

# PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

The Protection of Children from Sexual Offences (POCSO) Act, 2012 was enacted by the Government of India to protect children from offences of sexual assault, sexual harassment and pornography, while safeguarding the interest of the child at every stage of the judicial process, by incorporating child-friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts.

POCSO Act, 2012, provides a comprehensive definition and recognition of crime which covers all possible sexual crimes and sexual exploitation against children.

Under POCSO Act, 2012, a person below the age of 18 years is a child.

It safeguards the interests of child at every stage of the judicial process by incorporating child-friendly mechanism.

The Chandigarh Commission for Protection of Child Rights (CCPCR) is mandated to monitor the implementation of POCSO Act, 2012.

## What Special About (POCSO) Act, 2012 ?

POCSO Act incorporating child-friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts.

Before they turn 18...



1 in 6 boys experience  
some form of sexual abuse



1 in 4 girls experience  
some form of sexual abuse

# Some Symptoms of Sexual Abuse



Child has frequent unexplained injuries especially in private body parts



The child walks and sits with difficulty



Fatigue and sleeping difficulties



Poor attendance of child in school



Unexpected behavioural changes in a child such as social withdrawal or unjustified/inappropriate aggression



Regressive behaviour such as bed wetting and thumb sucking



Sudden dislike/withdrawal from certain specific people or places he/she was comfortable with earlier



Sudden accumulation of money or gifts



The child starts paying too much or too little attention to his/her appearance

**Note:** The above symptoms are only indicative of abuse but there may be others which are not so obvious and therefore, parental attention is required.

## Important :

Listen to children reporting sexual abuse

Believe the child

Tell the child that he/she is brave

Tell the child it is not his/her fault that he/she has been abused

## ✓ Do's

### Adopt supportive behavior towards child victims



Listen to the case with patience when the child complains about a person or an incident or a physical discomfort



Raise your concern with people close to the child



Call CHILD HELPLINE 181 or CHILDLINE at 1098



Ensure the child has undergone medical examination immediately after reporting the incident



Report incident of abuse at the nearest Police Station



Be sensitive while discussing the incident or its details with the child

## ✗ Do Not

### Do not adopt unsupportive behaviour towards child victims



Blaming the child



Ignoring when the child complains about a person or an incident or a physical discomfort



Ignoring when the child complains about a person or an incident or a physical discomfort



Sending the child back to the person/place where the abuse happened



Asking the child not to seek help from others



Asking the child not to seek help from others



Not providing medical attention to the child



Not taking action even when one is aware of the abuse being taking place



Not reporting the incident at the Police Station

## FLOW CHART OF PROCESSES UNDER POCSO ACT



## Key authorities under POCSO Act, 2012

| Authorities                                   | Duties   |
|---|--|
| Police/<br>Special<br>Juvenile<br>Police Unit | <ul style="list-style-type: none"> <li>Record information</li> <li>Conduct preliminary inquiry</li> <li>Report the case to CWC/ Special Court within 24 hours</li> <li>Produce child before CWC within 24 hours, if required</li> <li>Adhere to medical needs of child Keep parent/guardian informed</li> <li>Inform Special Court about appointment of Support Person within 24 hours</li> <li>Ensure that at no point of time child comes in contact with accused</li> </ul> |
| CWC   | <ul style="list-style-type: none"> <li>Determine placement of child within 3 days with family/children home/shelter home if found in need of care and protection</li> <li>Provide Support Person</li> </ul>  |
| District Child Protection Unit                | <ul style="list-style-type: none"> <li>Maintain list of interpreters/ translators/ special educators etc. and make it available to authorities</li> <li>Make payment for services of interpreters/ translators</li> </ul>  |
| Magistrate                                    | <ul style="list-style-type: none"> <li>Record statement at the residence of child or at a place of child's choice/comfort</li> <li>Provide child/parents/representative, a copy of the document of final report by the police</li> </ul>   |
| Special Court/Judge                           | <ul style="list-style-type: none"> <li>Conduct in-camera trial</li> <li>Ensure child-friendly atmosphere</li> <li>Respect dignity of the child</li> <li>Maintain anonymity of child</li> <li>Record evidence of child within 30 days</li> <li>Complete trial within one year</li> </ul>  |
| Special Public Prosecutor                     | <ul style="list-style-type: none"> <li>prosecution of cases under the Act exclusively</li> </ul>   |
| Support Person                                | <ul style="list-style-type: none"> <li>Maintain confidentiality</li> <li>Keep parent/guardian informed</li> <li>Inform child of his/her role in judicial process</li> </ul>  |
| State Government                              | <ul style="list-style-type: none"> <li>Designate a court as Special Court Appoint a Special Public Prosecutor</li> <li>Provide publicity to the Act</li> <li>Impart training to Authorities/Stakeholders</li> <li>Frame rules and guidelines</li> </ul>  |
| Central Government                            | <ul style="list-style-type: none"> <li>Provide publicity to the Act</li> <li>Impart trainings to Authorities/Stakeholders</li> <li>Frame Rules and guidelines</li> </ul>   |
| NCPCR/ SCPCRs                                 | <ul style="list-style-type: none"> <li>Monitor implementation of the Act .</li> <li>Call for reports from CWCs on specific cases</li> <li>Report on the implementation of the Act by way of a separate chapter in its annual report</li> </ul>   |

“  
**YOU TOOK AWAY MY INNOCENCE  
 BUT YOU CAN NEVER TAKE AWAY  
 MY SPIRIT TO SURVIVE**  
**CHILD SEX ABUSE SURVIVOR**  
 ”



# Child-Friendly Procedures to be adopted by all organizations under POCSO Act

## Section 19: Special Juvenile Police Unit/Local Police and the Magistrate

- Anyone including a child can report an offence to Special Juvenile Police Unit (SJPU)/ local police.
- All individuals and institutions including schools, colleges, hospitals, hotels, clubs, studio, photographic facilities and media houses are under obligation to report cases of child abuse as soon as they come to know of it (u/s 20).
- The police must record the statement of the child in a simple language so that the child can understand what is being recorded and provide translator or interpreter, if found necessary.
- SJPU/local police has to provide care and protection to the child.
- Make immediate arrangements to take the child to the nearest hospital for medical examination and admit the child into a shelter home if found necessary.
- Report the matter within 24 hours to Child Welfare Committee (CWC) and Special Court {u/s 19(6)}.
- A woman sub-inspector should record the child's statement preferably at the residence of child or at a place where child usually resides or at the place of child's choice {u/s 24 (1)}.
- Police must be in plain clothes while working with victims of child sexual abuse {u/s 24 (2)}.
- The police officer must ensure, during investigation that the child, at no point of time, comes in contact with the accused {u/s 24 (3)}.
- A child cannot be kept overnight in the police station {u/s 24 (4)}.
- The police officer shall ensure that the identity of the child is protected from the public media {u/s 24 (5)}.
- SJPU/local police to produce the child before the CWC as per Rule 4 (3).

## Medical/Legal/Media and other facilities:

- A female victim can be examined only by a female doctor or in the presence of a woman nominated by the head of the medical institute {u/s 27 (2)}.
- The child and her/his family are entitled to free legal aid through Legal Services Authority (Rule 4 & y/s 40).
- Media to strictly follow procedure (u/s 23).

## Section 33: Special Court

- 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 {u/s 33 (4)}. Statement of child to be recorded as spoken by the child {u/s 26 (1)}.
- Ensure that child is not called repeatedly to testify in the court {u/s 33 (5)}.
- Not permit aggressive questioning or character assassination of child and ensure that the dignity of the child is maintained {u/s 33 (6)}.
- Ensure that the identity of child is not disclosed {u/s 33 (7)}.
- Assistance of special educators to children having mental and physical disability {26 (3)}.
- Statement may be recorded by audio-visual means (video conferencing) {u/s 26 (4)}.
- In-camera trials are mandatory which means that only persons connected to the case will be allowed in the court room (u/s 37).
- Child's evidence will be recorded within 30 days of the court taking cognizance of the offence and in the presence of parents of child or any other person in whom child has trust or confidence.
- Trial shall be completed as far as possible within one year {u/s 35 (2)}.
- Grant interim compensation to be paid to the victim during pendency of the case.
- Juvenile Justice (Care and Protection of Children) Act, 2015 will apply if the sexual offence has been committed by a person who was below the age of 18 years at the time of alleged offence (u/s 34).
- Ensure that the child does not see the accused at the time of testifying (u/s 36).
- Services of professionals and experts can be taken in pre-trial and trial stage to assist the child in recording of evidence (u/s 38).



## Various offences and punishments under POCSO Act



### Offences



### Simplified Definitions



### Punishment

|  |  |  |
|--|--|--|
| <b>Penetrative Sexual Assault (u/s 3 and u/s 4)</b>            | Any form of penetration in private parts or other body parts or application of the mouth to the private parts of a child or forcing the child to penetrate the offender or someone else.   | Imprisonment, not less than 7 years but which may extend to life and shall also be liable to fine.   |
| <b>Aggravated Penetrative Sexual Assault (u/s 5 and u/s 6)</b> | When penetrative sexual assault is committed by a person in a position of trust or authority such as police officer or a member of security forces or public servant etc.  | Rigorous Imprisonment, not less than 10 years but may extend to life and shall also be liable to fine.   |
| <b>Sexual Assault (u/s 7 and u/s 8)</b>                        | All acts of physical nature without penetration. For example, stalking a child, showing dirty pictures, touching private parts of a child or making a child touch the private parts of someone else etc.   | Imprisonment, not less than 3 years but which may extend to 5 years and shall also be liable to fine.  |
| <b>Aggravated Sexual Assault (u/s 9 and u/s 10)</b>            | Offences of sexual assault if committed by a person in a position of power, authority and trust or in certain circumstances.   | Imprisonment, not less than 5 years but which may extend to 7 years and shall also be liable to fine.  |
| <b>Sexual Harassment (u/s 11 and u/s 12)</b>                   | sexual Harassment is committed upon a child when such person with sexual intent: <ul style="list-style-type: none"> <li>Carries out any act with sexual connotations; or</li> <li>Makes a child exhibit his/her body; or</li> <li>Shows any object to a child in any form or media for pornographic purposes; or</li> <li>Repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or</li> <li>Entices a child for pornographic purposes or gives gratification thereof.</li> </ul>  | Imprisonment, which may extended to 3 years and shall also be liable to fine.  |
| <b>Pornographic Purposes (u/s 13, u/s 14 &amp; u/s 15)</b>     | <ul style="list-style-type: none"> <li>Use of a child for pornographic purposes;</li> <li>Using child for pornographic purposes, directly participating in child pornography act and commits offence u/s 3;</li> <li>Using child for pornographic purposes, directly participating in child pornography act and commits offence u/s 5;</li> <li>Using child for pornographic purposes, directly participating in child pornography act and commits offence u/s 7;</li> <li>Using child for pornographic purposes, directly participating in child pornography act and commits an offence u/s 9;</li> <li>Storing child pornography material u/s 15;</li> </ul> | <ul style="list-style-type: none"> <li>5 years imprisonment and shall also be liable to fine. But for second or subsequent conviction with imprisonment which may extend to seven years and also be liable to fine.</li> <li>Imprisonment not less than ten years but may extend to life imprisonment and shall also be liable to fine.</li> <li>Rigorous imprisonment for life and shall also be liable to fine.</li> <li>Imprisonment not less than six years but which may extend to eight years and shall also be liable to fine.</li> <li>Imprisonment not less than eight years but which may extend to ten years and shall also be liable to fine.</li> <li>Imprisonment which may extend to three years or with fine or both.</li> </ul> |
| <b>Abetment (u/s 16 and u/s 17)</b>                            | Intentionally instigates, aids by any act or illegal omission, the doing of that offence or be part of a conspiracy with others.   | Same as the punishment for that offence.   |
| <b>Attempt (u/s 18)</b>  | Attempts to commit any act towards the commission of any of the offences   | One-half of the imprisonment for life or, one-half of the longest term of imprisonment provided for that offence or with fine or with both.  |
| <b>Media Obligations (u/s 20 and 23)</b>                       | If the media discloses the identity of the victim or fails to report about the crime to the police.  | 6 months to 1 year imprisonment or with fine or with both  |
| <b>False information or complaint (u/s 22)</b>                 | Anyone who provides false information or making a false complaint except child   | <ul style="list-style-type: none"> <li>6 months or fine or both {u/s 22(1)}</li> <li>Upto 1 year or fine or both {u/s 22(4)}</li> </ul>  |
| <b>Failure to record or report crime (u/s 21)</b>              | Failure to record or report a crime under POCSO Act is also a crime  | <ul style="list-style-type: none"> <li>6 months to 1 year or fine or both {u/s 21(1)}</li> <li>1 year and fine {u/s 22(2)}</li> </ul>  |

## Linkage between Juvenile Justice Act, 2015 and POCSO Act, 2012

### 1. Child victims under POCSO Act can also be children in need of care and protection.

- I. Section 30 (xiii) of the Juvenile Justice Act, 2015 requires CWCs to take action for rehabilitation of sexually abused children who are reported as children in need of care and protection to the Committee by SJPU or local police under POCSO Act.
- II. Under Section 19 (6) of POCSO Act, the local police or the SJPU should report the commission of a sexual offence against a child to the CWC within 24 hours of receiving information and should also indicate if the child is in need of care and protection; and steps taken by them in this regard. Rule 4 (3) of POCSO Rules, 2012 specifies 3 situations in which a child must be produced before a CWC.
- III. Upon production, as per Rule 4 (4), POCSO Rules, the CWC should determine within three days whether the child needs to be taken out of the custody of the family or shared household and placed in a Children's Home or Shelter Home. CWC can take the assistance of a social worker to make this determination.
- IV. Rule 4 (5), POCSO Rules specifies 7 factors that should be considered by CWC along with preferences of the child and the best interests of the child while deciding whether or not the child should be removed from the custody of the family or shared household. CWC should ensure that the child is not inconvenienced or exposed to injury during this inquiry.

### 2. Support Person to child victims under POCSO Act to be provided by CWC.

- I. Based on the report it receives from the local police or SJPU or its assessment, when a child victim is produced before it, under Rule 4 (7), POCSO Rule, the CWC can provide a Support Person to assist the child and family during the investigation and trial of the case.
- II. The SJPU or local police should inform the Special Court in writing within 24 hours of the appointment of Support Person, provided by CWC.
- III. Under Rule 4 (8), the Support Person is required to maintain confidentiality and keep the child and the parent/guardian or their person whom the child trusts informed about the proceedings of the case, including available assistance, judicial procedures and potential outcomes and such other support necessary for the child.
- IV. CWC can terminate the services of Support Person based on such a request by the child or parent/guardian etc., whom the child trusts and no reasons need to be provided for seeking such termination.

### 3. JJBs to adhere to child-friendly procedures prescribed under POCSO Act, 2012

Section 34 (1), POCSO Act states that the JJ Act would apply if a child commits any offence under POCSO Act. Proceedings of the JJBs should be held in-camera, the child victim should not be exposed to the child alleged to be in conflict with the law during the inquiry and procedures laid down in POCSO Act for child victim should be followed, ensuring protection of the child victim.

### 4. Role of JJ functionaries under POCSO Act.

- (i) SJPU or local police on receiving information relating to an offence that has been or is likely to be committed, should take the following steps:  
(a) Record the complaint; (b) Assess whether the child is in need of care and protection; (c) Facilitate emergency medical care; (d) Facilitate medical examination; (e) Facilitate recording of statement by magistrate; (f) Report to the Special Court and Child Welfare Committee; (g) Provide information to the informant and victim.
- (ii) District Child Protection Unit (DCPU) shall maintain a register containing contact details of interpreters, translators and special educators in their district under Rule 3(1), POCSO Rules and should share with SJPU, local police, magistrate and Special Court to enable them to make available such services as and when required.

### 5. Age determination

Section 34 (2), POCSO Act, requires the Special Court to determine whether a person is a child or not, if the question arises in the course of the proceedings. The Special Court should satisfy itself about the age of the person and record its reasons in writing. Section 94 of JJ Act, 2015 prescribes the process of age determination.

### 6. Legal representation

Section 40, POCSO Act, recognizes the right of child victim to receive assistance of legal aid counsel during trial.

**In any emergency please contact:**

Police: 100, Childline: 1098,  
Child & Women Helpline : 181

Complaints can also be sent in person, by post, through messenger or any other means to the following address:

## CHANDIGARH COMMISSION FOR PROTECTION OF CHILD RIGHTS (CCPCR)

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