



Strengthening Response to Violence Against Women and Girls

Handout: session –PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 (POCSO)

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What is the POCSO Act?

The POCSO Act, 2012 is a comprehensive law to provide for the protection of children from the offences of sexual assault, sexual harassment and pornography, while safeguarding the interests 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.

Rationale and Objective of POCSO

The substantive law was very inadequate to deal with cases of child sexual abuse cases. The rape laws defined under sections 375 and 376 (2) of the IPC were invoked in cases of penetrative sexual abuse of a girl, and section 377 of IPC when the victim was a boy. If no penetration had taken place, sexual crimes were reported under sections 354 and 509 of IPC, when the victim was a girl, but there was no such provision for a boy. Also the diverse types of sexual offences committed against children were not finely regulated

The annual National Crime Records Bureau data revealed increase in number of crimes against children and rape against girl child too was on the rise. The “Sakshi case” in the Supreme Court highlighted the inadequacy in IPC and made suggestions to widen the meaning of rape to provide justice to child victim which should include boys too. Through this case the Hon’ble Supreme Court laid down child friendly special procedures for investigation, medical examination and trial. Accordingly the Law Commission of India suggested amendments to the IPC, Criminal Procedure Code and Indian Evidence Act.

Article 15 of the Constitution of the India confers upon the State powers to make special provisions for children while Article 39 provides that the State shall direct its policy towards

securing that the tender age of children are not abused and that their childhood and youth are protected against exploitation, and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity. Also the UNCRC, ratified by India on 11/12/1992 required the State Parties to undertake all appropriate measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity, the exploitative use of children in prostitution or other unlawful sexual practices and the exploitative use of children in pornographic performances and materials. The Study on Child Abuse: India 2007 conducted by MWCD revealed increase in number of child sexual abuse cases and the most cases the perpetrator is known to the child victim. Hence a special legislation was the need of the hour to deal with cases of Child sexual abuse.

General Principles for use of Professionals and Experts Assisting the Child at Pre-trial and Trial Stages

All the professionals need to keep in mind that a child is an individual with independent rights. In India, the children have right to be protected from the incidences of abuse, exploitation, violence, neglect, commercial sexual exploitation, trafficking, child labour, and harmful traditional practices. Children rights include the right to health, education family life, play and recreation and adequate standard of living. The UN Human Rights Council Resolution on the Protection of Rights of the child in Humanitarian situations Tare grounded by the key principles on Non-discrimination, Best Interest of the Child, ensuring the right of every child to be heard, ensuring the right to life, survival and development, Right to life and survival, the right to be treated with dignity and compassion, The right to special preventive measures, the right to be informed, the right to be heard and to express views and concerns, the right to effective assistance, the right to privacy, the right to be protected from hardship during the justice process, the right to , the right to compensation– The child victim may be awarded compensation for his/her relief and rehabilitation.

IMPORTANT DEFINITIONS UNDER THE POCSO ACT

The POCSO Act defines ‘child’ as any person below the age of 18 years. It is a gender neutral Act and it covers and protects both boys and girls who are victims of sexual offences till the age of 18 years. The perpetrator is any person - adult or Child (Male or Female) - who commits a Sexual offence /Assists or Attempts to commit an offence. Hence the perpetrator is also gender neutral. Along with others, the perpetrator can be from Armed forces of the Union or Security forces, Religious institution, Domestic relationship, shared household. In justice delivery system along with other stakeholders the POCSO Act has also defined ‘Support Persons’ to be assigned by CWC to render assistance to the child throughout investigation and trial and that the investigation team, judiciary cans seek assistance of Interpreters, translators and Special Educators as per the requirement of the case.

GRADED OFFENCES AND SENTENCING

The POCSO Act has defined two categories of Offences and graded the punishment accordingly

I. Penetrative Category

i. PENETRATIVE SEXUAL ASSAULT (Sec. 3)

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.

Punishment – Minimum 10 years

If the child is below 16 years of age - 20 years extended to Life Imprisonment and Fine

ii. AGGRAVATED PENETRATIVE SEXUAL ASSAULT (Sec. 5)

The penetrative sexual assault takes aggravated form of assault when committed by following personnel/officials:

- a. Whoever, being a police officer, a member of the armed forces or security forces, a public servant, 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, whoever being on the management or staff of a hospital, whether Government or private, whoever being on the management or staff of an educational institution or religious institution - commits penetrative sexual assault on a child.

The penetrative sexual assault takes aggravated form of assault when committed under certain circumstances/ situations:

- b. whoever commits gang penetrative sexual assault on a child.
- c. using deadly weapons, fire, heated substance or corrosive substance; or
- d. causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or
- e. physically incapacitates the child or causes the child to become mentally ill as defined under clause (b) 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,
- f. in the case of female child, makes the child pregnant as a consequence of sexual assault;
 - g. 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;
 - h. causes death of the child; or
 - i. whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or
 - j. on the child more than once or repeatedly;
 - k. on a child below twelve years; or
 - l. 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
 - m. whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child;
 - n. 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;
 - o. whoever commits penetrative sexual assault on a child knowing the child is pregnant; or
 - p. whoever commits penetrative sexual assault on a child and attempts to murder the child;
 - q. whoever commits penetrative sexual assault on a child in the course of 3[communal or sectarian violence or during any natural calamity or in similar situations]; or
 - r. 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
 - s. 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.

Punishment – Minimum 20 years

Maximum: Life Imprisonment and Fine Or with Death

B. Non Penetrative Category

iii. SEXUAL ASSAULT (Sec. 7)

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.

Punishment - 5 to 7 years

iv. AGGRAVATED SEXUAL ASSAULT (Sec. 9)

The sexual assault takes aggravated form of assault when committed by following personnel/officials:

- a. Whoever, being a police officer, a member of the armed forces or security forces, a public servant, 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, whoever being on the management or staff of a hospital, whether Government or private, whoever being on the management or staff of an educational institution or religious institution - commits sexual assault on a child.

The sexual assault takes aggravated form of assault when committed under certain circumstances/ situations:

- b. whoever commits gang sexual assault on a child.
- c. using deadly weapons, fire, heated substance or corrosive substance; or
- d. causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or
- e. physically incapacitates the child or causes the child to become mentally ill as defined under clause (b) 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,
- f. in the case of female child, makes the child pregnant as a consequence of sexual assault;
- g. 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;
- h. causes death of the child; or
- i. whoever, taking advantage of a child's mental or physical disability, commits sexual assault on the child; or
- j. on the child more than once or repeatedly;
- k. on a child below twelve years; or
- l. 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 sexual assault on such child; or
- m. whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits sexual assault on the child;

- n. 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;
- o. whoever commits sexual assault on a child knowing the child is pregnant; or
- p. whoever commits sexual assault on a child and attempts to murder the child;
- q. whoever commits sexual assault on a child in the course of 3[communal or sectarian violence or during any natural calamity or in similar situations]; or
- r. 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
- s. 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.

Punishment - 5 to 7 years

v. SEXUAL HARASSMENT (Sec. 11)

A person is said to commit sexual harassment upon a child when such person with sexual intent,--

- (i) 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
- (ii) 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
- (iii) shows any object to a child in any form or media for pornographic purposes; or
- (iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or
- (v) 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
- (vi) entices a child for pornographic purposes or gives gratification therefor.

Punishment - 3 years

vi. USING CHILD FOR PORNOGRAPHIC PURPOSES (Sec. 13)

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.

Punishment – 5 to 7 years + Fine (In addition to sec 3, 5, 7 & 9)

Punishment for storage/possession of Pornographic material, fails to delete/destroy involving a child – Rs 5000 to 10000

vii. ABETMENT AND ATTEMPT (Sec. 16)

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.

STAKEHOLDERS UNDER THE ACT

The POCSO Act has cast responsibility on following stakeholders to implement the various provisions of the Act in the best interest of the Child:

- Police
- Child Welfare Committee
- Support Persons
- Medical professionals
- Special Court
- Legal Aid Lawyers & Special Public Prosecutor

REPORTING PROCEDURE

Role of Police

- Responsibility on the police and/or SJPU to record information and take urgent action including the extension of care and protection to the child.
- Mandatory Reporting to the police
- Inform the child and/or guardian on the availability of support persons and right to legal counsel
- Within 24 hours of receiving a complaint, the police has to inform the CWC and the Special Court.
- Statement of the child to be recorded at the residence of the child or at a place where the child feels most comfortable by a women police officer.

- The police shall not be in uniform while taking the statement, the identity of the child needs to be protected.
1. On receiving the police report, the CWC must determine within 3 days as to whether the child needs to be taken out of the custody of his family or shared household and placed in the children's home or shelter home.
 2. Ensure that the child does not come in contact with the accused during recording of the statement
 3. No child shall be detained in the night for any reason
 4. Ensure that the identity of the child is protected from public media, unless directed by Special Court in the interest of the Child.
 5. The IO shall give their full name, designation, address, phone number as well as that of the supervising officer.
 6. Information can be recorded even through telephone and there is no requirement for the complainant to physically come to the PS
 7. If the CWC has appointed a support person to the child, the police will inform the Special Court of the same [Rule 4(9)]

ROLE OF DOCTORS

1. Medical examination: Shall be conducted by a lady doctor in presence of the parent of the child or any other person in whom the child reposes trust or confidence.
2. Seeking informed written consent: The doctor must obtain consent from the survivor if the child is above 12 years of age and if the child is under 12 years of age/mentally unsound, the consent of parent / guardian should be taken. Assure privacy and confidentiality.
3. Collection of forensic evidence: collect evidence based on the history of assault and consider the time lapse between the assault and survivor reporting to hospital. Collection of evidence is relevant only for 72 to 96 hours after the sexual assault episode.
4. Comprehensive medico-legal documentation: documenting the particulars of the survivor, history of the assault, marks of injuries, collect medico-legal evidence and provide reasoned medical opinion.

Recording by Magistrate

1. Record the statement as spoken by the Child.
2. Accused advocate will not be allowed
3. Copy of the Final report filed by the police will be given to the child/parents/representative

4. Statements of a mentally or physically disabled child victims have to be recorded in the presence of an interpreter or special educator.
5. The statement shall be recorded in the presence of the parent or guardian of the child
6. If possible the statement shall be recorded through audio-visual means

TRIAL

1. Special fast track courts are to be constituted to hear cases under POCSO.
2. The child's testimony is taken in a closed court with just the judge, public prosecutor and the counsel of the accused present. The accused needs to be behind a screen such that the child does not come in contact with the accused.
3. The public prosecutor and/or the counsel for the accused, when examining the child, shall communicate the questions to the judge who shall ask the child the question.
4. The child shall be permitted frequent breaks.
5. A parent or guardian of the child or a person on whom the child trusts shall be allowed inside the courtroom with the child during his/her examination.
6. The court needs to assure that the child is not called repeatedly to court for questioning.
7. No questions with regard to the child's character can be asked.
8. Ensure that the identity of the child is not disclosed at any time during the course of investigation or trial.
9. The evidence of the child shall be recorded within a period of 30 days from the date of taking cognizance of the offence.
10. The trial should be completed within a year from the date of taking cognizance.

Identifying Child Sexual abuse cases

Most children do not report abuse as they themselves are unaware of being violated, at times threatened by the perpetrator, lured by gifts, chocolates, etc. The Counsellors/ OSC staff can look for following symptoms in identifying the child sexual abuse cases and inform the parents/doctors about it.

- Pain on urination and/or defecation
- Abdominal pain / generalized body ache
- Inability to sleep
- Sudden withdrawal from peers / adults
- Feelings of anxiety, nervousness, helplessness
- Weight loss
- Vaginal discharge
- Abdominal pain
- Feelings of ending one's life

MoHFW Guidelines on Psychological Counseling

The Ministry of Health and Family Welfare have issued guidelines/protocol to be followed by stakeholders during investigation, medical examination, trials. Care should be taken to provide psycho-social support to the child during each procedure

- Creating enabling atmosphere
- Establishing trust
- Facilitation & Demystification of medical procedures
- Addressing survivor's emotional well-being
- Safety assessment
- Role of family, friends & community