffered, in addition to any other legal penalties (Subsection 8).

The Special Court exercises the same powers as a Court of Session for the trial, following the procedures laid out in the Code of Criminal Procedure, 1973 (Subsection 9).

Section 34: Procedure In Case Of Commission Of Offence By Child And Determination Of Age By Special Court

(1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016).

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.

(3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under subsection (2) was not the correct age of that person.

Simplified Act

If a child commits a crime covered by this law, they will be treated according to the rules of the Juvenile Justice Act of 2015.

If there's a question about whether someone is a child during a trial, the court will decide after checking their age. The court will also write down the reasons for its decision.

A court's decision won't be considered wrong just because someone later shows that the age the court decided on wasn't actually correct.

Explanation using Example

Imagine a scenario where a 16-year-old boy is accused of sexually assaulting a classmate. Since the accused is a child under Indian law, the case is referred to a Juvenile Justice Board instead of a regular criminal court, in accordance with Section 34(1) of The Protection of Children from Sexual Offences Act, 2012. This means the boy will be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015.

During the proceedings, there might be some confusion about the boy's age, as his birth certificate is not immediately available. The Special Court, as per Section 34(2), will then determine his age by examining other evidence, such as school records or a bone ossification test, and record the reasons for its determination.

Later on, if the boy's birth certificate is found and it shows a different age than what the Special Court had determined, Section 34(3) ensures that any orders made by the Special Court will not be considered invalid just because the age was subsequently proven to be incorrect.

Section 35: Period For Recording Of Evidence Of Child And Disposal Of Case

(1) The evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court.

(2) The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.

Simplified Act

(1) The child's testimony should be documented within 30 days after the Special Court acknowledges the case. If there's a delay, the Court must explain why.

(2) The Special Court should try to finish the trial within one year of recognizing the case.

Explanation using Example

Imagine a scenario where a 10-year-old child has been a victim of a sexual offence. According to Section 35(1) of The Protection of Children from Sexual Offences Act, 2012, once the case reaches a Special Court, the child's

testimony should be recorded no later than 30 days after the court has acknowledged (taken cognizance of) the offence. If this does not happen within the specified timeframe, the court must provide an explanation for the delay.

Furthermore, Section 35(2) mandates that the trial of the case involving the child should be concluded, if possible, within one year from the date the Special Court took cognizance of the offence. This ensures a swift trial to minimize the duration of the legal process for the child victim.

Section 36: Child Not To See Accused At The Time Of Testifying

(1) The Special Court shall ensure that the child is not exposed in any way to the accused at the time of recording of the evidence, while at the same time ensuring that the accused is in a position to hear the statement of the child and communicate with his advocate.

(2) For the purposes of sub-section (1), the Special Court may record the statement of a child through video conferencing or by utilising single visibility mirrors or curtains or any other device.

Simplified Act

(1) The Special Court must make sure that the child who is a witness or a victim does not see the person accused of the crime when the child is telling their story. However, the court also must make sure that the accused person can hear what the child is saying and can talk to their lawyer.

(2) To do this, the Special Court can use things like video calls, one-way mirrors, curtains, or any other equipment that helps the child give their statement without having to be in the same room as the accused.

Explanation using Example

Imagine a case where a 10-year-old child named Rohan is called to testify in court against a person accused of sexually assaulting him. To protect Rohan from the trauma of facing his assaulter, the judge orders that Rohan's testimony be recorded via video conferencing. The accused, Mr. Sharma, is in the courtroom with his lawyer, and they are provided with a monitor to see and hear Rohan's testimony. Rohan is in a different room accompanied by a child welfare officer, ensuring that he does not have to see Mr. Sharma directly

during the testimony, thus applying Section 36 of The Protection of Children from Sexual Offences Act, 2012.

Section 37: Trials To Be Conducted In Camera

The Special Court shall try cases in camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence:

Provided that where the Special Court is of the opinion that the child needs to be examined at a place other than the court, it shall proceed to issue a commission in accordance with the provisions of section 284 of the Code of Criminal Procedure, 1973 (2 of 1974).

Simplified Act

The Special Court will handle cases privately (not in public) and make sure that the child's parents or a trusted person is present with the child during the trial:

If necessary, if the court thinks the child should be questioned somewhere other than the courtroom, it will arrange for this to happen following the rules set out in section 284 of the Code of Criminal Procedure, 1973.

Explanation using Example

Consider a scenario where a 10-year-old child, named Aanya, has been a victim of sexual abuse. The case is brought to a Special Court under the Protection of Children from Sexual Offences Act, 2012. To protect Aanya's privacy and to ensure she feels secure during the trial, the judge orders the case to be heard in camera, meaning the proceedings will be conducted in private without access to the public or media.

Aanya is understandably distressed and the court recognizes that she would be more comfortable speaking in a familiar environment. Therefore, provided that the judge decides it is in the best interest of the child, the court issues a commission to take Aanya's testimony at her home, in accordance with section 284 of the Code of Criminal Procedure. This enables Aanya to provide her testimony in a safe and supportive setting, ensuring her well-being while the legal process is carried out.

Section 38: Assistance Of An Interpreter Or Expert While Recording Evidence Of Child

(1) wherever necessary, the Court may take the assistance of a translator or interpreter having such qualifications, experience and on payment of such fees as may be prescribed, while recording the evidence of the child.

(2) If a child has a mental or physical disability, the Special Court may take the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed to record the evidence of the child.

Simplified Act

(1) If needed, the Court can get help from a translator or interpreter who is qualified and experienced. They will be paid a fee set by the rules to help understand and record what a child says in court.

(2) If a child has trouble with mental or physical abilities, the Special Court can get help from a special educator or someone who knows how the child communicates. An expert in the field can also help. They must be qualified, experienced, and will be paid a fee set by the rules to help record the child's words in court.

Explanation using Example

Imagine a scenario where a young child from a non-English speaking background is required to testify in a sexual offense case. The child is the key witness but struggles to express the ordeal in English. The court, under Section 38(1) of The Protection of Children from Sexual Offences Act, 2012, appoints a qualified translator. This translator assists the child in communicating effectively with the court, ensuring the child's testimony is accurately recorded and understood by the judge and the lawyers present.

In another instance, consider a child with autism who is a victim of sexual abuse. The child communicates primarily through a specialized communication device and finds unfamiliar environments overwhelming. Under Section 38(2) of the Act, the Special Court arranges for a special educator who is experienced in using such communication devices and understands the child's unique way of interacting. The educator facilitates the communication between the child and the court, enabling the child to provide evidence in a supportive and accessible manner.

CHAPTER IX: MISCELLANEOUS

Section 39: Guidelines For Child To Take Assistance Of Experts, Etc

Subject to such rules as may be made in this behalf, the State Government shall prepare guidelines for use of non-governmental organisations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child.

Simplified Act

The government of each state, following certain rules that will be established, must create instructions for involving non-governmental organizations, professionals, and experts, especially those with expertise in psychology, social work, physical health, mental health, and child development, to help children during the stages before and during a trial.

Explanation using Example

A local government, in compliance with Section 39 of The Protection of Children from Sexual Offences Act, 2012, has established a set of guidelines for involving qualified professionals in child abuse cases. For example, when a child is required to give testimony in a sexual abuse case, the court may use these guidelines to involve a child psychologist. This psychologist will assist the child in understanding the legal process and provide emotional support during the pre-trial interviews and the trial itself, helping to ensure the child's well-being and effective communication of their testimony.

Section 40: Right Of Child To Take Assistance Of Legal Practitioner

Subject to the proviso to section 301 of the Code of Criminal Procedure, 1973 (2 of 1974) the family or the guardian of the child shall be entitled to the assistance of a legal counsel of their choice for any offence under this Act:

Provided that if the family or the guardian of the child are unable to afford a legal counsel, the Legal Services Authority shall provide a lawyer to them.

Simplified Act

If a child is involved in a legal case because of a sexual offence, their family or guardian has the right to have a lawyer help them. This is allowed unless a specific rule in the Code of Criminal Procedure says otherwise.

However, if the child's family or guardian can't pay for a lawyer, the government's Legal Services Authority will give them one for free.

Explanation using Example

Imagine a situation where a 14-year-old child has been a victim of sexual assault, which is an offence under The Protection of Children from Sexual Offences Act, 2012. The child's family wishes to pursue legal action against the perpetrator. According to Section 40 of the Act, the family has the right to hire a lawyer of their choice to represent them in court.

However, if the family is financially constrained and cannot afford legal representation, they are entitled to assistance from the Legal Services Authority. In this case, the Authority would appoint a lawyer to represent the child's interests in the legal proceedings, ensuring that the family has access to justice despite their financial limitations.

Section 41: Provisions Of Sections 3 To 13 Not To Apply In Certain Cases

The provisions of sections 3 to 13 (both inclusive) shall not apply in case of medical examination or medical treatment of a child when such medical examination or medical treatment is undertaken with the consent of his parents or guardian.

Simplified Act

Sections 3 to 13 of this law do not apply when a child is given a medical exam or treatment, as long as the child's parents or guardian have agreed to it.

Explanation using Example

Imagine a situation where a 10-year-old child is taken to the hospital by his parents for a routine health check-up. During the examination, the doctor needs to perform certain procedures that could fall under the actions described in sections 3 to 13 of the POCSO Act, which generally deal with sexual offenses against children. However, since the examination is for medical purposes and the parents have given their consent, the provisions of these sections do not

apply. The doctor can proceed with the necessary medical examination or treatment without the concern of violating the POCSO Act.

Section 42: Alternative Punishment

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, 376AB, 376B, 376C, 376D, 376DA, 376DB, 376E, section 509 of the Indian Penal Code or section 67B of the Information Technology Act, 2000 (21 of 2000), 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 only under this Act or under the Indian Penal Code as provides for punishment which is greater in degree.

STATE AMENDMENT

Arunachal Pradesh

Amendment of section 42 - In section 42 of the Protection of Children from Sexual Offences Act, 2012, for the words, figures, and letters "sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376C, 376D, 376E or section 509 of the Indian Penal Code" the words, figures, and letters "sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376AA, 376C, 376D, 376DA, 376E or section 509 of the Indian Penal Code" shall be substituted. Vide Arunachal Pradesh Act 3 of 2019, s. 26

Simplified Act

42 Alternate punishment - If a person's actions or failure to act is considered a crime under this Act (Protection of Children from Sexual Offences Act, 2012) as well as certain sections of the Indian Penal Code and the Information Technology Act, 2000, then the law says that the person should only be punished under one of these laws. Specifically, the punishment should be the one that is more severe or has a greater penalty.

STATE AMENDMENT

Arunachal Pradesh

Amendment of section 42 - In Arunachal Pradesh, there has been a change to Section 42 of the Protection of Children from Sexual Offences Act, 2012. Certain section numbers listed in the original text have been updated with new

ones. This means that if a crime falls under these updated sections of the Indian Penal Code, the rule about choosing the more severe punishment still applies. This change is noted in Arunachal Pradesh Act 3 of 2019, s. 26.

Explanation using Example

Imagine a scenario where an individual is found guilty of sexually assaulting a minor, which is an offence under both the Protection of Children from Sexual Offences (POCSO) Act, 2012 and the Indian Penal Code (IPC). The POCSO Act, in Section 42, specifies that if the offence is punishable under both the POCSO Act and certain sections of the IPC (like Sections 376 for rape, 354A for sexual harassment, etc.), the offender will be punished under the act that prescribes a more severe penalty.

For instance, if the prescribed punishment for sexual assault of a minor under the POCSO Act is more stringent than the punishment under the IPC, the offender will be sentenced as per the POCSO Act. This ensures that the most severe punishment applicable is imposed for crimes against children.

Section 42A: Act Not In Derogation Of Any Other Law

The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.

Simplified Act

42A This Act adds to existing laws without replacing them

This law is meant to add to any current laws, not to replace or reduce their importance. If there's a conflict between this law and another, this law will take priority over the other law where there's a disagreement.

Explanation using Example

Imagine a situation where a 14-year-old child has been sexually abused by a relative. There is a provision in another law that deals with sexual assault, but it does not specifically address the unique vulnerabilities and needs of children. The Protection of Children from Sexual Offences (POCSO) Act, 2012, however, has been designed with the intent to protect children from offenses of

sexual assault, sexual harassment, and pornography with provisions that are child-friendly.

In this case, while the other law might still apply, the POCSO Act would take precedence where there is any inconsistency between the two laws. If the other law suggests a lesser penalty for the offender, or if it lacks specific provisions for the child's testimony to be recorded in a safe and non-intimidating environment, the POCSO Act would override those aspects to ensure the child receives the most sensitive and effective protection and justice as per Section 42A of the Act.

Section 43: Public Awareness About Act

The Central Government and every State Government, shall take all measures to ensure that:

- (a) the provisions of this Act are given wide publicity 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;
- (b) the officers of the Central Government and the State Governments and other concerned persons (including the police officers) are imparted periodic training on the matters relating to the implementation of the provisions of the Act.

Simplified Act

The national government and the governments of each state must make sure that:

- (a) information about this law is spread far and wide through TV, radio, and newspapers often, so that everyone, including kids and their parents or caretakers, knows what the law says;
- (b) government officers, police, and others who need to enforce this law get training regularly on how to do so.

Explanation using Example

Imagine a scenario where the Indian government launches a nationwide campaign to raise awareness about the Protection of Children from Sexual Offences (POCSO) Act, 2012. As part of this campaign:

(a) Public service announcements are broadcasted on television and radio, and advertisements are published in newspapers and magazines. These announcements inform the public about the rights of children and the legal repercussions of violating the POCSO Act. Schools organize special assemblies where students and parents are educated about the importance of child safety and the details of the Act.

(b) Police officers and other relevant government officials attend workshops and training sessions designed to familiarize them with the provisions of the POCSO Act. They learn how to handle cases involving child sexual abuse sensitively and effectively, ensuring that the rights of young victims are protected throughout the legal process.

Section 44: Monitoring Of Implementation Of Act

(1) The National Commission for Protection of Child Rights constituted under section 3, or as the case may be, the State Commission for Protection of Child Rights constituted under section 17, of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) shall, in addition to the functions assigned to them under that Act, also monitor the implementation of the provisions of this Act in such manner as may be prescribed.

(2) The National Commission or, as the case may be, the State Commission, referred to in sub-section (1), shall, while inquiring into any matter relating to any offence under this Act, have the same powers as are vested in it under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006).

(3) The National Commission or, as the case may be, the State Commission, referred to in sub-section (1), shall also include, its activities under this section, in the annual report referred to in section 16 of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006).

Simplified Act

Part 1: The National Commission for Protection of Child Rights (or the State Commission, depending on the jurisdiction), which was set up by the Commissions for Protection of Child Rights Act of 2005, has extra duties. One

of these is to make sure that the rules of this Act, which is designed to protect children from sexual offences, are being followed properly.

Part 2: When the National or State Commission investigates any issues related to crimes under this Act, they have all the powers they already have under the Commissions for Protection of Child Rights Act of 2005. This means they can do things like call for witnesses and evidence when looking into child sexual offences.

Part 3: The National or State Commission must include information about their work on this Act in their yearly report. This report is something they're already required to make under the Commissions for Protection of Child Rights Act of 2005.

Explanation using Example

Imagine a situation where a school in Mumbai has been reported to have a case where a teacher is accused of sexually harassing a student. The State Commission for Protection of Child Rights (SCPCR) in Maharashtra, which is established under the Commissions for Protection of Child Rights Act, 2005, now has the responsibility to monitor the implementation of the Protection of Children from Sexual Offences (POCSO) Act in this case.

The SCPCR can investigate the matter using its powers under the Commissions for Protection of Child Rights Act, such as summoning the teacher, inspecting the school premises, and calling for records. Their investigation will ensure that the provisions of the POCSO Act are being followed in the school's handling of the case.

After the investigation, the SCPCR will include the details of this case and the steps they took to address it in their annual report. This report helps in understanding how effectively the POCSO Act is being implemented in the state and also aids in identifying areas that may require more attention or improvement.

Section 45: Power To Make Rules

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:

(a) the manner of deleting or destroying or reporting about pornographic material in any form involving a child to the designated authority under sub-section (1) of section 15;

(aa) the manner of reporting about pornographic material in any form involving a child under sub-section (2) of section 15;

(ab) the qualifications and experience of, and the fees payable to, a translator or an interpreter, a special educator or any person familiar with the manner of communication of the child or an expert in that field, under sub-section (4) of section 19; sub-sections(2) and (3) of section 26 and section 38;

(b) care and protection and emergency medical treatment of the child under sub-section (5) of section 19;

(c) the payment of compensation under sub-section (8) of section 33;

(d) the manner of periodic monitoring of the provisions of the Act under sub-section (1) of section 44.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Simplified Act

(1) The central government can create rules to make sure this law is followed. They will announce these rules in an official publication called the Official Gazette.

(2) Specifically, these rules can cover a variety of things, including:

(a) How to get rid of or report child pornography to the authorities as stated in section 15, subsection (1).

(aa) How to report child pornography as stated in section 15, subsection (2).

(ab) What qualifications and experience translators, interpreters, special educators, or experts need to have, and how much they get paid, as mentioned in sections 19, 26, and 38.

(b) How to take care of and provide emergency medical help to a child as stated in section 19, subsection (5).

(c) How to decide the amount of money given to a child as compensation as stated in section 33, subsection (8).

(d) How often the government will check that the rules of this law are being followed, as stated in section 44, subsection (1).

(3) Every new rule must be shown to both Houses of Parliament as soon as possible. Parliament has 30 days to look at it, which can happen in one session or over several. If both Houses decide to change the rule or not use it at all, then the rule will only work in the new way or not at all. However, anything done before the change or cancellation is still valid.

Explanation using Example

Imagine a situation where a school principal discovers that one of the teachers has been sharing pornographic material involving a child. Under Section 45 of The Protection of Children from Sexual Offences Act, 2012, the principal takes action by following the rules set by the Central Government. These rules specify the process for reporting the material to the designated authority, as per clause (a) and (aa). Furthermore, the principal ensures that a translator with the required qualifications, as outlined in clause (ab), is present during the child's statement to the police, facilitating clear communication. Additionally, the child is provided with immediate care and protection, and emergency medical treatment, in accordance with the rules under clause (b). The government also has provisions under clause (c) to pay compensation to the child, and the school is subject to periodic monitoring to ensure compliance with the Act, as per clause (d). The principal's adherence to these rules, mandated by Section 45, ensures that proper procedures are followed, and the welfare of the child is prioritized.

Section 46: Power To Remove Difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for removal of the difficulty: Provided that no order shall be made under this section after the expiry of the period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Simplified Act

(1) If there are problems in applying this law, the Central Government can issue an order to solve those problems. This order must be in line with the law and can't be made after two years since the law started. (But remember, the government can't make this kind of order more than two years after the law has been in effect.)

(2) Any order the government makes to fix these problems must be shown to both houses of Parliament as soon as possible after it's created.

Explanation using Example

Imagine a situation where a new form of digital communication emerges and becomes popular among children. This platform is not explicitly covered under the current provisions of The Protection of Children from Sexual Offences Act, 2012, for monitoring or regulating to prevent child sexual abuse. The government realizes that predators may exploit this loophole to harm children. To address this issue promptly, the Central Government decides to use Section 46 of the Act.

The government issues an order stating that the provisions of the Act now also apply to this new digital platform, ensuring that any sexual offense against children on this platform is punishable. This order is consistent with the Act's provisions and is aimed at protecting children from sexual offenses in this new digital environment. The order is published in the Official Gazette and, as per the Act's requirements, it is presented before both Houses of Parliament for scrutiny.

This example shows how Section 46 allows the government to adapt the Act to emerging challenges and ensure the protection of children continues effectively.