

Protection of Children from Sexual Offences POCSO ACT: What we all should know

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Introduction

Child Sexual Abuse (CSA) is an emerging grave public health concern, posing an enormous challenge worldwide with significant adverse impact on physical, mental & psychological wellbeing according to World Health Organisation.¹ Data is alarming and the scenario is too scary as prevalence rates of CSA varies from 8% to 31% for females and 3% to 17% for males globally.^{2,3} Approximately 37% of India's population are children below 18 years of age and around 53% of Indian children experience different forms of CSA.⁴ Even the United Nations have urged the countries to “end abuse, exploitation, trafficking and all forms of violence against, and torture of, children”, making it one of the targets of Sustainable Development Goals by 2030.

With this intention, the Government of India has implemented various child centric acts which are as follows:

- Commissions for protection of child rights act (CPCR)2005
- Protection of Children from Sexual Offences (POCSO) Act 2012
- Juvenile Justice Act (JJ Act) 2015 for protection and promotion of child rights and ensuring the safety, security, dignity and well being of children.

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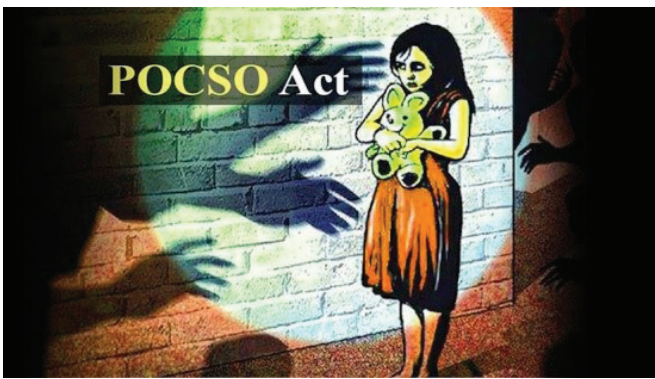


POCSO Act, came into force with effect from 14 November, 2012 is an all inclusive and complete law that provides protection to children (<18 years) from the offences of sexual assault (penetrative/non-penetrative/aggravated sexual assault), sexual harassment, pornography or abetment while safeguarding the interests of the child at every stage of the judicial process and by incorporating child-friendly mechanisms for reporting and recording of evidence, and speedy trial of offences through designated special courts.

“Aggravated” sexual assault: When the abused child is mentally ill or is committed by a person in a position of trust or authority vis-à-vis the child (family member, police officer, teacher, or doctor).

Key highlights of the act:

- Makes it necessary to report each and every case.
- It is the legal duty of the person who is aware of the offences to report them. If fails to do so, person



can be punished with 6 months of imprisonment and fine.

- Provides for punishment against false complaints or untrue information.
- Punishment is graded according to the gravity of offence.

Amendments made in 2019 to the POCSO Act, 2012

The POCSO Act was amended in order to make it more effective in dealing with cases of child sex abuse in the country which came into effect from 16 August, 2019.

- Modified to incorporate child pornography
- Punishment from a minimum of 7 years was increased to 10 years and even 20 years if the victim is below 16 years for penetrative sexual assault
- Amended to include aggravated penetrative sexual assault during natural calamity and causing the death of child
- Punishment was increased from a minimum of 10 years to a minimum of 20 years and introducing



the death penalty as an option for penalizing for aggravated penetrative sexual assault

- A fine was introduced (Rs 5,000/- on the first occasion, Rs 10,000 on the second occasion) for punishment of storage of pornographic material and if it was used for commercial purposes, then the minimum punishment will be imprisonment for three years which may extend to five years or with fine or both. With subsequent conviction, imprisonment for a term not to be less than five years which may extend to seven years along with fine was instigated.
- It was amended to establish consonance with the JJ act 2015.
- Revised in order to acknowledge the amendment made vide Criminal Law Amendment Act,2018;

Salient features of POCSO rule 2020: CSA is one of the most crucial concerns of the day and therefore it is the responsibility of GOI to provide an environment propitious to the development, growth and to live with dignity for the children in accordance with the UN convention. Besides providing punishment under the POCSO act it also highlights the importance of various aspects to ensure child protection, safety and rehabilitation based on the principle of zero-tolerance to violence against children.⁵

1. Awareness generation and capacity building

The Central incoordination with State Government should prepare age-appropriate educational material and information for children, and awaring them about several features of personal safety, possible risks and vulnerabilities, signs of abuse, inculcating gender sensitivity, equality and equity for effective prevention of offences at all public and prominent places and also be disseminated in suitable form in virtual spaces such as social media.

Orientation programmes, and workshops should be organised for sensitising those who come in regular contact with children.

2. Procedure regarding care and protection of child

When Special Juvenile Police Unit (SJPU) or the local police receives any information with respect to an

offence that has been committed or attempted from any person including the child or child helpline-1098 the following details should always be mentioned

- name and designation;
- address and telephone number;
- name, designation and contact details of the officer who receives the information.
- Proceed to record and register a First Information Report as per the provisions of section 154 of the Code of Criminal Procedure, 1973 and furnish a copy thereof free of cost to the person making such report.
- To take the child to the hospital for emergency medical care and to ensure that the samples collected for the purposes of the forensic tests are sent to the forensic laboratory immediately
- Inform the child and the parents of the availability and accessibility of support services and assist them in contacting the persons who are responsible for providing these services
- Provide them legal advice and counsel and the right to be represented by a lawyer.
- It is the due responsibility of the police to produce the child before the Child Welfare Committee (CWC) within 24 hours of receipt of such report if the police feels that the offence has been committed by a person living in the same household with the child.
- Concerned CWC must proceed, under JJ act to make a determination within three days, as to whether the child needs to be taken out of the custody of child's family or shared household and placed in a shelter home.
- CWC, may provide a person to render assistance and all possible help to the child throughout the process trial.

3. Interpreters, translators, special educators, experts and support persons.

- In each district, the DCPU shall maintain a register with names, addresses and contact details of the special personnel and should be made available to the official persons whenever necessary.



- Interpreters should have familiarity with language spoken by the child as well as the official language of the state.
- Sign language should be understood by such persons and they should have relevant qualifications from recognised university.
- These persons be unbiased and impartial and render a complete and valid interpretation without any additions or omissions, in accordance with Code of Criminal Procedure, 1973.

4. Medical aid and care

- SJPU, or the local police, within 24 hours of receiving such information, arrange to take such a child to the hospital for emergency medical care.
- No medical practitioner, shall demand any legal or magisterial requisition or other documentation as a pre-requisite to rendering such care.

Health professionals play an important role of providing 3Cs to the survivors:

- Compassionate (care and concern for whatever they have experienced)
- Competent (treatment should be appropriate)
- Confidential (privacy)

It is always important to establish a rapport with the survivor in the beginning:

- Never say or do anything to suggest disbelief regarding the incident.
- Do not pass judgemental remarks that might appear unsympathetic.

- Appreciate the survivor's strength in coming to the hospital as it can serve to build a bond of trust.

COMPONENTS OF CARE

FORENSIC CARE:

- Ensuring good quality, complete and non-judgemental documentation
- Conducting a forensic examination by completing a 'rape kit', which is a pre-assembled box of instructions and containers designed to ensure evidence collection, occurs in a standardized, ordered and thorough manner.
- Maintaining a clear and fool-proof chain of custody of medical evidence collected.

MEDICAL CARE:

- Antibiotics for treatment of STIs as per protocol (these infections include Chlamydia, Gonorrhoea, HIV and Syphilis): give the shortest courses available.
- For post-exposure prophylaxis of HIV transmission: must be started as soon as possible within 72 hours of exposure with a recommendation of 28 days of course.
- Emergency contraceptive pills and/or copper bearing intrauterine devices within 5 days of unprotected intercourse will reduce the chance of a pregnancy by 56%-93%: Ulipristal 30mg PO once within 120 hrs.
- Tetanus: Tdap vaccine 0.5 ml IM and tetanus immunoglobulin 250 units IM.
- Hepatitis B vaccine: administer vaccine series and immunoglobulin within 24 hrs.

SURGICAL CARE:

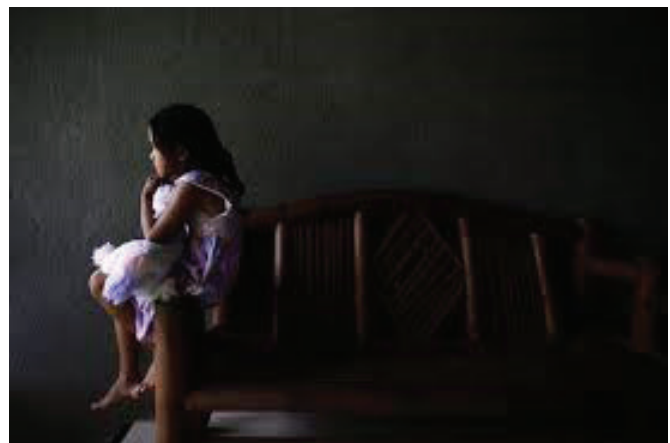
- Victims may have scratches, cuts, bruises, and superficial wounds which should be cleaned and antibiotics may be given to prevent wound from becoming infected.
- Forced penetration especially in children may lead to perineal tears (including complete perineal tear) which should be dealt with multidisciplinary approach especially with the involvement of pediatric surgeon.



- If the child is found to be pregnant, then the registered medical practitioner shall counsel the child and her parents, regarding the various lawful options available to the child as per the Medical Termination of Pregnancy Act 2021 and the Juvenile Justice (Care and Protection of Children) Act 2015.
- If the child is found to have been administered any drugs or other intoxicating substances, access to drug dedication programme should be ensured.
- If the child is physically or mentally disabled, suitable measures and care shall be taken as per the provisions of The Rights of Persons with Disabilities Act, 2016.

PSYCHOLOGICAL CARE:

- Provision of safe and empathetic environment so that child feels comfortable to share their experiences.
- Active listening, allowing for personal expression of emotions (distress, fright, guilt, shame, anger, depressive and anxious affect) about events.
- Assessing familial and social consequences.





- Working on coping strategies.
- Working on acceptance and development of future perspectives and plans.

5. Legal aid and assistance.

The CWC shall make a recommendation to District Legal Services Authority (DLSA) for legal aid and assistance and shall be provided to the child in accordance with the provisions of the Legal Services Authorities Act, 1987.

6. Special relief.

- Special relief may be provided for contingencies such as food, clothes, transport and other essential needs and immediate payment shall be made within a week of receipt of recommendation from the CWC.



7. Compensation and imposition of fine and payment

- The Special Court may pass an order for interim compensation to meet the needs of the child for relief or rehabilitation.
- Under CrPC it shall take into account all relevant factors relating to the loss or injury caused to the victim, while awarding for compensation and includes the following: -
 - type of abuse, gravity of the offence and the severity of the mental or physical harm or injury suffered by the child;
 - the expenditure incurred or likely to be incurred on child's medical treatment
- Compensation should be paid by the State Government from the Victims Compensation Fund within 30 days of receipt of such order.
- The CWC should ensure payment of the compensation and any measures to facilitate it.

9. Reporting of pornographic material involving a child.

The Central and State Government should make all the desired efforts to create widespread awareness about the reporting of pornographic content (details of device, type of content and the platform which was used to display such content) from time to time and also take necessary actions as per the directions

10. Monitoring of implementation of the Act.

- The National Commission for the Protection of Child Rights (NCPCR) or the State Commission



for the Protection of Child Rights (SCPCR), under the Commissions for Protection of Child Rights Act, 2005 should perform the following functions for proper implementation of the Act -

- monitor the designation of Special Courts
- monitor the designing and implementation of modules for training police personnel
- monitor the dissemination of information through media and social network to increase the awareness.
- collect from the relevant agencies regarding reported cases of sexual abuse,

- By analysing the digital, visual and audio content of photographs and videos, victim identification experts can retrieve clues, identify any overlap in cases and combine their efforts to locate victims of child sexual abuse.

CONCLUSION:

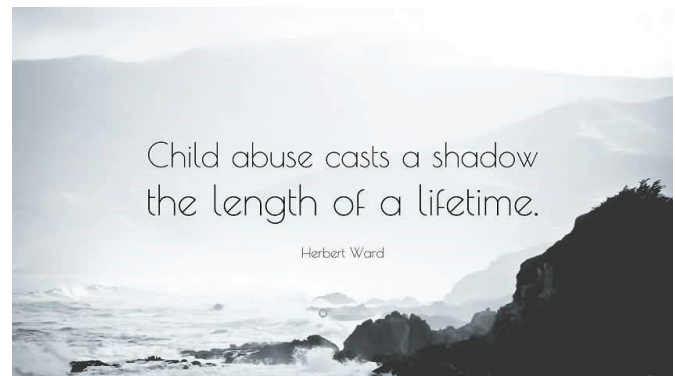
Protection of basic rights of children is of utmost concern. Measures in this regard are of paramount importance which ensures for proper and adequate implementation of legislative actions and community-based interventions through virtual media to prevent a further rise in the statistics and to ensure child protection.

Drawback of the original act

The law does not highlight how the offender would be treated if he himself is a minor. Today, the physical and mental development of children has advanced much in comparison to earlier period and therefore, inappropriate to consider a child as adult only after he attains the age of 18 years. Hence, it would be pertinent if child offenders between 15 to 18 years of age is also punished under the same sections under which the punishment for adults have been described. It was decided in a parliamentary panel not to push age limit from 18 to 16 years for juveniles as existing laws are adequate enough to deal with the crimes committed in this age group.

INTERPOL:⁶

- International Child Sexual Exploitation (ICSE) image and video database is an intelligence and investigative tool, which allows specialized investigators involving more than 64 countries to share data on cases of child sexual abuse.



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