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**PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012**

The Protection of Children from Sexual Offences Act, 2012, is a law that protects children from the offences of sexual assault and sexual harassment. It further safeguards the interest and well-being of the child at every stage of the judicial process.

**FAQs on POCSO Act, 2012**

▲ **Who is a Child?**

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

▲ **What is Sexual Harassment?**

Under Section 11 of the POCSO Act, 2012, sexual harassment is committed when:

- a person utters any word or makes any sound or gesture or exhibits any object or part of the body with the intent that the same shall be seen or heard by the child; or
- makes a child exhibit his/her body or any part of his/her body to be 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, film or digital or any other mode; or
- threatens to use a real or fabricated depiction of any part of the body of the child or involvement of the child in a sexual act in any form of media; or
- entices a child for pornographic purposes or gives gratification.

▲ **What is Sexual Assault?**

Under Section 7 of the POCSO Act, 2012, sexual assault is committed if a person 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 with sexual intent or does any other act involving physical contact without penetration with a sexual intent.

▲ **What is Aggravated Sexual Assault?**

Under Section 9 of POCSO Act, 2012, sexual assault becomes aggravated when:

- the sexual act is committed by either a police officer, member of the armed forces or security forces, public servant, management or staff of a jail, remand home, protection home, educational or religious institutes or child care institutions or any place of custody where the child resides; or
- if the sexual assault is committed by one or more persons of a group or by using deadly weapons, fire, heated substance or corrosive substance; or
- if while committing sexual assault, serious bodily harm or injury to the sexual organs of the child is caused or if the sexual assault incapacitates the child or causes the child to become mentally ill or causes impairment of any kind which prevents the child from performing regular tasks, temporarily or permanently; or
- if the person inflicts the child with Human Immunodeficiency Virus (HIV) or any other life threatening disease or infection; or, if the sexual assault

is committed taking advantage of a child's mental or physical disability; or if sexual assault is committed more than once, or if the child is below twelve years; or

- if the perpetrator is a relative of the child either through blood or adoption or marriage or guardianship or in foster care or living in the same house as with the child; or
- if the sexual assault is committed on a child knowing that the child is pregnant; or, commits sexual assault and also attempts to murder the child; or, if the sexual assault is committed on the child during the course of communal or sectarian violence; or
- if the perpetrator has been convicted for any offence under POCSO Act or for any sexual offence; or, if the perpetrator sexually assaults the child and makes the child strip or parade naked in public.

#### ⬆ **What is Penetrative Sexual Assault?**

- Under Section 3 of the POCSO Act, 2012, penetrative sexual assault is committed when:
- a person penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do the same to him or any other person; or
- a person inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, urethra or anus of a child or makes the child to do the same to him or any other person; or
- If a person manipulates any part of the body of the child so as to cause penetration into the vagina, urethra or anus of a child or makes the child to do the same to him or any other person; or
- if a person applies his mouth to the penis, vagina, urethra of the child or makes the child to do the same to him or any other person.

#### ⬆ **Aggravated Penetrative Sexual Assault:**

- Under Section 5 of the POCSO Act, 2012, penetrative sexual assault becomes aggravated when:
- the act is committed by either a police officer, member of the armed forces or security forces, public servant, management or staff of a jail, remand home, protection home, educational or religious institutes or child care institutions or any place of custody where the child resides; or
- if gang penetrative sexual assault is committed on a child or the act is committed using deadly weapons, fire, heated substance or corrosive substance; or
- if while committing penetrative sexual assault, grievous hurt or bodily injury or injury to the sexual organs of the child is caused or if the penetrative sexual assault incapacitates the child or causes the child to become mentally ill or causes impairment of any kind which prevents the child from performing regular tasks, temporarily or permanently, or makes the child pregnant; or
- if the person inflicts the child with Human Immunodeficiency Virus (HIV) or any other life treating disease or infection; or, if the sexual assault is committed taking advantage of a child's mental or physical disability; or, if sexual assault is committed more than once; or, if the child is below twelve years; or
- if the perpetrator is a relative of the child either through blood or adoption or marriage or guardianship or in foster care or living in the same house as with the child; or, if the penetrative sexual assault is committed on a child knowing that the child is pregnant; or, commits penetrative sexual assault and also attempts to murder the child; or
- if the sexual assault is committed on the child during the course of communal or sectarian violence; or, if the perpetrator has been convicted for any offence under POCSO Act or for any sexual offence; or
- if the perpetrator commits penetrative sexual assault on the child and makes the child strip or parade naked in public.

#### ⬆ **Using a child for pornographic purposes, in any form of media for the purpose of sexual gratification by representing the sexual organs of a child, or usage of a child for engaging in real or simulated sexual acts (with or without penetration) or if there is indecent or obscene representation of a child is an offence under the POCSO Act, 2012.**



## **PUNISHMENTS UNDER THE POCSO ACT, 2012**

- ▲ Punishment for Sexual Harassment under Section 12, POCSO Act, 2012 is imprisonment up to three years along with fine.
- ▲ Punishment for Sexual Assault under Section 8, POCSO Act, 2012 is imprisonment from three to five years along with fine.
- ▲ Punishment for Aggravated Sexual Assault under Section 10, POCSO Act, 2012 is imprisonment from five years to seven years along with fine.
- ▲ Punishment for Penetrative Sexual Assault under Section 4, POCSO Act, 2012 is imprisonment from seven years to imprisonment for life along with fine.
- ▲ Punishment for Aggravated Penetrative Sexual Assault under Section 6, POCSO Act, 2012 is rigorous imprisonment from ten years to imprisonment for life along with fine.
- ▲ If a person uses a child for pornographic purposes, the punishment under Section 14(1), POCSO Act, 2012 is imprisonment up to five years along with fine;
- ▲ If the person while using a child for pornographic purposes commits the offence of penetrative sexual assault, by directly participating in pornographic act, the punishment under Section 14(2), POCSO Act, 2012 is imprisonment from 10 years to imprisonment for life along with fine;
- ▲ If the person while using a child for pornographic purposes commits the offence of aggravated penetrative sexual assault, by directly participating in pornographic act, the punishment under Section 14(3), POCSO Act, 2012 is rigorous imprisonment for life along with fine;
- ▲ If the person while using a child for pornographic purposes commits sexual assault, the punishment under Section 14(4), POCSO Act, 2012 is imprisonment from six years up to eight years along with fine.
- ▲ If the person while using the child for pornographic purpose commits an offence of aggravated sexual assault, punishment under Section 14(5), POCSO Act, 2012 is imprisonment of eight to ten years along with fine.
- ▲ If any person stores any pornographic materials that involves a child for commercial purposes, the person shall be punished under Section 15, POCSO Act, 2012 with imprisonment up to three years or with fine or with both.
- ▲ If a person instigates any person to do any of the offences under the POCSO Act, 2012 or engages with one or more person in any such conspiracy or intentionally aids such offence shall be punished under Section 17, POCSO Act, 2012 with the same punishment as provided by the offence;
- ▲ Any person who attempts to commit any of the offences under the POCSO Act shall be punished under Section 18, POCSO Act, 2012 with imprisonment for a term of one-half of the imprisonment for life or one-half of the long term of imprisonment provided under the offence or with fine or with both.
- ▲ If a person fails to report the commission of offence under the POCSO Act, he shall be punished under Section 21, POCSO Act, 2012 with imprisonment which may extend to six months or with fine or with both.
- ▲ If a false information is made against any person for committing the offence of penetrative sexual assault, aggravated penetrative sexual assault or sexual harassment to humiliate, extort or threaten or defame him, the punishment under Section 22(1), POCSO Act, 2012 is imprisonment for six months or with fine or with both;
- ▲ If a false complaint is made against a child, thereby victimizing such child in any of the offences under this Act, the punishment under Section 22(3), POCSO Act, 2012 is imprisonment for one year or with fine or with both.
- ▲ Disclosure of the identity of the child or such other information is liable to be punished under Section 23(4), POCSO Act, 2012 with imprisonment of six months to one year or with fine or with both.



### **Dos and Don'ts:**

- ▲ If any person has apprehension that an offence under this Act is likely to be committed or has knowledge that such offence has been committed, such person shall immediately provide information to the local police or the Special Juvenile Police Unit of the concerned district;
- ▲ After commission of the offence, bathing the victim child or washing her/his clothes to be avoided.
- ▲ The clothes worn by the child at the time of offence are to be preserved in a paper bag and not to be packed in a plastic bag.
- ▲ The statement of a child cannot be recorded at the police station and the police officer cannot be in his/her uniform.
- ▲ Section 23 of the POCSO Act prohibits disclosure of the victim's identity in any form of media, except when permitted by the Special Courts established under the Act, if the Court is of the opinion that the disclosure is in the interest of the child.
- ▲ Media shall not make any report or present comments on any child which may lower the child's reputation or infringe upon his/her privacy;
- ▲ The identity of a child including his name, address, photographs, family details, school, neighbourhood or any other particulars is not to be disclosed anywhere.
- ▲ All cases registered under the POCSO Act to be tried by the Special Courts constituted under the POCSO Act.
- ▲ Child not to see the accused at the time of testifying/examination.
- ▲ Any offence under this Act cannot be settled at any level and the authorities cannot compound the offences.

### **ACTION TO BE TAKEN BY THE AUTHORITIES:**

- ▲ The police officer shall immediately record the complaint/report in writing in very simple language that is understood by the child or the informant;
- ▲ Immediate arrangements shall be given to the child for his/her care and protection including rehabilitating the child to a shelter home;
- ▲ Matter is to be reported by the police to Child Welfare Committee and the Special Court (POCSO Act) within a period of 24 hours after the offence is reported;
- ▲ The child shall be immediately sent to the hospital for medical examination in a room designated in every District Hospital for this purpose and if the victim is a girl, medical examination shall be conducted by a female doctor;
- ▲ Medical examination shall be conducted in the presence of the child's parent or guardian or if unavailable, in the presence of a woman who is nominated by the hospital for this purpose;
- ▲ If a child is subjected to the offences of penetrative sexual assault, aggravated penetrative sexual assault, sexual assault or aggravated sexual assault, the victim shall be referred to emergency medical care and physical as well as mental needs of the child is to be attended to.
- ▲ The child shall be examined during trial of the case in the Vulnerable Witness Deposition Room of a Court which should have a child friendly atmosphere.
- ▲ The child not to be called repeatedly to testify and the dignity of the child shall be maintained at all times.

