

# The Protection of Children from Sexual Offences Act, 2012

# Some points to keep in mind

- How , if at all, the law attempts to deal with vulnerability of child survivors
- Victimization, revictimisation and secondary victimization by the Criminal Justice System-how does the law seek to address these issues
- Victims rights, needs : How if at all are these addressed
- Have victim's rights been at cost of accused's rights
- Is the right to fair trial at risk

# Basic Information on the Act

- The Protection of Children from Sexual Offences Act, 2012 came into force on 14 November 2012. The Act was passed in the Indian Parliament in May 2012.
- The Act is popularly known as **POCSO Act**.
- The Act defines a child as any person below the age of 18 years and provides protection to all children under the age of 18 years from the offences of sexual assault, sexual harassment and pornography.

# Key Features

- The POCSO is gender neutral. Both boys and girls fall within the purview of the Act.
- The definition of sexual offences is broad and not restricted to rape alone.
- The POCSO Act ensures effective access to justice. It provides for special procedures for reporting cases, special procedures for recording statement of child victim, and Special Courts for trial of such offences.
- Burden of proof regarding the sexual offence has been shifted onto the accused for serious offences.

# Offences covered & punishments under POCSO Act

Offences	Punishment
Penetrative Sexual Assault ( <b>Section 3</b> )	Imprisonment ( <b>7 yrs min. life imprisonment max</b> ) + <b>Fine</b> (Section 4)
Aggravated Sexual Assault ( <b>Section 5</b> )	Imprisonment ( <b>10 yrs min. life imprisonment max</b> ) + <b>Fine</b> (Section 6)
Sexual Assault: with sexual intent touching the private parts of a child ( <b>Section 7</b> )	Imprisonment ( <b>5 yrs min. 7 yrs max</b> ) + <b>Fine</b> (Section 10)
Aggravated Sexual Assault: Sexual assault by a police officer, member of armed forces, public servant, staff of remand home/ jail/hospital/school, etc. ( <b>Section 9</b> )	Imprisonment ( <b>7 yrs min. life imprisonment max</b> ) + <b>Fine</b> (Section 4)

# Contd.

Offence	Punishment
Sexual Harassment with sexual intent ( <b>Section 11</b> )	3 yrs imprisonment +Fine ( <b>Section 12</b> )
Use of Child for pornographic purposes ( <b>Section 13</b> )	First Conviction: Imprisonment upto 5 yrs + fine; Second or subsequent conviction: 7 yrs imprisonment. { <b>Section 14 (1)</b> }
Penetrative Sexual assault by directly participating in pornographic acts { <b>Section 14 (2)</b> }	Imprisonment ( <b>10 yrs min life imprisonment max</b> ) + Fine { <b>Section 14 (2)</b> }

# Contd.

Offence	Punishment
Aggravated penetrative Sexual assault by directly participating in pornographic acts <b>{Section 14 (3)}</b>	Rigorous imprisonment for life +Fine <b>{Section 14 (3)}</b>
Sexual assault by directly participating in pornographic acts <b>{Section 14 (4)}</b>	Imprisonment (6 yrs Min. 8 yrs Max.)+ Fine <b>{Section 14 (4)}</b>
Aggravated penetrative Sexual assault by directly participating in pornographic acts <b>{Section 14 (5)}</b>	Imprisonment (8 yrs Min. 10 yrs Max.)+ Fine <b>{Section 14 (5)}</b>
Storage of pornographic material by directly involving child for commercial purposes. <b>(Section 15)</b>	Imprisonment or Fine or Both (Min. yrs not mentioned, 10 yrs Max <b>(Section 15)</b>

# Steps to be taken by CWC thereafter:

- CWC must proceed, in accordance with its powers under sub section (1) of section 31 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (JJ Act):
- Make a determination within three days, either on its own or with the assistance of a Social Worker /Probation Officer/Non Governmental Organization (NGO)/any other person found fit by the CWC, as to whether the child needs to be taken out of the physical custody of his/her family or shared household and placed in a Children's Home or a Shelter Home.
- As per Rule 4(5) of the POCSO Rules, 2012 the CWC should take into account the opinion of the Child. Also prior to making such determination, **an inquiry should be conducted** in such a way that the child is not unnecessarily exposed to injury or inconvenience.



# Contd.

The said inquiry may be conducted by the following:

- i. CWC itself
  - ii. CWC itself or with the assistance of a Social Worker/Probation Officer/Non Governmental Organization (NGO)/any other person found fit by the CWC to be appointed for this purpose.
  - iii. If a support person is appointed for the child, the same person may be engaged to conduct the inquiry under Rule 4(5) to assist the CWC in its inquiry.
- Interviewer should follow the **interview guidelines**.

# Contd.

- Inquiry report should determine the following:
  - i. the child's physical and emotional state;
  - ii. whether the child needs any urgent care such as medical/mental health intervention, shelter, etc.
  - iii. to hear the child's version of the circumstances leading to the concern;
  - iv. to get an insight into the child's relationship with his/her parents or guardian or other person in whom the child has trust and confidence;
  - v. to support the child to participate in decisions affecting him according to his/her age and level of maturity .

# Special Courts- Section 28

- The state govt. in consultation with the Chief Justice of the High Court shall designate for each district, a Court of Session to be a Special Court to try offences under the Act.
- Provided that if a Court of Session is notified as a Children's Court under the CPC Act, 2005 or a Special Court designated for similar purposes under any other law for the time being in force, then such court shall be deemed as a **Special Court**.

# Special Public Prosecutors- Section 32

- The State govt. shall, by notification in the Official Gazette appoint a Special Public Prosecutor for every Special Court for conducting cases only under the provisions of POCSO Act.
- 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 7 years as an advocate.

# Contd.

- While preparing for the interview, consult with the adults in the child's world who understand the nature of his/her disability and are familiar with how the child communicates. This may include speech/language pathologists, educational psychologists, counsellors, teachers, clinical psychologists, social workers, nurses, child and adolescent psychiatrists, paediatricians, etc.
- Recognize that the child may have also some degree of cognitive disability: mental retardation, mental illness, developmental disabilities, traumatic brain injury, etc. Note however that not all developmental disabilities affect cognitive ability (e.g., cerebral palsy may result in physical rather than mental impairment).
- Assure the child that it is not his/her fault that he was sexually assaulted. If needed, encourage discussion in a counselling/advocacy setting if he/she is concerned about their safety in the future

# Compensation by state

- 357 A of CrPC- Victim Compensation Scheme

(1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

## 357 (3) of CrPC

If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

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**EXTRAORDINARY**  
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Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

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**PART IV-A**

**Rule and Orders (Other than those published in Parts I, I-A, and I-L) made  
by the Government of Gujarat under the Central Acts**

**HOME DEPARTMENT**

*Notification*

Sachivalaya, Gandhinagar: 5<sup>th</sup> January, 2013

No.GG/ 01 /SB.2/COM/132011/GAD/165648:- In exercise of the powers conferred by section 357-A of the Code of Criminal Procedure, 1973 (Central Act No. 2 of 1974), the State Government hereby frame the scheme for providing funds for compensation to the victims or their dependents, who have suffered loss or injury on account of offence against body and who require rehabilitation, namely:-



# Definition of victim as per circular

- Victim defined as some who has suffered loss or injury and requires rehabilitation and the expression victim requires his/her dependents.

# Eligibility for compensation

GOVERNMENT GAZETTE, EX., 07-01-2013

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4. Eligibility.- A victim or his/her dependents shall be eligible for the grant of compensation if:-

- (a) the perpetrator of a heinous crime is not traceable or goes unpunished after trial, but the victim is identifiable and has to incur expenses on physical and mental rehabilitation, such victim may also apply for the grant of compensation under sub-section (4) of section 357-A of the Code;
- (b) the offender is not traced or identified, but the victim is identified, and where no trial takes place, such victim may also apply grant of compensation under subsection (4) of section 357-A of the Code;
- (c) the victim/claimant report the crime without unreasonable delay to the Judicial Magistrate of the area provided that the State Legal Services Authority or the District Legal Services Authority if satisfied, for the reasons to be recorded in writing, may condone the delay.

# Procedure for grant of compensation

condone the delay, reasons to be recorded in writing, may

**5. Procedure for grant of compensation.-** (1) Whenever a recommendation is made by the Court under Sub-section (2) and (3) or an application is made by any victim or his/her dependent under sub-section (4) of section 357-A of the Code to the District Legal Service Authority or the State Legal Service Authority, as the case may be, District Legal Service Authority or the State Legal Service Authority shall examine the case and verify the contents of the claim with regard to the loss or-injury caused to victim/claimant and arising out of the reported criminal activity and may call for any other relevant information necessary in order to determine genuineness. The District Legal Service Authority or the State Legal Service Authority, as the case may be, shall award compensation within two months, in accordance with provisions of this Scheme

(2) The District

# Amount of Compensation

[ See rule 5 (8) ]

S.N.	Particulars of loss or injury	Maximum Limit of compensation (In rupees)
1.	Loss of Life	1,50,000=00
2.	Loss of any limb or part of body resulting 80% or above સામગ્રી,	1,00,000=00
3.	Loss of any limb or part of body resulting above 40% & below 80% Handicap.	50,000=00
4.	Rape	1,00,000=00
5.	Loss of any injury causing sever mental agony to women and child victim in case like Human Trafficking.	25,000=00
6.	Permanent disfiguration of the head or face by acid. (In case of acid attack on a woman)	1,00,000=00
7.	Assault on women disfiguring her face or any part of body by acid or any other weapon.	50,000=00
8.	In case of sodomy.	25,000=00
9.	Rehabilitation.	50,000=00

By order and in the name of Governor of Gujarat.

# Compensation for medical expenses

## **Section 33 (8) provides:**

- “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.”

## **Rule-7 provides :**

- Compensation be paid not only at the end of the trial, but also on an interim basis, to meet the immediate needs of the child for relief or rehabilitation at any stage after registration of the First Information Report.

# Contd.

- Sexual offences are often reported weeks or months after the abuse event, and physical injuries to the genital or anal regions usually heal within a few days. Therefore, due consideration to be given to differential diagnosis and alternative explanations for physical signs and symptoms.
- Clothing collection is critical when evidence is collected. Clothing, especially underwear, is the most likely positive site for evidentiary DNA. Evidence from clothing and other objects is more likely to be positive than evidence from the patient's body.
- Wherever necessary, refer the child for counselling.
- If any child of any age refuses the genital-anal examination, clinical judgment of how to proceed be used. If the refusal continues examination may be deterred instead of causing trauma to the child.

# Rule 4(2)(e) - Counselors

Duties	Duty Bearers
<ul style="list-style-type: none"><li>❑ Where an SJPU or the local police receives any information under sub section (1) of <b>Section 19</b> of the Act, they must inform the child and his/her parent or guardian or other person in whom the child has trust and confidence of the availability of support services including counselling, and assist them in contacting the persons who are responsible for providing these services and relief.</li><li>❑ Wherever necessary, a referral or consultation for mental or psychological health or other counselling should be made by the medical professional rendering emergency medical care to the child.</li></ul> <p><b>Rule 5(4)(v)</b></p>	<p>The child may be referred for counseling either by <b>Police</b> or by a <b>Doctor</b>.</p>

# Experts as per POCSO Act/Rule

- “Expert” means a person trained in mental health, medicine, child development or other related discipline, who may be required to facilitate communication with a child whose ability to communicate has been affected by trauma, disability or any other vulnerability. **POCSO Act, 2012, Rule 2(c)**



# Role of Expert

- **Section 26(3)** states, “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.
- **Section 38(2)** states, “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”.

# Services by the Legal Aid Authorities

- Under Section 12(c) of the Legal Services Authorities Act, 1987, every child who has to file or defend a case shall be entitled to legal services under this Act. The POCSO Act, 2012 confirms the right to free legal aid under **Section 40**. The Form for Application for Legal Services should be provided to the child **by the police** at the time of making the report under Section 19(1).

# Guidance on examining child victims and witnesses

## Before trial

- i. List cases for an as soon as possible and avoid adjournments.
- ii. Ensure that communication with the child is in an understandable language and manner.
- iii. Consider what special measures may be taken in light of the child's wishes and needs.
- iv. Ensure that the child is able to exercise his/her right to be accompanied by an adult in whom he has trust and confidence.

# Contd.

- v. Chart all stages of children's evidence to minimize time at court and give them a fresh start in the morning.
- vi. Request that the child is given an opportunity to visit the court to familiarize himself with it before the trial.
- vii. Request that the child sees or can be briefed on his/her statement for the purpose of memory-refreshing before trial.
- viii) Consider the witness's access to the building and suitability of waiting areas.

# Contd.

## At trial

- Children have the right to be heard in any judicial and administrative proceedings affecting them.
- Children have the right to information about the case in which they are involved.
- Ensure ahead of time that equipment is working, recordings can be played and that camera angles will not permit the witness to see the defendant.
- Explain that the judge or magistrates can always see the witness over the live video Link.

# Contd.

- Request the Public Prosecutor to present himself to the child before the trial and to answer his/her questions.
- Encourage the child to let the court know if they have a problem.
- Do not ask the child at trial to demonstrate intimate touching on his/her own body.

# Public Awareness about POCSO Act: Section 43

The **central and every State govt.** shall take all measures to ensure that:

- a. The provision of this Act are give wide publicity through media including the televion, radio, and the print media at regular interval 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 govt. & the State Govt. and other persons (including police officers) are imparted periodic training on the matter relating to the implementation of the provisions of the Act.