



# POCSO

DIGEST 2021



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**WITH POCSO UPDATES**

**&**

**POCSO RULES 2020**

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## **PREFACE**

This book provides a lucid and comprehensive treatment of the POCSO Act with case laws, POCSO updates and POCSO Rules 2020. This book will serve the students, practicing advocates as a reference text during their professional career.



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

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**Preamble** - THE PROTECTION OF CHILDREN FROM SEXUAL  
OFFENCES ACT, 2012

[Act No. 32 of 2012]

[19th June, 2012]

**PREAMBLE**

*An Act to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto.*

Whereas clause (3) of article 15 of the Constitution, inter alia, empowers the State to make special provisions for children;

And whereas, the Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, which has prescribed a set of standards to be followed by all State parties in securing the best interests of the child;

And whereas it is necessary for the proper development of the child that his or her right to privacy and confidentiality be protected and respected by every person by all means and through all stages of a judicial process involving the child;

And whereas it is imperative that the law operates in a manner that the best interest and well-being of the child are regarded as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child;

And whereas the State parties to the Convention on the Rights of the Child are required to undertake all appropriate national, bilateral and multilateral measures to prevent--

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) the exploitative use of children in prostitution or other unlawful sexual practices;
- (c) the exploitative use of children in pornographic performances and materials;

And whereas sexual exploitation and sexual abuse of children are heinous crimes and need to be effectively addressed.

Be it enacted by Parliament in the Sixty-third Year of the Republic of India as follows: -

**Section 1 - Short title, extent and commencement**

**(1)** This Act may be called the Protection of Children from Sexual Offences Act, 2012.

**(2)** It extends to the whole of India, <sup>1</sup>[\*\*\*].

**(3)** It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

1. Omitted by Jammu And Kashmir Reorganisation Act, 2019, w.e.f. 31.10.2019 the previous text was: -

"except the State of Jammu and Kashmir"

**Section 2 - Definitions**

**(1)** In this Act, unless the context otherwise requires, --

(a) "aggravated penetrative sexual assault" has the same meaning as assigned to it in section 5;

(b) "aggravated sexual assault" has the same meaning as assigned to it in section 9;

(c) "armed forces or security forces" means armed forces of the Union or security forces or police forces, as specified in the Schedule;

(d) "child" means any person below the age of eighteen years;

<sup>1</sup>[(da) "child pornography" means any visual depiction of sexually explicit conduct involving a child which include photograph, video, digital or computer-generated image indistinguishable from an actual child and image created, adapted, or modified, but appear to depict a child;]

(e) "domestic relationship" shall have the same meaning as assigned to it in clause (f) of section 2 of the Protection of Women from Domestic Violence Act, 2005(43 of 2005);

(f) "penetrative sexual assault" has the same meaning as assigned to it in section 3;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "religious institution" shall have the same meaning as assigned to it in the Religious Institutions (Prevention of Misuse) Act, 1988(41 of 1988);

(i) "sexual assault" has the same meaning as assigned to it in section 7;

(j) "sexual harassment" has the same meaning as assigned to it in section 11;

(k) "shared household" means a household where the person charged with the offence lives or has

lived at any time in a domestic relationship with the child;

(l) "Special Court" means a court designated as such under section 28;

(m) "Special Public Prosecutor" means a Public Prosecutor appointed under section 32.

**(2)** The words and expressions used herein and not defined but defined in the Indian Penal Code (45 of 1860), the Code of Criminal Procedure, 1973(2 of 1974), <sup>2</sup>[the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016)] and the Information Technology Act, 2000 (21 of 2000) shall have the meanings respectively assigned to them in the said Codes or the Acts.

1. Inserted by Protection of Children from Sexual Offences (Amendment) Act, 2019, w.e.f. 16.08.2019.

2. Substituted by Protection of Children from Sexual Offences (Amendment) Act, 2019, w.e.f. 16.08.2019 for the following: -

"the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) "

**[Case Law] - Sabari vs Inspector of Police, 2019 (3) MLJ CrI 110**

The Madras High Court held that, "...on a profound consideration of the ground realities, the definition of 'Child' under Section 2(d) of the POCSO Act can be redefined as 16 instead of 18. Any consensual sex after the age of 16 or bodily contact or allied acts can be excluded from the provisions of the POCSO Act and such sexual assault, if it is so defined can be tried under more liberal provision, which can be introduced in the Act itself and in order to distinguish the cases of teen age relationship after 16 years, from the cases of sexual assault on children below 16 years."

### **Section 3 - Penetrative sexual assault**

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.

Modi's Medical Jurisprudence and Technology

“Thus, to constitute the offence of rape, it is not necessary that there should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration of the penis within the Labia Majora or the Vulva or Pudenda with or without emission of semen or even attempt at penetration is quite sufficient for the purpose of the law. It is therefore quite possible to commit legally, the offence of rape without producing any injury to the genitals or leaving any seminal stains. In such a case, the medical officer should mention the negative facts in his report, but should not give his opinion that no rape had been committed. Rape is a crime and not a medical condition. Rape is a legal term and not a diagnosis to be made by the medical officer treating the victim. The only statement that can be made by the medical officer is to the effect whether there is evidence of recent sexual activity. Whether the rape has occurred or not is a legal conclusion, not a medical one.”

**[Case Law]** - *Independent Thought vs Union of India, (2017) 10 SCC 800*

The Supreme Court in this case, read down Section 375, Exception 2, IPC, to resolve the anomaly between Section 375, IPC and POCSO Act, 2012 (Sections 5 and 41, 42). Marriage with victim does not absolve the accused of his crime. “There is no real or material difference between the definition of “rape” in the terms of Section 375 IPC and “penetrative sexual assault” in the terms of Section 3 of



the POCSO Act. ... Consequently, it is immaterial if a person is guilty of the same sexual activity under the provisions of the POCSO Act or the provisions of IPC—the end result is the same and only the forum of trial changes. The consequence of this amendment [insertion of Section 42-A vide 2013 Amendment] is that the provisions of the POCSO Act will override the provisions of any other law (including IPC) to the extent of any inconsistency.

**Section 4 - Punishment for penetrative sexual assault**

1. Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than [ten years] but which may extend to imprisonment for life, and shall also be liable to fine.
2. Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine.
3. The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.

**[Case Law]** – *Suresh Angloswami Naidu vs State of Maharashtra, Appeal No. 865 of 2017, Bombay HC, pronounced on 25<sup>th</sup> November 2020.*

In the absence of charge framed under Section 6 of the POCSO Act, the Trial Court ought to have convicted and sentenced the Appellant under Section 4 of the said Act. As noted in foregoing paragraphs, the Trial Court has committed grave error in convicting the Appellant under Section 6 of the POCSO Act. In view of the above and after taking into consideration over all view of the present matter, this Court is of the considered opinion that, the Appellant deserves to be awarded minimum sentence under Section 4 of the POCSO Act, which was prevailing prior to the amendment of 2019 i.e., seven years of rigorous imprisonment and is accordingly awarded.

**Section 5 - Aggravated penetrative sexual assault**

**(a)** Whoever, being a police officer, commits penetrative sexual assault on a child--

- (i) within the limits of the police station or premises at which he is appointed; or
- (ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or
- (iii) in the course of his duties or otherwise; or
- (iv) where he is known as, or identified as, a police officer; or

**(b)** whoever being a member of the armed forces or security forces commits penetrative sexual assault on a child--

- (i) within the limits of the area to which the person is deployed; or
  - (ii) in any areas under the command of the forces or armed forces; or
  - (iii) in the course of his duties or otherwise; or
  - (iv) where the said person is known or identified as a member of the security or armed forces; or
- (c)** whoever being a public servant commits penetrative sexual assault on a child; or
- (d)** 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 established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or
- (e)** whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or
- (f)** whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution; or
- (g)** whoever commits gang penetrative sexual assault on a child.

**Explanation.** --When a child is subjected to sexual assault by one or more persons of a group in furtherance of their

common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

**(h)** whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

**(i)** whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

**(j)** whoever commits penetrative sexual assault on a child, which--

**(i)** 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; <sup>1</sup> [\*\*\*]

**(ii)** in the case of female child, makes the child pregnant as a consequence of sexual assault;

**(iii)** 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; <sup>1</sup>[\*\*\*]

<sup>2</sup>[(iv) causes death of the child; or]

**(k)** whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or

**(l)** whoever commits penetrative sexual assault on the child more than once or repeatedly; or

**(m)** whoever commits penetrative sexual assault on a child below twelve years; or

**(n)** 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

**(o)** whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or

**(p)** 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; or

**(q)** whoever commits penetrative sexual assault on a child knowing the child is pregnant; or

**(r)** whoever commits penetrative sexual assault on a child and attempts to murder the child; or

**(s)** whoever commits penetrative sexual assault on a child in the course of <sup>3</sup>[communal or sectarian violence or during any natural calamity or in similar situations]; or

**(t)** 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

**(u)** 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.

1. Omitted by Protection of Children from Sexual Offences (Amendment) Act, 2019, w.e.f. 16.08.2019 the previous text was: -

"or"

2. Inserted by Protection of Children from Sexual Offences (Amendment) Act, 2019, w.e.f. 16.08.2019.

3. Substituted by Protection of Children from Sexual Offences (Amendment) Act, 2019, w.e.f. 16.08.2019 for the following: -

"communal or sectarian violence"

**[Case Law]** - *Independent Thought vs Union of India, (2017) 10 SCC 800*

The Supreme Court in this case, read down Section 375, Exception 2, IPC, to resolve the anomaly between Section 375, IPC and POCSO Act, 2012 (Sections 5 and 41, 42). Marriage with victim does not absolve the accused of his crime. "There is no real or material difference between the definition of "rape" in the terms of Section 375 IPC and "penetrative sexual assault" in the terms of Section 3 of the POCSO Act. ... Consequently, it is immaterial if a person is guilty of the same sexual activity under the provisions of the POCSO Act or the provisions of IPC—the end result is the same and only the forum of trial changes. The consequence of this amendment [insertion of Section 42-A vide 2013 Amendment] is that the provisions of the POCSO Act will override the provisions of any other law (including IPC) to the extent of any inconsistency.

**[Case Law]** - *Matiur Rahaman vs State of W.B., 2021 SCC Online Cal 2081*

The word "is prosecuted" in Section 29 of the POCSO Act does not mean that the prosecution has no role to play in establishing and/or probablising primary facts constituting the offence. ...Such an interpretation of the said provision is that in a case where the person is prosecuted under Section 5 and 9 of the POCSO Act, the prosecution is

absolved of the responsibility of proving its case beyond reasonable doubt.

### **Section 6 - Punishment for aggravated penetrative sexual assault**

1. Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death.
2. The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.

**[Case Law] - Delhi High Court:** A Division Bench comprising of Vipin Sanghi and P.S. Teji, JJ, in the matter of Manoj vs State, Crl. Appeal 647/2014, decided on 21.11.2017 modified the conviction of the appellant to a conviction under Section 18 of the POCSO Act (hereinafter the Act) instead of Section 6 of the Act.

**Note** - The Court held that in the absence of penetrative sexual assault, offence and sentence under Sections 5(k) and 6 cannot be made out. Consequently, the sentence was set aside. However, the evidence led in the case established an offence under Section 18 of the Act. Hence, the appellant was sentence to 10 years' rigorous



imprisonment with a fine of Rs. 10,000. In default of payment of fine, he was to undergo simple imprisonment for six months.

**[Case Law]** – *Partap vs State of Himachal Pradesh, 2019 SCC Online HP 1472, decided on 04-09-2019*

A fundamental postulate of criminal jurisprudence is the presumption of innocence; Bail granted under POCSO Act.

it is well settled that freedom of an individual is of utmost importance and cannot be curtailed for indefinite period. Till the time guilt of accused is not proved, in accordance with law, he is deemed to be innocent. In the case at hand, the guilt, if any, of the bail petitioner is yet to be proved, in accordance with law

**[Case Law]** – *Suresh Angloswami Naidu vs State of Maharashtra, Appeal No. 865 of 2017, Bombay HC, pronounced on 25<sup>th</sup> November 2020.*

In the absence of charge framed under Section 6 of the POCSO Act, the Trial Court ought to have convicted and sentenced the Appellant under Section 4 of the said Act. As noted in foregoing paragraphs, the Trial Court has committed grave error in convicting the Appellant under Section 6 of the POCSO Act. In view of the above and after taking into consideration over all view of the present matter, this Court is of the considered opinion that, the Appellant deserves to be awarded minimum sentence under Section 4 of the POCSO Act, which was prevailing

prior to the amendment of 2019 i.e., seven years of rigorous imprisonment and is accordingly awarded.

### **Section 7 - Sexual assault**

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.

**[Case Law]** - Tarkeshwar Sahu vs State of Bihar, (2006) 8 SCC 560,

The Supreme Court had held that, “The point of distinction between an offence to commit rape and to commit indecent assault is that there should be some action on the part of the accused which would show that he is just going to have sexual connection with her.”

**[Case Law]** – *Fayaz Ahmad Dar vs UT of J&K*, 2021 SCC Online J&K 463, decided on 12-07-2021.

There is fine distinction between preparation and attempt to commit offence and the difference between the two lies primarily in the greater degree of determination and it is, therefore, necessary to be proved in an offence of attempt to commit rape that the accused has gone beyond the stage of preparation.

**[Case Law]** - *Attorney General for India versus Satish and another* LL 2021 SC 656. [SPECIAL LEAVE PETITION (CRL) NO. 925 OF 2021]

The most important ingredient for constituting the offence of sexual assault under Section 7 of the Act is the "sexual intent" and not the "skin to skin contact with the child.

Restricting the interpretation of the words "touch" or "physical contact" to "skin to skin contact" would not only be a narrow and pedantic interpretation of the provision contained in Section 7 of the POCSO Act, but it would lead to an absurd interpretation of the said provision. "skin to skin contact" for constituting an offence of "sexual assault" could not have been intended or contemplated by the Legislature. The very object of enacting the POCSO Act is to protect the children from sexual abuse, and if such a narrow interpretation is accepted, it would lead to a very detrimental situation, frustrating the very object of the Act, inasmuch as in that case touching the sexual or non-sexual parts of the body of a child with gloves, condoms, sheets or with cloth, though done with sexual intent would not amount to an offence of sexual assault under Section 7 of the POCSO Act. The most important ingredient for constituting the offence of sexual assault under Section 7 of the Act is the "sexual intent" and not the "skin to skin" contact with the child.

## **Section 8 - Punishment for sexual assault**

Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

**Section 9 - Aggravated sexual assault**

**(a)** Whoever, being a police officer, commits sexual assault on a child--

- (i) within the limits of the police station or premises where he is appointed; or
- (ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or
- (iii) in the course of his duties or otherwise; or
- (iv) where he is known as, or identified as a police officer; or

**(b)** whoever, being a member of the armed forces or security forces, commits sexual assault on a child--

- (i) within the limits of the area to which the person is deployed; or
- (ii) in any areas under the command of the security or armed forces; or
- (iii) in the course of his duties or otherwise; or
- (iv) where he is known or identified as a member of the security or armed forces; or

**(c)** whoever being a public servant commits sexual assault on a child; or

**(d)** whoever being on the management or on the staff of a jail, or remand home or protection home or observation home, or other place of custody or care and protection established by or under any law for the time being in force commits sexual assault on a child being inmate of such jail or remand home or protection home or observation home or other place of custody or care and protection; or

**(e)** whoever being on the management or staff of a hospital, whether Government or private, commits sexual assault on a child in that hospital; or

**(f)** whoever being on the management or staff of an educational institution or religious institution, commits sexual assault on a child in that institution; or

**(g)** whoever commits gang sexual assault on a child.

**Explanation.** --when a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

**(h)** whoever commits sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

**(i)** whoever commits sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

- (j)** whoever commits sexual assault on a child, which--
- (i)** physically incapacitates the child or causes the child to become mentally ill as defined under clause (l) 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; or
  - (ii)** 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; or
- (k)** whoever, taking advantage of a child's mental or physical disability, commits sexual assault on the child; or
- (l)** whoever commits sexual assault on the child more than once or repeatedly; or
- (m)** whoever commits sexual assault on a child below twelve years; or
- (n)** whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having 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

**(o)** whoever, being in the ownership or management or staff, of any institution providing services to the child, commits sexual assault on the child in such institution; or

**(p)** 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; or

**(q)** whoever commits sexual assault on a child knowing the child is pregnant; or

**(r)** whoever commits sexual assault on a child and attempts to murder the child; or

**(s)** whoever commits sexual assault on a child in the course of <sup>1</sup>[communal or sectarian violence or during any natural calamity or in any similar situations]; or

**(t)** 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

**(u)** 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.

<sup>2</sup>**[(v)** whoever persuades, induces, entices or coerces a child to get administered or administers or direct anyone to administer, help in getting administered any drug or hormone or any chemical substance, to a child with the intent that such child attains early sexual maturity;]

1. Substituted by Protection Of Children From Sexual Offences (Amendment) Act, 2019, w.e.f. 16.08.2019 for the following: -

"communal or sectarian violence"

2. Inserted by Protection of Children from Sexual Offences (Amendment) Act, 2019, w.e.f. 16.08.2019.

**[Case Law]** - *State of Bihar vs Rajballav Prasad, (2017) 2 SCC 178*

In this case, the Supreme Court held that general presumption of innocence of accused not applicable to cases where there is contrary statutory presumption of his guilt such as when prosecuted under Sections 3, 5, 7 and 9 of POCSO Act, 2012.

**[Case Law]** - *Matiur Rahaman vs State of W.B., 2021 SCC Online Cal 2081*

The word "is prosecuted" in Section 29 of the POCSO Act does not mean that the prosecution has no role to play in establishing and/or probablising primary facts constituting the offence. ...Such an interpretation of the said provision is that in a case where the person is prosecuted under Section 5 and 9 of the POCSO Act, the prosecution is absolved of the responsibility of proving its case beyond reasonable doubt.

**Section 10 - Punishment for aggravated sexual assault**



Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

**[Case Law]** – *Tukaram Ashruji Khandare vs State of Maharashtra, 2020 SCC Online Bom 2802, decided on 22-10-2020.*

The act of accused of touching the breast of the victim with sexual intent amounts to an aggravated form of sexual assault, which is punishable under Section 10 of the POCSO Act.

**[Case Law]** - *Laxman Govind Varma vs State of Maharashtra, Criminal Appeal No. 723 of 2019, decided on 26-10-2021.*

A child is a competent witness provided he is capable of understanding the questions put to him and is able to give rational answers.

### **Section 11 - Sexual Harassment**

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 therefore.

**Explanation**, --Any question which involves "sexual intent" shall be a question of fact.

**[Case Law]** – *State (NCT of Delhi) vs Baljeet Singh, 2019 SCC Online Del 9109, decided on 11-07-2019.*

The substantive offence (Section 11) for which punishment is prescribed under Section 12 POCSO, clearly indicates that the precondition for the section to be attracted is that an act, as enumerated therein, is done with sexual intent.

### **Section 12 - Punishment for sexual harassment**

Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

**[Case Law]** – *Santosh Kumar Mandal vs State of Delhi* decided on 28<sup>th</sup> September 2016.

Considering the gravity of the offences and the special mechanism provided under POCSO Act to hold that the offences are bailable though cognizable and would fall in category 3 would be rendering an interpretation to the classification provided in second part of First Schedule of CrPC contrary to the object of the special enactment. Thus offences punishable under POCSO Act including Section 12 are cognizable and non-bailable offences.

**[Case Law]** – *State (NCT of Delhi) vs Baljeet Singh, 2019 SCC Online Del 9109, decided on 11-07-2019.*

Doing of act with ‘sexual intent’ is precondition to attract punishment for sexual harassment under S.12 of POCSO Act.

**[Case Law]** - *State vs Anil, CrI. Revision Petition 1058 of 2019, decided on 06-11-2019, HC of Delhi.*

Person Cannot Be Charged With Section 12 Of The POCSO Act If The Person Has Not Made A Mention Of Any Act Of Sexual Intent Or Assault.

### **Section 13 - Use of child for pornographic purposes**

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.

**Explanation.** -- For the purposes of this section, the expression "use a child" shall include involving a child through any medium like print, electronic, computer or any other technology for preparation, production, offering, transmitting, publishing, facilitation and distribution of the pornographic material.

**Section 14 - Punishment for using child for pornographic purposes**

<sup>1</sup>(1) Whoever uses a child or children for pornographic purposes shall be punished with imprisonment for a term which shall not be less than five years and shall also be liable to fine and in the event of second or subsequent conviction with imprisonment for a term which shall not be less than seven years and also be liable to fine.

(2) Whoever using a child or children for pornographic purposes under sub-section (1), commits an offence referred to in section 3 or section 5 or section 7 or section 9 by directly participating in such pornographic acts, shall

be punished for the said offences also under section 4, section 6, section 8 and section 10, respectively, in addition to the punishment provided in sub-section (1).

1. Substituted by Protection of Children from Sexual Offences (Amendment) Act, 2019, w.e.f. 16.08.2019 for the following: -

"(1) Whoever, uses a child or children for pornographic purposes shall be punished with imprisonment of either description which may extend to five years and shall also be liable to fine and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also be liable to fine.

(2) If the person using the child for pornographic purposes commits an offence referred to in section 3, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(3) If the person using the child for pornographic purposes commits an offence referred to in section 5, by directly participating in pornographic acts, he shall be punished with rigorous imprisonment for life and shall also be liable to fine.

(4) If the person using the child for pornographic purposes commits an offence referred to in section 7, by directly

participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than six years but which may extend to eight years, and shall also be liable to fine.

(5) If the person using the child for pornographic purposes commits an offence referred to in section 9, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than eight years but which may extend to ten years, and shall also be liable to fine."

**Section 15 - Punishment for storage of pornographic material involving child**

<sup>1</sup>(1) Any person, who stores or possesses pornographic material in any form involving a child, but fails to delete or destroy or report the same to the designated authority, as may be prescribed, with an intention to share or transmit child pornography, shall be liable to fine not less than five thousand rupees and in the event of second or subsequent offence, with fine which shall not be less than ten thousand rupees.

(2) Any person, who stores or possesses pornographic material in any form involving a child for transmitting or propagating or displaying or distributing in any manner at any time except for the purpose of reporting, as may be prescribed, or for use as evidence in court, shall be punished with imprisonment of either description which may extend to three years, or with fine, or with both.

**(3)** Any person, who stores or possesses pornographic material in any form involving a child for commercial purpose shall be punished on the first conviction with imprisonment of either description which shall not be less than three years which may extend to five years, or with fine, or with both and in the event of second or subsequent conviction, with imprisonment of either description which shall not be less than five years which may extend to seven years and shall also be liable to fine.

1. Substituted by Protection of Children from Sexual Offences (Amendment) Act, 2019, w.e.f. 16.08.2019 for the following:-

"Any person, who stores, for commercial purposes any pornographic material in any form involving a child shall be punished with imprisonment of either description which may extend to three years or with fine or with both."

**[Case Law]** - *P.G. Sam Infant Jones v. State, 2021 SCC Online Mad 2241*

In a case where the Petitioner had shared the offending material with his friend through Facebook messenger, the High Court of Madras granted anticipatory bail for offences under Sec.15(1), POCSO Act, and Sec.67B, Information Technology Act, 2000.

### **Section 16 - Abetment of an offence**

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.

**Explanation I.**--A person who, by willful misrepresentation, or by willful concealment of a material fact, which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure a thing to be done, is said to instigate the doing of that offence.

**Explanation II.**--Whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

**Explanation III.**--Whoever employ, harbours, receives or transports a child, by means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position, vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of any offence under this Act, is said to aid the doing of that act.



**[Case Law]** - *Nagina Choudhary vs The State of Bihar [CRIMINAL APPEAL (SJ) No.2060 of 2017], High Court of Patna*

Since charge proved against appellant is of an abettor, this Court is of the view that if sentence is reduced to period already undergone that would meet the ends of justice.

### **Section 17 - Punishment for abetment**

Whoever abets any offence under this Act, if the act abetted is committed in consequence of the abetment, shall be punished with punishment provided for that offence.

**Explanation** -- An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy or with the aid, which constitutes the abetment.

**[Case Law]** – *Asha Patil v. State of Maharashtra, 2019 SCC Online Bom 2056, decided on 18-09-2019*

Mere giving an aid does not make the act of abetment of an offence, if the person who gave the aid did not know that offence was being committed or contemplated. In other words, mere negligence or carelessness on the part of the accused cannot be termed as ‘abetment’ since mens rea is an essential element of the offence of abetment.

**Section 18 - Punishment for attempt to commit an offence**

Whoever attempts to commit any offence punishable under this Act or to cause such an offence to be committed, and in such attempt, does any act towards the commission of the offence, shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence or with fine or with both.

**[Case Law]** – *Suresh @ Pintya Kashinath Kamble vs The State of Maharashtra on 25 January, 2018, Bombay High Court*

As the appellant/accused is sentenced for committing the offence punishable under Section 18 read with Section 6 of the POCSO Act by imposing punishment, which is greater in degree, no separate sentence for commission of offence punishable under Section 511 read with Section 376 (2) of the IPC is imposed on him.

**Section 19 - Reporting of offences**

**(1)** Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974), any person (including the child), who has apprehension that in offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to, --

- (a) the Special Juvenile Police Unit; or
- (b) the local police.

**(2)** Every report given under sub-section (1) shall be--

- (a) ascribed an entry number and recorded in writing;
- (b) be read over to the informant;
- (c) shall be entered in a book to be kept by the Police Unit

**(3)** Where the report under sub-section (1) is given by a child the same shall be recorded under sub-section (2) in a simple language so that the child understands contents being recorded.

**(4)** In case contents, are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same.

**(5)** Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection (including admitting the child into shelter home or to the nearest hospital) within twenty-four hours of the report, as may be prescribed.

(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.

(7) No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub-section (1).

[Case Law] - *Dr. Sr. Tessy Joe vs State of Kerala, (2019) 3 SCC CrI. 164*

The Supreme Court held that the Section 19(1) of POCSO Act puts a legal obligation on a person to inform the relevant authorities if he/she has knowledge that an offence under POCSO has been committed. The Court noted that the expression used under the section is —knowledge, which meant that information was received by such person of the offence being committed, but does not extend to an obligation to conduct an investigation in order to —gather such knowledge.

**Section 20 - Obligation of media, studio and photographic facilities to report cases**

Any personnel of the media or hotel or lodge or hospital or club or studio or photographic facilities, by whatever name called, irrespective of the number of persons employed therein, shall, on coming across any material or object

which is sexually exploitative of the child (including pornographic, sexually-related or making obscene representation of a child or children) through the use of any medium, shall provide such information to the Special Juvenile Police Unit, or to the local police, as the case may be.

**Section 21 - Punishment for failure to report or record a case**

**(1)** Any person, who fails to report the commission of an offence under subsection (1) of section 19 or section 20 or who fails to record such offence under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

**(2)** Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.

**(3)** The provisions, of sub-section (7) shall not apply to a child under this Act.

**[Case Law]** - *Shankar Kisanrao Khade v. State of Maharashtra, (2013) 5 SCC 546*

The Supreme Court took up the issue of non-reporting of sexual offences by bystanders and other witnesses. The

Court held that it must be the duty of every citizen in the country to report a crime that has taken place in front of them. The Court further noted that nonreporting is most prevalent within the family, whereby adult members of the family, including the parents of the victim, don't report such crimes in order to protect children from social stigma, which causes even more psychological and emotional harm to the child. The Court also issued several directions to stakeholders of such offences.

**Section 22 - Punishment for false complaint or false information**

**(1)** Any person, who makes false complaint or provides false information against any person, in respect of an offence committed under sections 3, 5, 7 and section 9, solely with the intention to humiliate, extort or threaten or defame him, shall be punished with imprisonment for a term which may extend to six months or with fine or with both.

**(2)** Where a false complaint has been made or false information has been provided by a child, no punishment shall be imposed on such child.

**(3)** Whoever, not being a child, makes a false complaint or provides false information against a child, knowing it to be false, thereby victimising such child in any of the offences under this Act, shall be punished with imprisonment which may extend to one year or with fine or with both.

**Section 23 - Procedure for media**

**(1)** No person shall make any report or present comments on any child from any form of media or studio or photographic facilities without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy.

**(2)** No reports in any media shall disclose, the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child:

Provided that for reasons to be recorded in writing, the Special Court, competent to try the case under the Act, may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

**(3)** The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omissions of his employee.

**(4)** Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be liable to be punished with imprisonment of either description for a period which shall not be less than six months but which may extend to one year or with fine or with both.

**Section 24 - Recording of statement of a child**

**(1)** The statement of the child shall be recorded at the residence of the child or at a place where he usually resides or at the place of his choice and as far as

practicable by a woman police officer not below the rank of sub-inspector.

(2) The police officer while recording the statement of the child shall not be in uniform.

(3) The police officer making the investigation, shall, while examining the child, ensure that at no point of time the child come in the contact in any way with the accused.

(4) No child shall be detained in the police station in the night for any reason.

(5) The police officer shall ensure that the identity of the child is protected from the public media, unless otherwise directed by the Special Court in the interest of the child.

**Section 25 - Recording of statement of a child by Magistrate**

(1) If the statement of the child is being recorded under section 164 of the Code of Criminal Procedure, 1973(2 of 1974) (herein referred to as the Code), the Magistrate recording such statement shall, notwithstanding anything contained therein, record the statement as spoken by the child:

Provided that the provisions contained in the first proviso to sub-section (1) of section 164 of the Code shall, so far it permits the presence of the advocate of the accused shall not apply in this case.



(2) The Magistrate shall provide to the child and his parents or his representative, a copy of the document specified under section 207 of the Code, upon the final report being filed by the police under section 173 of that Code.

**[Case Law]** – *Minor P Represented by Her Father Vs. State W.P. (Crl.) 3822/2018, High Court of Delhi*

A perusal of sub-Section (2) of Section 25 clearly shows that the Magistrate is mandated to provide to the child/parents/guardians copy of the documents as specified under Section 207 CrPC. upon the final report being filed. Sub-Clause (2) of Section 25 imposing a mandate on the Magistrate to provide a copy of the charge sheet learned Metropolitan Magistrate could not have asked for expenses from the complainant/victim in the FIR in question.

Though the issue looks trivial but it affects the rights of a victim as a victim cannot pursue trial effectively for not being in possession of the possession of the charge-sheet and the documents filed therewith. It is for this reason that Section 25(2) of POCSO Act mandates the court concerned to provide the charge-sheet and all documents supplied to the accused under Section 207 CrPC. Once the Act imposes a mandate to supply the documents, no charge can be directed to be levied.

**Section 26 - Additional provisions regarding statement to be recorded**

**(1)** The Magistrate or the police officer, as the case may be, shall record the statement as spoken by the child in the presence of the parents of the child or any other person in whom the child has trust or confidence.

**(2)** Wherever necessary, the Magistrate or the police officer, as the case may be, may take the assistance of a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, while recording the statement of the child.

**(3)** 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.

**(4)** Wherever possible, the Magistrate or the police officer, as the case may be, shall ensure that the statement of the child is also recorded by audio-video electronic means.

### **Section 27 - Medical examination of a child**

**(1)** The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offences under this Act, be conducted in accordance with section 164A of the Code of Criminal Procedure, 1973(2 of 1974).

**(2)** In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.

**(3)** The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.

**(4)** Where, in case the parent of the child or other person referred to in sub-section (3) cannot be present, for any reason, during the medical examination of the child, the medical examination shall be conducted in the presence of a woman nominated by the head of the medical institution.

**Guidelines by Ministry of Women and Child Welfare, 2013 (WCD Guidelines)**

3.3. ... “Where a child is brought to a doctor for a medical examination to confirm sexual abuse, the doctor must:

**i)** Take the written consent of the child. ...the child and/or his or her parent/guardian should agree to the examination voluntarily, without feeling pressurised to do so. In some situations, it may be appropriate to spend time with the child/adolescent alone, without the parent/guardian present. This may make it easier for the child to ask questions and not feel coerced by a parent/guardian.

**ii)** Where the child is too young or otherwise incapable of giving consent, consent should be

obtained from the child's parent, guardian or other person in whom the child has trust and confidence.

iii) The right to informed consent implies the right to informed refusal.

**[Case Law]** - *Moti Lal vs State of U.P., JT 2008 8 SCC 271*

The Supreme Court reiterated the well settled principle that even if the doctor who examined the victim does not find any sign of rape, it is no ground to disbelieve the sole testimony of the prosecutrix if it inspires confidence.

**[Case Law]** - *Dayal Singh vs State of U.P.', (2012) 8 SCC 263*

The Supreme Court held that where the eye witness account is found credible and trustworthy, medical opinion pointing to alternative possibilities may not be accepted as conclusion.

**[Case Law]** - *Hazari Paswan v. State (NCT of Delhi), 2016 SCC Online Del 4312*

True, 'X' was not medically examined. However, it is inconsequential. Medical evidence was not required in the absence of specific allegations of penetrative sexual assault. Victim's mother was apprehensive about the painful procedure to be adopted at the time of such internal medical examination and she did not like 'X' to undergo the said trauma.

**[Case Law]** - *In Re: Assessment of The Criminal Justice System in Response to Sexual Offences, 2019 SCC Online SC 1654*

With the advancement of the DNA science and its accuracy, the sampling for the purpose of Forensic examination and expeditious reports after due examination are vital to the just adjudication of the case.

**Section 28 - Designation of Special Courts**

**(1)** For the purposes of providing a speedy trial, the State Government shall in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, designate for each district, a Court of Session to be a Special Court to try the offences under the Act:

Provided that if a Court of Session is notified as a children's court under the Commissions for Protection of Child Rights Act, 2005(4 of 2006) or a Special Court designated for similar purposes under any other law for the time being in force, then, such court shall be deemed to be a Special Court under this section.

**(2)** While trying an offence under this Act, a Special Court shall also try an offence [other than the offence referred to in sub-section (1)], with which the accused may, under the Code of Criminal Procedure, 1973(2 of 1974), be charged at the same trial.

**(3)** The Special Court constituted under this Act, notwithstanding anything in the Information Technology

Act, 2000(21 of 2000), shall have jurisdiction to try offences under section 67B of that Act in so far as it relates to publication or transmission of sexually explicit material depicting children in any act, or conduct or manner or facilitates abuse of children online.

### **Section 29 - Presumption as to certain offences**

Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.

**[Case Law]** - *Prakash vs State, 2016 SCC Online Mad 10692*

The Madras High Court held that since the fundamental fact required to raise presumption under Section 29 of the Act have been proved, the Court has to necessarily presume that the accused has committed the offence charged. Such presumption is rebuttable, although the rebuttal need not be made with the same vigour with which guilt of a person is required to be proved by the prosecution beyond all reasonable doubts.

**[Case Law]** - *Joy vs State of Kerala, 2019 (2) KHC 66*

The High Court held that the statutory presumption under Section 29 of the Act does not mean that the prosecution version has to be accepted as gospel truth in every case. The presumption does not mean that the court cannot

take into consideration the special features of a particular case. Patent absurdities or inherent infirmities or improbabilities in the prosecution version may lead to an irresistible inference of falsehood in the prosecution case. The presumption would come into play only when the prosecution is able to bring on record facts that would form the foundation for the presumption.

**[Case Law]** - *Sitaram Das vs State of W.B., 2020 SCC Online Cal 522*

It is only on proof of foundational evidence being led, the onus gets shifted to accused to prove the contrary in order to discharge the reverse burden of proof, as contemplated in Section 29 of the POCSO Act.... It has got no direct and automatic application irrespective of the standard of evidence adduced in a particular case.

The statutory presumption thus cannot be taken to be absolute. "...mere proof of medical evidence, which is nothing more than a corroborative piece of evidence, would not by itself pave the way for application of presumption available under Section 29 of the POCSO Act.

**[Case Law]** - *Matiur Rahaman vs State of W.B., 2021 SCC Online Cal 2081*

The word "is prosecuted" in Section 29 of the POCSO Act does not mean that the prosecution has no role to play in establishing and/or probablising primary facts constituting the offence. ...Such an interpretation of the said provision is that in a case where the person is prosecuted under

Section 5 and 9 of the POCSO Act, the prosecution is absolved of the responsibility of proving its case beyond reasonable doubt.

**[Case Law]** - *Swapan Mondal vs State, 2021 SCC Online Cal 2007*

There is hardly any scope for direct application of Section 29 of the POCSO Act, even in a case where there is no foundational evidence being led by the prosecution. ... The issue was addressed by the Division Bench of this court in the case of **Subrata Biswas vs The State reported in (2019) 3 CrI. (Cal) 331**, where the ratio decided was that proof of penetrative sexual assault is sine qua non prior to making application of the presumption available under Section 29 of the POCSO Act.

... Section 29 has got no direct and automatic application irrespective of the standard of evidence adduced in a particular case. Thus, without proof of foundational evidence in a case under the POCSO Act, the onus to prove the reverse burden of proof does not come into operation. The statutory presumption therefore cannot be taken to be absolute.

**[Case Law]** – See Sec. 30 below for more case laws.

### **Section 30 - Presumption of culpable mental state**

(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of



such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

**Explanation** - In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

**[Case Law]** - *Prakash v. State, 2016 SCC Online Mad 10692*

The Madras High Court held that since the fundamental fact required to raise presumption under Section 29 of the Act have been proved, the Court has to necessarily presume that the accused has committed the offence charged. Such presumption is rebuttable, although the rebuttal need not be made with the same vigour with which guilt of a person is required to be proved by the prosecution beyond all reasonable doubts.

**[Case Law]** – *Justin alias Renjith vs Union of India and 3 others in WP (C) No. 15564 of 2017 (U), Kerala HC.*

With the inbuilt safeguards in the Act, the limited presumption do not upset the basic features of criminal law. Tendering of the oral evidence by accused is not mandatory or essential. To that extent, the apprehension

of the petitioners that, sections 29 and 30 of POCSO Act violate Art.20(3) of the Constitution is misplaced. In the result, sections 29 and 30 of the POCSO Act is held to be Constitutional and they do not violate the Fundamental Rights, nor are they contrary to the basic Criminal Principles.

**[Case Law]** - *Shahid Hossain Biswas vs State of West Bengal, (2017) 3 CALLT 243 (HC)*

It was held that presumption of innocence is a human right but not a fundamental right under Part III of the Constitution of India. Thus, the presumption acts as a reverse burden of proof upon the accused who is to rebut the statutory presumption.

**[Case Law]** - *State of Bihar vs Rajballav Prasad, (2017) 2 SCC 178*

In this case, the Supreme Court held that general presumption of innocence of accused not applicable to cases where there is contrary statutory presumption of his guilt such as when prosecuted under Sections 3, 5, 7 and 9 of POCSO Act, 2012.

**[Case Law]** - *Sri Joubansen Tripura vs The State of Tripura [Criminal Appeal (J) NO. 30 of 2018]*

Upon meticulous reading of Section 29 and 30 of the POCSO Act, according to us, the prosecution will commence the trial with an additional advantage that there will be a presumption of guilt against the accused

person, but, in our considered view, such presumption cannot form the basis of conviction, if that be so, it would offend Article 20(3) and 21 of the Constitution of India. Perhaps, it is not the object of the legislature to incorporate Sections 29 and 30 under the POCSO Act.”

The Court also added, “the prosecution will commence trial with an additional advantage of presumption against the accused but, prosecution is legally bound to establish foundational facts which set the prosecution case in motion. Then, it will be the obligation of the accused to prove his innocence but the standard of proof again will be on the basis of preponderance of probabilities.”

The Court hence observed that “It may safely be said that presumptions under Sections 29 and 30 of the POCSO Act do not take away the primary duty of the prosecution to establish the fundamental facts. This duty is always on the prosecution and never shifts to the accused.” Additionally, the court acknowledged that, “foundational facts which the prosecution has been able to establish and the appellant failed to controvert these established facts.

**[Case Law]** - *Purna Nahar Deka vs The State of Assam on 10 September, 2021. Guwahati High Court.*

Section 29 and 30 of the POCSO Act does not actually relieve the prosecution of its burden to prove a case. These provisions of law, however, lessen the burden of the prosecution by shifting the onus of proof to the accused. Once the foundation for holding the presumption is

established, after that the duty is cast upon the accused to prove his innocence.

**Section 31 - Application of Code of Criminal Procedure, 1973 to proceedings before a Special Court**

Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973(2 of 1974) (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.

**[Case Law]** - *The Additional Registrar General, Madurai Bench of Madras High Court, Madurai Criminal Reference (MD). No.2 of 2020, dated 30.09.2020.*

The Special Court designated under Section 28 of the POCSO Act alone is empowered to exercise power under Section 438 of CrPC, in view of Section 31 of the POCSO Act, and the Sessions Court cannot entertain any application seeking pre-arrest bail in respect of offences under the POCSO Act.

Even in cases where pre-arrest bail is sought before registering the First Information Report, only the Special Court designated under the POCSO Act can entertain the application and the regular Sessions Court cannot exercise its power under Section 438 of CrPC.

**[Case Law]** - *Aparna Bhat v. State of Madhya Pradesh, 2021 SCC Online SC 230*

Following directions were laid down to be followed while granting bail.

**(a)** Bail conditions should not mandate, require or permit contact between the accused and the victim. Such conditions should seek to protect the complainant from any further harassment by the accused;

**(b)** Where circumstances exist for the court to believe that there might be a potential threat of harassment of the victim, or upon apprehension expressed, after calling for reports from the police, the nature of protection shall be separately considered and appropriate order made, in addition to a direction to the accused not to make any contact with the victim;

**(c)** In all cases where bail is granted, the complainant should immediately be informed that the accused has been granted bail and copy of the bail order made over to him/her within two days.

**(d)** Bail conditions and orders should avoid reflecting stereotypical or patriarchal notions about women and their place in society, and must strictly be in accordance with the requirements of the CrPC. In other words, discussion about the dress, behavior, or past “conduct” or “morals” of the prosecutrix, should not enter the verdict granting bail;

(e) The courts while adjudicating cases involving gender related crimes, should not suggest or entertain any notions (or encourage any steps) towards compromises between the prosecutrix and the accused to get married, suggest or mandate mediation between the accused and the survivor, or any form of compromise as it is beyond their powers and jurisdiction;

(f) Sensitivity should be displayed at all times by judges, who should ensure that there is no traumatization of the prosecutrix, during the proceedings, or anything said during the arguments, and

(g) Judges especially should not use any words, spoken or written, that would undermine or shake the confidence of the survivor in the fairness or impartiality of the court.

### **Section 32 - Special Public Prosecutors**

(1) The State Government shall, by notification in the Official Gazette, appoint a Special Public Prosecutor for every Special Court for conducting cases only under the provisions of this Act.

(2) A person shall be eligible to be appointed as a Special Public Prosecutor under sub-section (7) only if he had been in practice for not less than seven years as an advocate.

(3) Every person appointed as a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (a) of section 2 of

the Code of Criminal Procedure, 1973(2 of 1974) and provision of that Code shall have effect accordingly.

**Section 33 - Procedure and powers of Special Court**

(1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.

(2) The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or reexamination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.

(3) The Special Court may, if it considers necessary, permit frequent breaks for the child during the trial.

(4) The Special Court shall 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.

(5) The Special Court shall ensure that the child is not called repeatedly to testify in the court.

(6) The Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial.

(7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial:

Provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

**Explanation** --For the purposes of this sub-section, the identity of the child shall include the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed.

(8) 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.

(9) Subject to the provisions of this Act, a Special Court shall, for the purpose of the trial of any offence under this Act, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, and as far as may be, in accordance with the procedure specified in the Code of Criminal Procedure, 1973(2 of 1974) for trial before a Court of Session.

**[Case Law]** - *The Minor Through Guardian Zareen vs State (Govt of NCT of Delhi), W.P.(CRL) 798/2015, dated 21.03.2016*



The Delhi High Court held that, “The definition under Section 357 (A) is very wide and would in fact even cover cases which are covered under the POCSO Act, 2012 but then the reading of Section 33 of the Act would show that the power has been given to the Special Court to grant compensation and there is no outer limit which has been fixed while granting the compensation.”

**[Case Law]** - *Deo Kumar Rai v State of Sikkim, 2017 SCC Online Sikk 152*

There is a mandatory duty on the special courts under Section 33(8) of POCSO Act, to apply its mind to the question of awarding compensation. The court further held that Section 7(1) of POCSO Rules, the special court can, in appropriate cases, on its own or on an application filed by or on behalf of the child, pass an order for interim compensation to meet the immediate needs of the child for relief or rehabilitation.

**[Case Law]** - *Bijoy vs State of West Bengal (2017 Cri.L.J.3893) Calcutta High Court*

The Special Court upon receipt of information as to commission of any offence under the Act by registration of FIR shall on his own or on the application of the victim make enquiry as to the immediate needs of the child for relief or rehabilitation and upon giving an opportunity of hearing to the State and other affected parties including the victim pass appropriate order for interim compensation and/or rehabilitation of the child.

In conclusion of proceeding, whether the accused is convicted or not, or in cases where the accused has not been traced or had absconded, the Special Court being satisfied that the victim had suffered loss or injury due to commission of the offence shall award just and reasonable compensation in favour of the victim.

The quantum of the compensation shall be fixed taking into consideration the loss and injury suffered by the victim and other related factors as laid down in Rule 7(3) of the Protection of Children from Sexual Offences Rules, 2012 and shall not be restricted to the minimum amounts prescribed in the Victim Compensation Fund.

The interim/final compensation shall be paid either from the Victim Compensation Fund or any other special scheme/fund established under section 357A of the Code of Criminal Procedure, 1973 or any other law for the time being in force through the State Legal Services Authorities or the District Services Authority in whose hands the Fund is entrusted.

If the Court declines to pass interim or final compensation in the instant case it shall record its reasons for not doing so. The interim compensation, so paid, shall be adjusted with final compensation, if any, awarded by the Special Court in conclusion of trial in terms of section 33(8) of the Act

[Case Law] - *Nipun Saxena v. Union of India*, (2019) 13 SCC 715: (2019) 4 SCC (Cri) 592: 2018 SCC Online SC 2010. (Order dated 05.09.2018).

The NALSA Compensation Scheme, 2018 would function as a guideline for the Special Court to award Compensation to minor victims of sexual abuse, under Rule 7 of the POCSO Rules, 2012. (Now POCSO Rules, 2020).

**Section 34 - Procedure in case of commission of offence by child and determination of age by Special Court.**

(1) Where a child commits an offence under this Act, the child is subject to the provisions of 1 [the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016)].

(2) In any process before the Special Court, if the question of whether or not a person is a child arises, the Special Court shall determine the question after ascertaining the age of such person, and it shall record in writing its reasons for such finding.

(3) Any later proof that the age of a person as established by the Special Court under subsection (2) was not the correct age of that person must not be construed to invalidate any order made by the Special Court.

[Case Law] – *Abuzar Hossain vs State of WB (2012) 10 SCC 489*

The Hon'ble Supreme Court held that – "The claim of juvenility may be raised at any stage irrespective of delay

in raising the same. It may be raised even after final disposal of the case; it may be raised in appeal even if not pressed in trial court”

**[Case Law]** - Jarnail Singh vs State of Haryana (2013) 7 SCC 263

Provisions of the Juvenile Justice Act and Rules would equally apply to determine the age for both a victim as well as an accused person.

In particular, the Supreme Court relied on Rule 12 (3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007.

**[Case Law]** – Siddu vs State of Karnataka – Decided by High Court Of Karnataka (Criminal Petition No. 200335/2015 | 06-04-2015)

The learned Sessions Judge is hereby directed to record the evidence of the witnesses who are relevant for the purpose of deciding the age of the accused first and then pass orders under Section 34 of the POCSO Act, 2012 and if for any reason, the Trial Court holds that the accused is not a Juvenile, then only it can proceed to record the evidence on merits of the case. Otherwise, the learned Sessions Judge has to refer the matter to the Juvenile Justice Board for further proceedings

**[Case Law]** – Longjam Pinky Singh vs State of Manipur – Decided by Manipur High Court on September 05, 2017.

This court is of the view that it may not be appropriate to restrict the scope of Section 34(2) only for determining the age of child who is in conflict with the law but can be extended to even a child who is a victim of the crime.

It may be noted that a statute which fastens criminal liability may be interpreted in such a manner that when two interpretations are possible, such interpretation which supports the right of the accused may be preferred unless the context otherwise requires.

**Section 35 - Period for recording of evidence of child and disposal of case**

(1) Within thirty days of the Special Court taking cognizance of the offence, the child's testimony must be recorded, and the Special Court must also record the reasons for the delay, if any.

(2) The Special Court must finish the trial within one year of the date of taking cognizance of the offence, if at all practicable.

**[Case Law] - H Mogaveera vs State of Karnataka – Decided by Karnataka High Court on 23<sup>rd</sup> April 2021.**

1. Non-compliance with time frame u/s 35 of POCSO Act will not lead to default bail of the accused.
2. The statement recorded under Section 164 of the Code of Criminal Procedure cannot be taken as

evidence under Section 35 of the POCSO Act. During the course of the inquiry or at any time before the start of the trial, a statement under Section 164 of the CrPC is made. However, the evidence recorded before the Special Court under Section 35 of the POCSO Act occurs during the trial. They can't be compared, because they're not on the same plane.

3. Vinay vs the State of Karnataka is not a good case law and cannot be a precedent for further cases.

**Section 36 - Child not to see accused at the time of testifying**

(1) The Special Court shall ensure that the child is not in any way exposed to the accused at the time of the evidence recording, while also ensuring that the accused is able to hear the child's statement and speak with his attorney.

(2) For the purposes of subsection (1), the Special Court may use video conferencing, single visibility mirrors or curtains, or any other device to record a child's statement.

**Section 37 - Trials will be held behind closed doors.**

The Special Court will hear cases in private and in the presence of the child's parents or any other person in whom the child has trust or confidence: Provided, however, that if the Special Court believes that the child should be examined somewhere other than the court, it shall issue a commission in accordance with the provisions

of Section 284 of the Code of Criminal Procedure, 1973. (2 of 1974).

**Section 38 - Assistance of an interpreter or expert while recording evidence of child.**

**(1)** wherever necessary, the Court may take the assistance of a translator or interpreter having such qualifications, experience and on payment of such fees as may be prescribed, while recording the evidence of the child.

**(2)** 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.

**[Case Law]** - *Vikas Singh vs State of U.P. & Anr. on 19 October, 2019, CRIMINAL REVISION No. - 1385 of 2019, Allahabad HC (Lucknow Bench).*

The argument of learned counsel for the revisionists that the court below while passing the impugned order went beyond the jurisdiction vested in it and wrongly exercised his power to appoint interpreter for victim-child, aged about 7 years, during cross-examination, is incorrect, baseless and suffers from misconception as to the provisions of Evidence Act and the relevant Section 38 of the POCSO Act. In my view courts are made competent under Section 38(1) of POCSO Act read with proviso appended to Section 119 of the Evidence Act (as amended

vide Act No. 13 of 2013, w.e.f. 03.02.2013) to provide help of translator or interpreter as the case may be in appropriate cases, to a victim child who is unable to communicate verbally, while recording evidence.

**Section 39 - Guidelines for child to take assistance of experts, etc.**

Subject to such rules as may be made in this behalf, the State Government shall prepare guidelines for use of non-governmental organisations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child.

**Section 40 - Right of child to take assistance of legal practitioner**

Subject to the proviso to section 301 of the Code of Criminal Procedure, 1973 (2 of 1974) the family or the guardian of the child shall be entitled to the assistance of a legal counsel of their choice for any offence under this Act:

Provided that if the family or the guardian of the child are unable to afford a legal counsel, the Legal Services Authority shall provide a lawyer to them.

**[Case Law]** – *Arjun Kishanrao Malge Vs the State, PIL No. 5 of 2021, Bombay HC, CRPIL No. 52021, decided on 09.04.2021.*



The legislative intent behind Section 40 the POSCO Act is to prioritize the welfare of children, be it someone either a victim or even a witness.

The court held that, “In the event, it has not been possible to serve the child’s family, guardian or legal counsel; it shall be the duty of the SJPU to inform the reasons in writing to the relevant court. The appropriate Court, before proceeding to hear the application, shall ascertain the status of service of notice, and if it is found that notice has not been issued, the Court may make such reasoned order as it deems fit to secure the ends of justice, taking into account any emergent circumstances that warrant dealing with the application in the absence of the child’s family or guardian or legal counsel.”

The Bench disposing of the petition passed the following directions:

☯ When an application is made before the Court on behalf of the prosecution, it shall be the duty of the office of the public prosecutor to issue notice of hearing of such application to the child’s family.

☯ When an application is made before the Court on behalf of the accused, it shall be the duty of the accused to issue notice of hearing of such application to the child’s family.

☯ It shall be the duty of the Special Juvenile Police Unit (SJPU) to give the court reasons in writing if the victim’s

family, guardian or legal counsel could not be put to notice regarding the court's proceedings.

☞ The Court further states that when the proceedings under the Act would also relate to an offence under Sections 376(3), 376-AB, 376-DA or 376-DB of the Indian Penal Code (i.e. offenses related to rape), the notice to the victim shall be issued under Section 439(1-A) of Criminal Procedure Code (which deals with bail of the accused) read with Rule 4(13) and 4(15) of POCSO Rules.

**Section 41 - Provisions of sections 3 to 13 not to apply in certain cases**

The provisions of sections 3 to 13 (both inclusive) shall not apply in case of medical examination or medical treatment of a child when such medical examination or medical treatment is undertaken with the consent of his parents or guardian.

**[Case Law]** – *Dr. P. Rajendran vs State, Madras HC, Crl. R. C. No. 941 of 2018 & Crl. M. P. No.10884 of 2018, decided on 26.11.2018.*

If the case of the petitioner is to be accepted that the medical practitioners need to be protected under all circumstances under Section 41 of POCSO Act, which would mean that no medical practitioner can ever be prosecuted and convicted even if there is involvement in POCSO offence. Such scenario would not have been <http://www.judis.nic.in> the intention of the Parliament while enacting the law. After all, the objective of the

POCSO Act is to protect the children from the perpetrators of sexual assault and the objectives of the Act have to be given effect to and such objectives cannot stand stymied at the threshold by discharging the person like the petitioner who stood charged for offences under Sections 9(e) and 10 of POCSO Act. As stated earlier, nothing is lost for the petitioner except to face the trial and come out clean of the trial in case he is able to discharge the burden of his non-complicity in the offence.

<sup>1</sup>**Section 42 - Alternate punishment.**

Where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, <sup>2</sup>[376A, 376AB, 376B, 376C, 376D, 376DA, 376DB], 376E or section 509 of the Indian Penal Code (45 of 1860), then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under this Act or under the Indian Penal Code as provides for punishment which is greater in degree.

**Section 42A - Act not in derogation of any other law**

The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.]

1. Subs. by Act 13 of 2013, s. 29, for s. 42 (w.e.f. 3-2-2013).

2. Subs. by Act 22 of 2018, s. 25, for "376A, 376C, 376D" (w.e.f. 21-4-2018).

**Section 43 - Public awareness about Act**

The Central Government and every State Government, shall take all measures to ensure that—

**(a)** The provisions of this Act are given wide publicity through media including the television, radio and the print media at regular intervals 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 Government and the State Governments and other concerned persons (including the police officers) are imparted periodic training on the matters relating to the implementation of the provisions of the Act.

**Section 44 - Monitoring of implementation of Act**

**(1)** The National Commission for Protection of Child Rights constituted under section 3, or as the case may be, the State Commission for Protection of Child Rights constituted under section 17, of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) shall, in addition to the functions assigned to them under that Act, also monitor the implementation of the provisions of this Act in such manner as may be prescribed.

**(2)** The National Commission or, as the case may be, the State Commission, referred to in sub-section (1), shall, while inquiring into any matter relating to any offence under this Act, have the same powers as are vested in it under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006).

**(3)** The National Commission or, as the case may be, the State Commission, referred to in sub-section (1), shall, also include, its activities under this section, in the annual report referred to in section 16 of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006).

#### **Section 45 - Power to make rules**

**(1)** The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

**(2)** In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely: —

**(a)** the qualifications and experience of, and the fees payable to, a translator or an interpreter, a special educator or any person familiar with the manner of communication of the child or an expert in that field, under sub-section (4) of section 19; sub-sections (2) and (3) of section 26 and section 38;

(b) care and protection and emergency medical treatment of the child under sub-section (5) of section 19;

(c) the payment of compensation under sub-section (8) of section 33;

(d) the manner of periodic monitoring of the provisions of the Act under sub-section (1) of section 44.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

#### **Section 46 - Power to remove difficulties**

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear

to it to be necessary or expedient for removal of the difficulty:

Provided that no order shall be made under this section after the expiry of the period of two years from the commencement of this Act.

**(2)** Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

## THE SCHEDULE

(See Sec. 2.1.(c))

### ARMED FORCES AND SECURITY FORCES CONSTITUTED UNDER

- (a) The Air Force Act, 1950 (45 of 1950);
- (b) The Army Act, 1950 (46 of 1950);
- (c) The Assam Rifles Act, 2006 (47 of 2006);
- (d) The Bombay Home Guard Act, 1947 (3 of 1947);
- (e) The Border Security Force Act, 1968 (47 of 1968);
- (f) The Central Industrial Security Force Act, 1968 (50 of 1968);
- (g) The Central Reserve Police Force Act, 1949 (66 of 1949);
- (h) The Coast Guard Act, 1978 (30 of 1978);

- (i) The Delhi Special Police Establishment Act, 1946 (25 of 1946);
- (j) The Indo-Tibetan Border Police Force Act, 1992 (35 of 1992);
- (k) The Navy Act, 1957 (62 of 1957);
- (l) The National Investigation Agency Act, 2008 (34 of 2008);
- (m) The National Security Guard Act, 1986 (47 of 1986);
- (n) The Railway Protection Force Act, 1957 (23 of 1957);
- (o) The Sashastra Seema Bal Act, 2007 (53 of 2007);
- (p) The Special Protection Group Act, 1988 (34 of 1988);
- (q) The Territorial Army Act, 1948 (56 of 1948);
- (r) The State police forces (including armed constabulary) constituted under the State laws to aid the civil powers of the State and empowered to employ force during internal disturbances or otherwise including armed forces as defined in clause (a) of section 2 of the Armed Forces (Special Powers) Act, 1958 (28 of 1958).

### MISCELLANEOUS POCSO UPDATES

**Bombay HC:** POCSO Special Court Can Try Offences Under SC/ST(PoA) Act When Child-Victim Belongs to Scheduled Caste/Tribe.



**New POCSO Rules:** Compensation to Be Paid Within 30 Days.

**Bombay HC:** Accused Can Challenge DNA Report Only on The Ground of Tampering of His Blood Sample.

**Delhi HC:** POCSO Act Is Gender Neutral.

**Supreme Court:** Rape Cases of Mentally Challenged Victims Cannot Be Shifted to POCSO Courts.

**Madras HC:** Punishing an Adolescent Boy Who Enters into A Relationship with A Minor Girl Was Never the Objective of POCSO Act.

## **POCSO RULES 2020**

***Published vide Notification No. G.S.R. 165(E), dated  
9.03.2020***

1. Short title and commencement
2. Definitions
3. Awareness generation and capacity building
4. Procedure regarding care and protection of child
5. Interpreters, translators, special educators, experts and support persons
6. Medical aid and care
7. Legal aid and assistance
8. Special relief
9. Compensation
10. Procedure for imposition of fine and payment thereof
11. Reporting of pornographic material involving a child

12. Monitoring of implementation of the Act

13. Repeal

Form -A

Form-B

**G.S.R. 165(E).** - In exercise of the powers conferred by section 45 of the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), the Central Government hereby makes the following rules, namely: -

**1. Short title and commencement. –**

(1) These rules may be called the Protection of Children from Sexual Offences Rules, 2020.

(2) They shall come into force on the date of their publication in the Official Gazette.

**2. Definitions. –**

(1) In these rules, unless the context otherwise requires, -

(a) "*Act*" means the Protection of Children from Sexual Offences Act, 2012 (32 of 2012);

(b) "*District Child Protection Unit*" (DCPU) means the District Child Protection Unit established by the State Government under section 106 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016);

(c) "*expert*" means a person trained in mental health, medicine, child development or other relevant 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;

(d) "*special educator*" means a person trained in communication with children with disabilities in a way that addresses the child's individual abilities and needs, which include challenges with learning and communication, emotional and behavioural issues, physical disabilities, and developmental issues.

***Explanation.*** - For the purposes of this clause, the expression "disabilities", shall carry the same meaning as defined in clause (s) of section 2 of the Rights of Persons with Disabilities Act, 2016 (49 of 2016);

(e) "*Person familiar with the manner of communication of the child*" means a parent or family member of a child or a member of child's shared household or any person in whom the child reposes trust and confidence, who is familiar with that child's unique manner of communication, and whose presence may be required for or be conducive to more effective communication with the child;

(f) "*support person*" means a person assigned by the Child Welfare Committee, in accordance with sub-rule (7) of rule 4, to render assistance to the child through the process of investigation and trial, or any other person assisting the child in the pretrial or trial process in respect of an offence under the Act;

**(2)** Words and expressions used and not defined in these rules but defined in the Act shall have the meanings respectively assigned to them under the Act.

**3. Awareness generation and capacity building. –**

**(1)** The Central Government, or as the case may be, the State Government shall prepare age-appropriate educational material and curriculum for children, informing them about various aspects of personal safety, including -

**(i)** measures to protect their physical, and virtual identity; and to safeguard their emotional and mental wellbeing;

**(ii)** prevention and protection from sexual offences;

**(iii)** reporting mechanisms, including Child helpline-1098 services;

**(iv)** inculcating gender sensitivity, gender equality and gender equity for effective prevention of offences under the Act.

**(2)** Suitable material and information may be disseminated by the respective Governments in all public places such as panchayat bhavans, community centers, schools and colleges, bus terminals, railway stations, places of congregation, airports, taxi stands, cinema halls and such other prominent places and also be disseminated in suitable form in virtual spaces such as internet and social media.

**(3)** The Central Government and every State Government shall take all suitable measures to spread awareness about possible risks and vulnerabilities, signs of abuse,

information about rights of children under the Act along with access to support and services available for children.

**(4)** Any institution housing children or coming in regular contact with children including schools, crèches, sports academies or any other facility for children must ensure a police verification and background check on periodic basis, of every staff, teaching or non-teaching, regular or contractual, or any other person being an employee of such Institution coming in contact with the child. Such Institution shall also ensure that periodic training is organised for sensitising them on child safety and protection.

**(5)** The respective Governments shall formulate a child protection policy based on the principle of zero-tolerance to violence against children, which shall be adopted by all institutions, organizations, or any other agency working with, or coming in contact with children.

**(6)** The Central Government and every State Government shall provide periodic trainings including orientation programmes, sensitization workshops and refresher courses to all persons, whether regular or contractual, coming in contact with the children, to sensitize them about child safety and protection and educate them regarding their responsibility under the Act. Orientation programme and intensive courses may also be organized for police personnel and forensic experts for building their capacities in their respective roles on a regular basis.

#### **4. Procedure regarding care and protection of child. –**

**(1)** Where any Special Juvenile Police Unit (hereafter referred to as "SJPU") or the local police receives any

information under sub-section (1) of section 19 of the Act from any person including the child, the SJPU or local police receiving the report of such information shall forthwith disclose to the person making the report, the following details: -

- (i)** his or her name and designation;
- (ii)** the address and telephone number;
- (iii)** the name, designation and contact details of the officer who supervises the officer receiving the information.

**(2)** If any such information regarding the commission of an offence under the provisions of the Act is received by the child helpline-1098, the child helpline shall immediately report such information to SJPU or Local Police.

**(3)** Where an SJPU or the local police, as the case may be, receives information in accordance with the provisions contained under sub-section (1) of section 19 of the Act in respect of an offence that has been committed or attempted or is likely to be committed, the authority concerned shall, where applicable, -

- (a)** proceed to record and register a First Information Report as per the provisions of section 154 of the Code of Criminal Procedure, 1973 (2 of 1974), and furnish a copy thereof free of cost to the person making such report, as per sub-section (2) of section 154 of that Code;
- (b)** where the child needs emergency medical care as described under sub-section (5) of section 19 of

the Act or under these rules, arrange for the child to access such care, in accordance with rule 6;

**(c)** take the child to the hospital for the medical examination in accordance with section 27 of the Act;

**(d)** ensure that the samples collected for the purposes of the forensic tests are sent to the forensic laboratory immediately;

**(e)** inform the child and child's 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;

**(f)** inform the child and child's parent or guardian or other person in whom the child has trust and confidence as to the right of the child to legal advice and counsel and the right to be represented by a lawyer, in accordance with section 40 of the Act.

**(4)** Where the SJPU or the local police receives information under sub-section (1) of section 19 of the Act, and has a reasonable apprehension that the offence has been committed or attempted or is likely to be committed by a person living in the same or shared household with the child, or the child is living in a child care institution and is without parental support, or the child is found to be without any home and parental support, the concerned SJPU, or the local police shall produce the child before the concerned Child Welfare Committee (hereafter referred to as "CWC") within 24 hours of receipt of such report,

together with reasons in writing as to whether the child is in need of care and protection under sub-section (5) of section 19 of the Act, and with a request for a detailed assessment by the CWC.

**(5)** Upon receipt of a report under sub-rule (3), the concerned CWC must proceed, in accordance with its powers under sub-section (1) of section 31 of the Juvenile Justice Act, 2015 (2 of 2016), to make a determination within three days, either on its own or with the assistance of a social worker, as to whether the child needs to be taken out of the custody of child's family or shared household and placed in a children's home or a shelter home.

**(6)** In making determination under sub-rule (4), the CWC shall take into account any preference or opinion expressed by the child on the matter, together with the best interests of the child, having regard to the following considerations, namely: -

- (i)** the capacity of the parents, or of either parent, or of any other person in whom the child has trust and confidence, to provide for the immediate care and protection needs of the child, including medical needs and counselling;
- (ii)** the need for the child to remain in the care of parent's, family and extended family and to maintain a connection with them;
- (iii)** the child's age and level of maturity, gender, and social and economic background;
- (iv)** disability of the child, if any;



**(v)** any chronic illness from which a child may suffer;

**(vi)** any history of family violence involving the child or a family member of the child; and,

**(vii)** any other relevant factors that may have a bearing on the best interests of the child:

Provided that prior to making such determination, an inquiry shall be conducted in such a way that the child is not unnecessarily exposed to injury or inconvenience.

**(7)** The child and child's parent or guardian or any other person in whom the child has trust and confidence and with whom the child has been living, who is affected by such determination, shall be informed that such determination is being considered.

**(8)** The CWC, on receiving a report under sub-section (6) of section 19 of the Act or on the basis of its assessment made under sub-rule (5), and with the consent of the child and child's parent or guardian or other person in whom the child has trust and confidence, may provide a support person to render assistance to the child in all possible manner throughout the process of investigation and trial, and shall immediately inform the SJPU or Local Police about providing a support person to the child.

**(9)** The support person shall at all times maintain the confidentiality of all information pertaining to the child to which he or she has access and shall keep the child and child's parent or guardian or other person in whom the child has trust and confidence, informed regarding the proceedings of the case, including available assistance,

judicial procedures, and potential outcomes. The Support person shall also inform the child of the role the Support person may play in the judicial process and ensure that any concerns that the child may have, regarding child's safety in relation to the accused and the manner in which the Support person would like to provide child's testimony, are conveyed to the relevant authorities.

**(10)** Where a support person has been provided to the child, the SJPU or the local police shall, within 24 hours of making such assignment, inform the Special Court in writing.

**(11)** The services of the support person may be terminated by the CWC upon request by the child and child's parent or guardian or person in whom the child has trust and confidence, and the child requesting the termination shall not be required to assign any reason for such request. The Special Court shall be given in writing such information.

**(12)** The CWC shall also Seek monthly reports from support person till the completion of trial, with respect to condition and care of child, including the family situation focusing on the physical, emotional and mental well-being, and progress towards healing from trauma; engage with medical care facilities, in coordination with the support person, to ensure need-based continued medical support to the child, including psychological care and counselling; and shall ensure resumption of education of the child, or continued education of the child, or shifting of the child to a new school, if required.

**(13)** It shall be the responsibility of the SJPU, or the local police to keep the child and child's parent or guardian or other person in whom the child has trust and confidence,

and where a support person has been assigned, such person, informed about the developments, including the arrest of the accused, applications filed and other court proceedings.

**(14)** SJPU or the local police shall also inform the child and child's parents or guardian or other person in whom the child has trust and confidence about their entitlements and services available to them under the Act or any other law for the time being applicable as per Form-A. It shall also complete the Preliminary Assessment Report in Form B within 24 hours of the registration of the First Information Report and submit it to the CWC.

**(15)** The information to be provided by the SJPU, local police, or support person, to the child and child's parents or guardian or other person in whom the child has trust and confidence, includes but is not limited to the following: -

- (i) the availability of public and private emergency and crisis services;
- (ii) the procedural steps involved in a criminal prosecution;
- (iii) the availability of victim's compensation benefits;
- (iv) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;

- (v) the arrest of a suspected offender;
- (vi) the filing of charges against a suspected offender;
- (vii) the schedule of court proceedings that the child is either required to attend or is entitled to attend;
- (viii) the bail, release or detention status of an offender or suspected offender;
- (ix) the rendering of a verdict after trial; and
- (x) the sentence imposed on an offender.

**5. Interpreters, translators, special educators, experts and support persons. –**

(1) In each district, the DCPU shall maintain a register with names, addresses and other contact details of interpreters, translators, experts, special educators and support persons for the purposes of the Act, and this register shall be made available to the SJPU, local police, magistrate or Special Court, as and when required.

(2) The qualifications and experience of the interpreters, translators, special educators, experts and support persons engaged for the purposes of sub-section (4) of section 19, sub-sections (3) and (4) of section 26 and section 38 of the Act, and rule 4 respectively shall be as indicated in these rules.

(3) Where an interpreter, translator, or special educator is engaged, otherwise than from the list maintained by the DCPU under sub-rule (1), the requirements prescribed under sub-rules (4) and (5) of this rule may be relaxed on

evidence of relevant experience or formal education or training or demonstrated proof of fluency in the relevant languages by the interpreter, translator, or special educator, subject to the satisfaction of the DCPU, Special Court or other authority concerned.

**(4)** Interpreters and translators engaged under sub-rule (1) should have functional familiarity with language spoken by the child as well as the official language of the state, either by virtue of such language being child's mother tongue or medium of instruction at school at least up to primary school level, or by the interpreter or translator having acquired knowledge of such language through child's vocation, profession, or residence in the area where that language is spoken.

**(5)** Sign language interpreters, special educators and experts entered in the register under sub-rule (1) should have relevant qualifications in sign language or special education, or in the case of an expert, in the relevant discipline, from a recognised University or an institution recognised by the Rehabilitation Council of India.

**(6)** Support person may be a person or organisation working in the field of child rights or child protection, or an official of a children's home or shelter home having custody of the child, or a person employed by the DCPU:

Provided that nothing in these rules shall prevent the child and child's parents or guardian or other person in whom the child has trust and confidence from seeking the assistance of any person or organisation for proceedings under the Act.

**(7)** Payment for the services of an interpreter, translator, special educator, expert or support person whose name is enrolled in the register maintained under sub-rule (1) or otherwise, shall be made by the State Government from the Fund maintained under section 105 of the Juvenile Justice Act, 2015 (2 of 2016), or from other funds placed at the disposal of the DCPU.

**(8)** Any interpreter, translator, special educator, expert or support person engaged for the purpose of assisting a child under this Act, shall be paid a fee which shall be prescribed by the State Government, but which, shall not be less than the amount prescribed for a skilled worker under the Minimum Wages Act, 1948 (11 of 1948).

**(9)** Any preference expressed by the child at any stage after information is received under sub-section (1) of section 19 of the Act, as to the gender of the interpreter, translator, special educator, expert or support person, may be taken into consideration, and where necessary, more than one such person may be engaged in order to facilitate communication with the child.

**(10)** The interpreter, translator, special educator, expert, support person or person familiar with the manner of communication of the child engaged to provide services for the purposes of the Act shall be unbiased and impartial and shall disclose any real or perceived conflict of interest and shall render a complete and accurate interpretation or translation without any additions or omissions, in accordance with section 282 of the Code of Criminal Procedure, 1973 (2 of 1974).

**(11)** In proceedings under section 38, the Special Court shall ascertain whether the child speaks the language of

the court adequately, and that the engagement of any interpreter, translator, special educator, expert, support person or other person familiar with the manner of communication of the child, who has been engaged to facilitate communication with the child, does not involve any conflict of interest.

**(12)** Any interpreter, translator, special educator, expert or support person appointed under the Act shall be bound by the rules of confidentiality, as described under section 127 read with section 126 of the Indian Evidence Act, 1872 (1 of 1872).

## **6. Medical aid and care. –**

**(1)** Where an officer of the SJPU, or the local police receives information under section 19 of the Act that an offence under the Act has been committed, and is satisfied that the child against whom an offence has been committed is in need of urgent medical care and protection, such officer, or as the case may be, the local police shall, within 24 hours of receiving such information, arrange to take such child to the nearest hospital or medical care facility center for emergency medical care:

Provided that where an offence has been committed under sections 3, 5, 7 or 9 of the Act, the victim shall be referred to emergency medical care.

**(2)** Emergency medical care shall be rendered in such a manner as to protect the privacy of the child, and in the presence of the parent or guardian or any other person in whom the child has trust and confidence.

**(3)** No medical practitioner, hospital or other medical facility center rendering emergency medical care to a child shall demand any legal or magisterial requisition or other documentation as a pre-requisite to rendering such care.

**(4)** The registered medical practitioner rendering medical care shall attend to the needs of the child, including:

(a) treatment for cuts, bruises, and other injuries including genital injuries, if any;

(b) treatment for exposure to sexually transmitted diseases (STDs) including prophylaxis for identified STDs;

(c) treatment for exposure to Human Immunodeficiency Virus (HIV), including prophylaxis for HIV after necessary consultation with infectious disease experts;

(d) possible pregnancy and emergency contraceptives should be discussed with the pubertal child and her parent or any other person in whom the child has trust and confidence; and,

(e) wherever necessary, a referral or consultation for mental or psychological health needs, or other counselling, or drug de-addiction services and programmes should be made.

**(5)** The registered medical practitioner shall submit the report on the condition of the child within 24 hrs to the SJPU or Local Police.



(6) Any forensic evidence collected in the course of rendering emergency medical care must be collected in accordance with section 27 of the Act.

(7) If the child is found to be pregnant, then the registered medical practitioner shall counsel the child, and her parents or guardians, or support person, regarding the various lawful options available to the child as per the Medical Termination of Pregnancy Act 1971 and the Juvenile Justice (Care and Protection of Children) Act 2015 (2 of 2016).

(8) If the child is found to have been administered any drugs or other intoxicating substances, access to drug de-addiction programme shall be ensured.

(9) If the Child is a divyang (person with disability), suitable measure and care shall be taken as per the provisions of The Rights of Persons with Disabilities Act, 2016 (49 of 2016).

#### **7. Legal aid and assistance. –**

(1) The CWC shall make a recommendation to District Legal Services Authority (hereafter referred to as "DLSA") for legal aid and assistance.

(2) The legal aid and assistance shall be provided to the child in accordance with the provisions of the Legal Services Authorities Act, 1987 (39 of 1987).

#### **8. Special relief. –**

(1) For special relief, if any, to be provided for contingencies such as food, clothes, transport and other essential needs, CWC may recommend immediate payment of such amount as it may assess to be required at that stage, to any of the following: -

(i) the DLSA under Section 357A; or;

(ii) the DCPU out of such funds placed at their disposal by state or;

(iii) funds maintained under section 105 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016);

(2) Such immediate payment shall be made within a week of receipt of recommendation from the CWC.

### **9. Compensation. –**

(1) The Special Court may, in appropriate cases, on its own or on an application filed by or on behalf of the child, pass an order for interim compensation to meet the needs of the child for relief or rehabilitation at any stage after registration of the First Information Report. Such interim compensation paid to the child shall be adjusted against the final compensation, if any.

(2) The Special Court may, on its own or on an application filed by or on behalf of the victim, recommend the award of compensation where the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified, and in the opinion of the Special Court the child has suffered loss or injury as a result of that offence.

**(3)** Where the Special Court, under sub-section (8) of section 33 of the Act read with sub-sections (2) and (3) of section 357A of the Code of Criminal Procedure, 1973 (2 of 1974) makes a direction for the award of compensation to the victim, it shall take into account all relevant factors relating to the loss or injury caused to the victim, including the following: -

(i) type of abuse, gravity of the offence and the severity of the mental or physical harm or injury suffered by the child;

(ii) the expenditure incurred or likely to be incurred on child's medical treatment for physical or mental health or on both;

(iii) loss of educational opportunity as a consequence of the offence, including absence from school due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;

(iv) loss of employment as a result of the offence, including absence from place of employment due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;

(v) the relationship of the child to the offender, if any;

(vi) whether the abuse was a single isolated incidence or whether the abuse took place over a period of time;

(vii) whether the child became pregnant as a result of the offence;

(viii) whether the child contracted a sexually transmitted disease (STD) as a result of the offence;

(ix) whether the child contracted human immunodeficiency virus (HIV) as a result of the offence;

(x) any disability suffered by the child as a result of the offence;

(xi) financial condition of the child against whom the offence has been committed so as to determine such child's need for rehabilitation;

(xii) any other factor that the Special Court may consider to be relevant.

**(4)** The compensation awarded by the Special Court is to be paid by the State Government from the Victims Compensation Fund or other scheme or fund established by it for the purposes of compensating and rehabilitating victims under section 357A of the Code of Criminal Procedure, 1973 or any other law for the time being in force, or, where such fund or scheme does not exist, by the State Government.

**(5)** The State Government shall pay the compensation ordered by the Special Court within 30 days of receipt of such order.

**(6)** Nothing in these rules shall prevent a child or child's parent or guardian or any other person in whom the child has trust and confidence from submitting an application

for seeking relief under any other rules or scheme of the Central Government or State Government.

**10. Procedure for imposition of fine and payment thereof. –**

(1) The CWC shall coordinate with the DLSA to ensure that any amount of fine imposed by the Special Court under the Act which is to be paid to the victim, is in fact paid to the child.

(2) The CWC will also facilitate any procedure for opening a bank account, arranging for identity proofs, etc., with the assistance of DCPU and support person.

**11. Reporting of pornographic material involving a child. –**

(1) Any person who has received any pornographic material involving a child or any information regarding such pornographic material being stored, possessed, distributed, circulated, transmitted, facilitated, propagated or displayed, or is likely to be distributed, facilitated or transmitted in any manner shall report the contents to the SJPU or local police, or as the case may be, cyber-crime portal ([cybercrime.gov.in](http://cybercrime.gov.in)) and upon such receipt of the report, the SJPU or local police or the cyber-crime portal take necessary action as per the directions of the Government issued from time to time.

(2) In case the "person" as mentioned in sub-rule (1) is an "intermediary" as defined in clause (w) of sub-section (1)

of section 2 of the Information Technology Act,2000, such person shall in addition to reporting, as provided under sub-rule(1), also hand over the necessary material including the source from which such material may have originated to the SJPU or local police, or as the case may be, cyber-crime portal (cybercrime.gov.in) and upon such receipt of the said material, the SJPU or local police or the cyber-crime portal take necessary action as per the directions of the Government issued from time to time.

**(3)** The report shall include the details of the device in which such pornographic content was noticed and the suspected device from which such content was received including the platform on which the content was displayed.

**(4)** The Central Government and every State Government shall make all endeavours to create widespread awareness about the procedures of making such reports from time to time.

## **12. Monitoring of implementation of the Act. –**

**(1)** The National Commission for the Protection of Child Rights (hereafter referred to as "NCPCR") or the State Commission for the Protection of Child Rights (hereafter referred to as "SCPCR"), as the case may be, shall in addition to the functions assigned to them under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006), perform the following functions for implementation of the provisions of the Act -

(a) monitor the designation of Special Courts by State Governments;

(b) monitor the appointment of the Special Public Prosecutors by the State Governments;

(c) monitor the formulation of the guidelines described in section 39 of the Act by the State Governments, for the use of non-governmental organisations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pretrial and trial stage to assist the child, and to monitor the application of these guidelines;

(d) monitor the designing and implementation of modules for training police personnel and other concerned persons, including officers of the Centre and State Governments, for the effective discharge of their functions under the Act;

(e) monitor and support the Central Government and State Governments for the dissemination of information relating to the provisions of the Act through media including the television, radio and print media at regular intervals, so as to make the general public, children as well as their parents and guardians aware of the provisions of the Act.

(f) call for a report on any specific case of child sexual abuse falling within the jurisdiction of a CWC.

(g) collect information and data on its own or from the relevant agencies regarding reported cases of sexual abuse and their disposal under the processes provided under the Act, including information on the following: -

(i) number and details of offences reported under the Act;

(ii) whether the procedures prescribed under the Act and rules were followed, including those regarding time frames;

(iii) details of arrangements for care and protection of victims of offences under this Act, including arrangements for emergency medical care and medical examination; and,

(iv) details regarding assessment of the need for care and protection of a child by the concerned CWC in any specific case;

(h) use the information so collected to assess the implementation of the provisions of the Act. The report on monitoring of the Act shall be included in a separate chapter in the annual report of the NCPCR or the SCPCR.

**(2)** The concerned authorities mandated to collect data, under the Act, shall share such data with the Central Government and every State Government, NCPCR and SCPCRs.

**13. Repeal.** - The Protection of Children from Sexual Offences Rules, 2012 are hereby repealed, except as respects things done or omitted to be done before such repeal.

### **Form -A**



*Entitlement of children who have suffered sexual abuse to receive information and services*

1. To receive a copy of the FIR.
2. To receive adequate security and protection by Police.
3. To receive immediate and free medical examination by civil hospital/PHC etc.
4. To receive Counselling and consultation for mental and psychological well being
5. For Recording of statement of child by woman police officer at child's home or any other place convenient to child
6. To be moved to a Child Care Institution where offence was at home or in a shared household, to the custody of a person whom child reposes faith.
7. For Immediate aid and assistance on the recommendation of CWC.
8. For being kept away from accused at all times, during trial and otherwise.
9. To have an interpreter or translator, where needed.
10. To have special educator for the child or other specialized person where child is disabled.
11. For Free Legal Aid.
12. For Support Person to be appointed by Child Welfare Committee.

13. To continue with education.

14. To privacy and confidentiality.

15. For list of Important Contact No.'s including that of the District Magistrate and the Superintendent of Police.

*Duty Officer*

*(Name & Designation to be mentioned)*

*Date:*

I have received a copy of 'Form-A'

(Signature of Victim/Parent/Guardian)

*(Note: The form may be converted in local and simple Child friendly language)*

### **Form-B**

*Preliminary Assessment Report*

<b>Parameters</b>	<b>Comment</b>
1. Age of the victim	
2. Relationship of child to the offender	
3. Type of abuse and gravity of the offence	
4. Available details and severity of mental and physical harm/injury suffered by the child	
5. Whether the child is disabled (physical, mental or intellectual)	

6.	Details regarding economic status of victim's parents, total number of child's family members, occupation of child's parents and monthly family income.	
7.	Whether the victim has undergone or is undergoing any medical treatment due to incident of the present case or needs medical treatment on account of offence.	
8.	Whether there has been loss of educational opportunity as a consequence of the offence, including absence from school due to mental trauma, bodily injury, medical treatment, investigation and trial or other reason?	
9.	Whether the abuse was a single isolated incident or whether the abuse took place over a period of time?	
10.	Whether the parents of victim are undergoing any treatment or have any health issues?	
11.	Aadhar No. of the child, if available.	

Date:

Station House Officer

**Ministry of Women and Child Development**

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**NOTES**