

# **The Protection of Children from Sexual Offences Act, 2012 and the Protection of Children from Sexual Offences (Amendment) Act, 2019: A Critical Analysis in Indian perspective**

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“Childhood should be carefree, playing in the Sun; not living a nightmare in the darkness of the soul.”

— Dave Polzer (American Author)

## **Introduction**

To deal with child sexual abuse cases, the Government has brought in special law, namely, The Protection of Children from Sexual Offences (POCSO) Act, 2012. The Act has come into force with effect from 14<sup>th</sup> November, 2012 along with the Rules framed thereunder.

The POCSO Act, 2012 is a comprehensive law of provide for the protection of children from the offenses of sexual assault, sexual harassment and pornography, While safe guarding the interests of the child at every stage of the judicial process by incorporating child-friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts.

The said Act defines a child as any person below eighteen years of age, and defines different forms of sexual abuse, including penetrative and non-penetrative assault, as well as sexual harassment and pornography and deems a sexual assault to be “aggravated” under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority vis-à-vis the child, like a family member, police officer, teacher or doctor. People who traffic children for sexual purpose are also punishable under the provisions relating to abetment in the said Act.

In keeping with the best international Child Protection standards, the said Act also provides for mandatory reporting of sexual offences, This casts of legal duty upon a person who has knowledge that a child has been sexually abused to report the offence; if he fails to do so, he may be punished with six months imprisonment and/or a fine. The said Act also casts the police

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in the role of child protectors during the investigative process. Thus, the police personnel receiving a report of sexual abuse of a child are given the responsibility of making urgent arrangements for the care and protection of the child, such as obtaining emergency medical treatment for the child and placing the child in a shelter home, should the need arise. The said Act make provisions for the medical examination of the child in a manner designed as little distress as possible. The examination is to be carried out in the presence of the parent or other person whom the child trusts, and in case of a female child, by a female doctor.

The said Act provides for Special Courts that conduct the trial in- camera and without revealing the identity of the child, in a child-friendly manner. Hence, the child may have a parent or other trusted person present at the time of testifying and can call for assistance from an interpreter, special educator or other professional while giving evidence; further, the child is not to be called repeatedly to testify in Court any may testify through video link rather than in a Court Room. Above all the said Act stipulates that the case of child sexual abuse must be disposed of within one year from the date of the offence if reported. It also provides for the Special Court to determine the amount of compensation to be paid to a children who has been sexually abused, so that this money can then be used for the child's medical treatment and rehabilitation. The said Act recognizes almost every known form of sexual abuse against children as punishment offences, and makes the different agencies of the State, such as the police, judiciary and child protection machinery collaborators in securing justice for a sexually abused child. Further, by providing for a child-friendly judicial process, the said Act encourages children who have been victims of sexual abuse to report the offence, and seek redress for their suffering as well as to obtain assistance in overcoming their trauma. In time, the said Act will provide a means not only to report and punish those who abuse and exploit the innocence of children, but also prove and effective deterrent in curbing the occurrence of these offences.

The said Act is to be implemented with the active participation of the State Governments. Under Section 39 of the said Act, the State Government is required to frame guidelines for the use of persons including non-governmental organisations, professionals and experts or persons trained in and having knowledge of psychology, social work, physical health, mental health and child development to assist the child at the trial and pre-trial stage. The following guidelines are Model guidelines formulated by the Central Government, based on which the State Governments can then frame more extensive and specific guidelines as per their specific needs.

### **Multi-Sectional Approach**

Children who have been sexually abused are not only traumatised as a result of their experience, but are also more vulnerable to further repeated abuse and at risk of secondary victimisation at the hands of the justice delivery process. A common example is the handling of cases of child victims by unspecialized police, prosecutors and judges who are not trained in justice for children, and their families. There is the lack of clear guidelines and communication with victim children and their families. The lack of clear guidelines and procedures on how to deal with child victims and their families in a child-sensitive manner during the Court process affects the quality of trial and evidence and trial process; the child is subjected in such cases to repeated probing and questioning made to relive the traumatic incident again and again, and thereby suffer in the retelling. Another instance is that of child victims not receiving proper medical support and counseling, causing physical and mental distress to the child and his/her family and hampering the healing process for the child. In addition to this, family and child victims are unable to benefit from legal aid as the appropriate agencies are not involved at the right stage in the procedure. Child victims do not receive timely advice and assistance so as to be free from a fear of family breakdowns and social isolation if the offender is a relative and/or the breadwinner of the family. There is also no system of supervision for checking the welfare and well-being of child victims during and after the Court process, particularly when the abuser is the parent or guardian of the child. There is thus a need for prompt and systematic multi - sectoral intervention that will be conducive to the justice delivery process, minimise the risks of health problems, enhance the recovery of the child and prevent further trauma. This can be achieved through action that address the needs of the child effectively, not only to protect him from further abuse and help him deal with his/her trauma, but also to ensure that he is not re-victimised in the course of the justice delivery process. The responsibility of supporting children who have been sexually used should be embraced by the whole community, but it is the professionals that work in this field who play an important role in enabling the healing process. These guidelines are therefore aimed at various professionals' involvement in providing service to the child and other affected persons including his/her family. Their objective is to foster better response mechanisms involving coordination amongst these professionals, so as to result in the evolution of a multi-sectoral, multi-disciplinary approach that will go to long way in achieving the objectives of the POCSO Act, 2012.

### **General Principles for Use of Professional and Experts Assisting the Child at Pre-trial and Trial Stages:**

The fundamental principles to be followed in the determination of a case involving a sexual offence against a child have been laid down in various international instruments and in the preamble to the POCSO Act, 2012 itself. The State Governments, the Child Welfare Committee, the Police, the Special Courts, all other Government functionaries as well as Non-Government Organisations, and all professionals and experts assisting the child at the trial and pre-trial stages are bound to abide by these principles.

These principles are:

- a) **Right to life and survival** : Every child has the right to life and survival and to be shielded from any form of hardship, abuse or neglect, including physical, psychological, mental and emotional abuse and neglect, and to a chance for harmonious development and a standard or living adequate for physical, spiritual, moral and social growth. In the case of child who has been traumatized, every step should be taken to enable the child to enjoy healthy development.
- b) **The best interests of the child** : Every child has the right to have his/her best interests given primary consideration. This includes the right to protection and to a chance for harmonious development. Protecting the child's best interests means not only protecting the child from secondary victimisation and hardship while involving in the justice process as victim or witness, but also enhancing the child's capacity to contribute to that process. Secondary victimisation refers to the victimisation that occurs not as a direct result of the criminal act but through the response of in situations and individuals to the victim.
- c) **The Right to be treated with dignity and compassion** : Child victims should be treated in a caring and sensitive manner throughout the justice process, taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental integrity. Interference in the child's private life should be limited to the minimum need and information shared on a need to know basis. In order to avoid further hardship to the child, interviews, examinations and other forms of investigation should be conducted by trained, professionals who proceed in a sensitive, respectful and thorough manner in a child-friendly environment. Medical examination should be ordered only where it is necessary for the investigation of the case and is in the best interest of the

child and it should be minimally intrusive.

- d) **The right to be protected from discrimination :** The justice process and Support services available to child victims and witnesses and their families should be sensitive to the child's age, wishes, understanding, gender, sexual orientation, ethnic, cultural, gender, caste, religions and social background as well as to the special needs of the child including health, abilities and capacities. Professionals should be trained and educated about such differences. Age should not be a barrier to child's right to participate fully in the justice process. Every child should be treated as a capable witness according to his/her age level of maturity.
- e) **The right to special preventive measures :** Children may already face twice as much risk of repeated victimisation as adults because they often are or are perceived by a potential offender as being vulnerable, unsure of how to defend themselves or unable to properly assert themselves and take a strong position against an adult. A preventive measure that could be used to protect children is to demand references and a criminal background assessment before hiring personnel likely to work with children, such as school teachers.
- f) **The right to be informed:** There are two aspects of child victims and witnesses' right to be informed, The first aspect is the more general one and consists of informing child victims and witnesses about the assistance they are entitled to the way legal proceedings are organized and the role they can play in those proceedings if they decided to do so. The second aspect is more specific and relates to information on the particular case in which the child is involved. It implies being informed about the progress of the case, about the scheduling of the proceedings, about what is expected of the child, about the decision rendered, about the status of the offender and so forth.
- g) **The right to be heard and to express views and concerns:** Every child has the right to be heard in respect of the matters affecting him/her. The child has a right to participate at all levels, being informed, expressing an informed view, having that view taken into account and being the main or joint decision maker. It is important to show respect from element that a child finds important in his/her story, but which are not necessarily relevant as evidence.
- h) **The right to effective assistance:** The child must receive the required assistance to address his/her needs and enable him/her participate effectively at all stages of the justice process. This may include assistance and support services such as financial, legal, counseling, health, social and educational services, physical and psychological recovery services and

other services necessary for the child's healing, as well as for justice and reintegration.

- i) **The right to privacy:** The child's privacy and identity must be protected at all stages of the pre-trial and trial process. The release of information about a child victim or witness in particular, in the media may endanger the child's safety, cause the child intense shame and humiliation, discourage him from telling what happened and cause him severe emotional harm. Release of information about a child victim or witness may put a strain on the relationships of the child with family, peers and community especially in cases of sexual abuse. There are two essential ways of protecting the privacy of child victims and witnesses. Firstly by restricting the disclosure of information on child victims and witnesses and secondly by restricting the attendance of the general public or non-essential persons in courtrooms.
- j) **The right to be protected from hardship during the justice process:** Throughout the justice process, child victims are exposed to hardship, also referred to as secondary victimization. This can occur while reporting the crime and recounting what has happened, while awaiting trial and while testifying in court. The judicial process is a very stressful one for the child; as far as possible, any stress the child may have as a result of the process should be minimized.
- k) **The right to safety :** Where the safety of a child victim may be at risk, appropriate measure should be taken to require the reporting of those safety risks to appropriate authorities and to protect the child from such risk before, during and after the justice process. Professionals should be trained in recognizing and preventing intimidation, threats and harm to child victims and witnesses. Where child victims and witnesses may be the subject of intimidation, threats or harm, appropriate condition should be put in place to ensure the safety of the child.
- l) **The right to compensation :** The child victim may be awarded compensation for his/her relief and rehabilitation. This compensation may be awarded at an interim stage, during the pendency of trial, as well as at the conclusion of the trial. Victims may be repaid from material losses and damages incurred, receive medical and/or psychological support obtain reparation for ongoing suffering.

**Guidelines On Interviewing a Child :** There are two distinct aspects to the gathering of information from the child (or attending adults) in cases of alleged child sexual abuse: (a) the medical history and (b) the interview. The interview stage of the assessment goes beyond the

medical history in that it seeks to obtain information directly related to the alleged sexual abuse, for example details of the assault, including the time and place, frequency, description of clothing worn and so on. Interviewing of children is a specialized skill and if possible, it should be conducted by a trained professional.

In the context of the POCSO Act, 2012 interviews may need to be conducted by a variety of professionals, including police or investigative agencies. These are forensic rather than therapeutic Interviews, with the objective being to obtain a statement from the child in a manner that is developmentally- sensitive, unbiased, and truth-seeking, that will support accurate and fair decision- making in the criminal justice and child welfare systems. Information obtained from an investigative or forensic interview may be useful for making treatment decisions, but the interview is not part of a treatment process.

The following are some basic guidelines that should be kept in mind while conducting the forensic interview to ensure that the interview process does not become traumatic for the child. Regardless of who is responsible for the medical history and interview, the two aspects of information gathering should be conducted in a coordinated manner so that the child is not further traumatized by unnecessary repetition of questioning and information is not lost or distorted.

**Reasons For Interviewing the Child:**

- i) To get a picture of the child's physical and emotional state ;
- ii) To establish whether the child needs urgent medical attention.
- iii) To hear the child's version of the circumstances leading to the concern;
- iv) To get a picture of the child's relationship with their parents or family;
- v) To support the child to participate in decisions affecting them according to their age and maturity;
- vi) To find out who the child trusts;
- vii) To inform the child of any further steps to be taken in the enquiry;
- viii) To assure the child that he/ she is now safe and would be cared for, looked after, protected;
- ix) To identify areas that would/ might need counseling/ psychiatric intervention.

**The interviewer should clarify the below point:**

The interviewer should clarify the following:

- a) Descriptions of events.
- b) The identity of the perpetrator (s).
- c) Whether allegations involve a single event or multiple events.
- d) The presence and identities of other witness.
- e) Whether similar events have happened to other children.
- f) Whether the child told anyone about the event (s).
- g) The time frame and location/ venue.
- h) Alternative explanations for the allegations.

However, interviewers should avoid probing for unnecessary details.

### **Children With Special Needs**

1. It is important to understand that children may have special physical or mental needs or a combinations of both.
2. Be aware that the risk of criminal victimization (including sexual assault) for children with special needs appears to be much higher than for those without such needs. Children with special needs are often victimized repeatedly by the same offender. Caretakers, family members or friends may be responsible for the sexual abuse.
3. Respect the child's wishes to have or not have caretakers, family members or friends present during the interview. Although these persons may be accustomed to speaking on behalf of the child, it is critical that they not influence the statements of the child.
4. Ideally those providing assistance should not be associated with child. Thus as far as possible, avoid using a relative or friend of the child an interpreter.
5. Speak directly to a child with special needs, even when interpreters, intermediaries or guardians are present. Asses the child's level of ability and need for assistance during the interview process.
6. Assure the child that it is not his/ her fault that he was sexual assaulted. If needed, encourage discussion in a counseling advocacy setting if he/ she is concerned about their safety in the future.

### **Best Practice Principles for the use of Interpreters:**

Interprets may be needed during both the investigation and trial of cases of child sexual



abuse. They may be needed for witnesses and for practice who speak a language different from that of the Court in the state or for witnesses and parties who speak a language different from that of the court in the state, or for witnesses and practice who have speech or hearing impairments or other communication difficulties.

The Police or SJPU (Special Juvenile Police Unit) may contract the District Child Protection Unit (DCPU), whose responsibility is under the POCSO Act and Rules, 2012 to provide interpreters, translators etc. for the child; however in these cases, it must be ensured that there is no conflict of interest. For example, Where there is an allegation of child sexual abuse against the child's father, the mother should not be asked to interpret.

- a. Promote access to interpreter services in order to facilitate the best possible communication with the child, to ensure everything is fully explained and that there is no room for misinterpretation.
- b. Services must be planned ahead where possible to meet the child's needs.
- c. Interpreter should declare that there is no prior acquaintance or relationship with the victim/witness.
- d. Maintain high quality/timely/precise records along with supporting documents: as far as possible, this should be a verbatim record of the communication.
- e. Interpreters should be subject to references and background checks and must sign a written agreement regarding confidentiality.

**Emergency Medical Care:**

The child may be brought to the hospital for emergency medical care as soon as the police receive a report of the commission of an offence against the child. In such cases, the rules under the POCSO Act, 2012 prescribe that the child is to be taken to the nearest hospital or medical care facility, this be a Government facility or a private one.

This is reiterated by Section 23 of the Criminal Law Amendment Act which inserts Section 357C into the Code of Criminal Procedure, 1973. According to this Section all hospitals are required to provide first-aid or medical treatment, free of cost, to the victim of a sexual offence.

**Medical Examination:**

Medical examination is to be conducted as per the provisions of Section 27 of the POCSO Act, 2012 and Section 164 of the Cr. P.C., 1973 which state.

- a. Where, during the stage when an offence of committing rape is under investigation, it is proposed that the woman with whom rape has been committed or attempted and examined by a medical expert, such examination shall be conducted by registered medical practitioner employed in a hospital run by the Government or local authority and in the absence of a such practitioner, by the other registered medical practitioner, with the consent of the woman or a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving information relating to the commission of such offence.
- b. The registered medical practitioner, to whom such woman is sent shall, without delay, examine her and prepare a report of her examination giving the following particular namely :
  - i. The name and address of the woman and of the person by whom she was brought.
  - ii. The age of the woman.
  - iii. The description of material taken from the person of the woman for DNA profiling.
  - iv. Marks of injury, if any, on the person of the woman.
  - v. General mental condition of the woman and
  - vi. Other material particulars in reasonable detail
- c. The report shall state precisely the reason for each conclusion arrived at.

**Compensation For Medical Expenses:**

Section 33(8) provides:

“In appropriate case, the Special Court may, in attention to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him for immediate rehabilitation of such child.”

**Role Of Medical Professionals In Context of the POCSO Act, 2012:**

Doctors have a dule role to play in terms of the POCSO Act, 2012. They are in a position to detect that a child has been or is being abused (for example if they come across a child with on STD),they are also often this first point of reference in confirming that a child has indeed been the victim of sexual abuse.

The role of the doctor may include :

- i. Having an in-depth understanding of sexual victimization
- ii. Obtaining a medical history of the child's experience in a facilitating non-judgmental and empathetic manner
- iii. Meticulously documenting historical details
- iv. Conducting a detailed examination to diagnose acute and chronic residual trauma and STD's, and to collect forensic evidence
- v. Considering a differential diagnosis of behavioural complaints and physical signs that may mimic sexual abuse
- vi. Obtaining photographic / video documentation of all diagnostic findings, that appear to be residual to abuse
- vii. Testifying in Court when required

There are at least three different circumstances when there is no direct allegation but when the doctor may consider the diagnosis of sexual abuse and have to ask questions of the parent and child. These include but are not limited to:

- i. When a child has a complaint that might be directly related to the possibility of sexual abuse, such as a girl with a vaginal discharge;
- ii. When a child has complaint that is not directly related to the possibility of sexual abuse, such as abdominal pain or encopresis (soiling);
- iii. When a child has no complaint but an incident finding, such as an enlarged hymeneal ring, makes the order suspicious.

**Medical or Health History:**

The purpose of this is to find out why the child is being brought under health care at the present time and to obtain information about the child's physical or emotional symptoms. It also provides the basis for development of a medical diagnostic impression before a physical examination is conducted. The medical history may involve information about the alleged abuse, but only in so far as it relates to health problems or symptoms that have resulted there from, such as bleeding at the time of the assault or constipation or insomnia since that time.

**Following information are essential to the Medical History:**

- i. Last occurrence of alleged abuse (younger children may be unable to answer this precisely).  
When do you say this happened?
- ii. First time to the alleged abuse occurred. When is the first time you remember this happening?
- iii. Threats that were made.
- iv. Vaginal or anal pain, bleeding and/or complained discharge following the event. Do you have any pain in your or in the toilet? (Use whatever term is culturally acceptable or commonly used for this parts of the anatomy.)
- v. Any difficulty or pain with voiding or defecating. Does it hurt when you go to the bathroom? (Indication to examine both genital and anal regions in all cases.)
- vi. Any urinary or faecal incontinence.
- vii. Whether or not the child noticed any injuries or complained of pain.
- viii. In case of children, illustrative books, body charts or doll can be used if available, to elicit the history of the assault. When it is difficult to elicit history from a child, please call an expert.

**The Following points are particularly note worthy when performing the Head-To-Toe Examination Of Children:**

- i. Record the height and weight of the child (neglect may co-exist with sexual abuse). Note any bruises, burns, scars or rashes on the skin. Carefully describe the size, location, pattern and colour of any such injuries.
- ii. Check for any signs that force and/or restraints were used, particularly around the neck and in the extremities.
- iii. Record the child's sexual development stage and check the breast for signs of injury.
- iv. If the survivor is menstruating at the time of examination. Then a second examination is required on a later date in order to record the injuries clearly.
- v. Some amount of evidences is lost because of menstruation. Hence it is important to record whether the survivor was menstruating at the time of assault / examination.
- vi. The same applies to bathing, douching, defecating, urinating and use of spermicide after the assault.

### **Basic Principles of Counseling Young Children:**

Sexually abused children are traumatized and vulnerable. They may show certain identifiable behavioural signs of abuse, but often, these are not immediately obvious and will reveal themselves only over a period of time. As a counsellor one must be aware of the signs of sexual abuse. Children often find it very difficult to disclose sexual abuse, due to the following reasons:

#### **Why a child may not Disclose Abuse**

Reasons include but are not limited to:

- i. He / She is embarrassed.
- ii. He / She does not know if what is happening to them is normal or not.
- iii. He / She does not have the words to speak out.
- iv. The abuser is a known person and the child does not want to get them in trouble.
- v. The abuser told the child to keep it a secret.
- vi. He / She thinks you already know

Being aware of these signs would alert the counselor to the possibility of sexual abuse.

#### **Role of Non-Governmental Organization:**

Civil society organizations (independent institutions, non- governmental organizations (NGOs) and independent experts ) have positive role to play in the effective implementation of the POCSO Act, 2012 not only in raising public awareness on children's right and in disseminating a new culture of child-adult relationships, but also in preventing and responding to violence against children by providing active support to reported cases through individual and group counseling and services for rehabilitation of abused children.

#### **Relevant Legal Provisions:**

The POCSO Act, 2012 and POCSO Rules, 2012 envisage the involvement of NGOs(Non – Government Organisation) as support persons for the child, as well as under various other provisions.

- i. Making report to police under section 19(1) of POCSO Act, 2012 – any person, including a member of an NGO may make a report under this section. An NGO that has knowledge of the sexual abuse of a child is also bound by the principle of mandatory reporting under Section 21(1) of POCSO Act, 2012.
- ii. An NGO worker may be appointed as a support person by the CWC(Child Welfare

Committee) to assist the child through the pre-trial and trial procedure (Sub rule 7 of rule 4 of POCSO Rules, 2012). Also the parents, guardian or other person in whom the child has trust and confidence can approach an NGO to act as a support person (Proviso to Sub rule 7 of rule 4 of POCSO Rules, 2012).

- iii. The NGO assisting a child can, under Rule 7 of POCSO Rules, 2012 file an application for interim and final compensation with the Special Court, as well as with the Legal Services Authority.

It has been noted that victims of child sex abuse, and often their families, prefer to approach and seek advice from an NGO even before they report the matter to the police. Thus, in such situations, the NGO becomes a first point of contact for the child, providing counselling, legal advice and assistance to report matter.

Where an NGO worker is appointed as the designated support person under rule 4 of POCSO Rules, 2012 such person should refer to the guidelines for support persons.

In addition to these support functions, an NGO can also play a vital role, in identifying child sexual abuse concerns. A number of NGO work with children closely and aware of the particular problems and behavior of each child. The NGO worker is in a position to keep a watch on these children and to look out for children who are at risk of sexual abuse, as well as for signs of sexual abuse even before the child himself may disclose it. In this way, an NGO worker can contribute to the detection of sexual abuse and to initiation of remedial measures, including judicial process, in respect of the sexual abuse.

**Free Legal Aid:**

Under Section 12 (c) of the Legal Services Authorities Act, 1987, every child who has to file or defend a case shall be entitled to legal services under this Act. The POCSO Act, 2012 confirms the right to free legal aid under Section 40, providing that the child or his/her family shall be entitled to a legal counsel of their choice and that where they are unable to afford such counsel, they shall be entitled to receive one from the Legal Services Authority.

In every District, a District Legal Services Authority has been constituted to implement the Legal Services Programmes in the District. The District Legal Services Authority is usually situated in the District Courts Complex in every district and chaired by the District Judge of the respective district.

### **Role of Lawyer for the Child:**

The Legal Aid Services lawyer, or, as the case may be the private lawyers appointed by the child and/or his/her family plays a critical role. Also it is the Special Public Prosecutor appointed under the POCSO Act, 2012 who will essentially be in charge of the trial in the child's interest, keeping it protected. Thus, his/her role extends to representing the child, helping uncover the nature and extent of abuse, identifying responsible parties and securing damages to compensate the victim and facilitate the healing process.

In addition to this, the legal aid or private lawyer should also be able to build a good rapport with the Special Public Prosecutor, as this would ensure that all concerns in respect of the child are raised before the Court in the course of the trial.

- i. The lawyer must provide independent representation and advice to the child.
- ii. The lawyer has a duty to put before the Court the views of the child, but should not require the child to express a view if he does not want to do so. However, the lawyer shall not be required to put before the court any views expressed to him in confidence.
- iii. Adequate representation and the right to be represented independently from the parents should be guaranteed, especially in proceedings where the parents, members of the family or caregivers are the alleged offenders.
- iv. Where a conflict arises between child's views and information relevant to the welfare and best interests of the child, and the lawyer should:
  - a. discuss the issues and the lawyer's obligations with the child;
  - b. attempt to resolve the conflict with the child and
  - c. advise the Court of the lawyer's position and, in the case where the lawyer is unable to resolve the conflict and as a matter of professional judgment can advocate only the child's views, invite the Court to appoint another lawyer.

### **Child Friendly Court Rooms and Waiting Areas:**

Many children find the courtroom experience intimidating and this intimidation can create stress in child victims. Under these circumstances, a child can be a poor witness, and the process of navigating the Criminal Justice System can compound a child's trauma.

Some of the ways to ensure the child's comfort is that screens are permanently in place in the Special Courts for the witness stands for the children. Additionally, the child –friendly

courtrooms can be equipped with closed circuit television capabilities, which allow the child to testify in a separate room from the accused. Special waiting rooms should be provided in the Court premises to allow the families to wait in privacy throughout the Court proceedings.

**Failure to report child abuse:**

The POCSO Act, 2012 provides under Section 21(1) that any person who fails to report the commission of an offence or who fails to record such offence shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

**Reporting False Information:**

The POCSO Act, 2012 makes it an offence to report false information, when such report is made other than in good faith. It states that any person, who makes false complaint or provide false information against any person in respect of an offence committed under Section 3, 5, 7 and Section 9, solely with the intention to humiliate, export or threaten or defame him, shall be punished with both. Where such information is provided against child, the punishment may be extended to one year.

**Amendment To The Protection Of Children From Sexual Offences Act,2012:**

The Ministry of Women and Child Development notified the Protection of Children from Sexual Offences(Amendment) Act, 2019. The Amendment Act modifies the Protection of of Children from Sexual Offences Act,2012(POCSO Act), with a view to enhance or provide for certain offences so as to deter the perpetrators and ensuresafety and security for children- defined as any child below 18 years of age.

Below is a summary of some of the key changes:

1. Penetrative Sexual Assault:

Persons convicted of penetrative sexual assault would be subject to enhanced imprisonment of not less than 10years, which may extend to life imprisonment, and fine which should cover medical expenses and rehabilitation of victim.

\*If the age of the victim is below 16 years of age, imprisonment of not less than 20 years would be applicable.

2. Aggravated Penetrative Sexual Assault:

\*The definition of “aggravated penetrative sexual assault” will now include sexual assault which causes death of a child, or which occurs during a natural calamity.



\*Persons convicted of aggravated penetrative sexual assault would be subject to enhanced punishment of not less than 20 years, which may extend to life imprisonment, with fine to cover medical expenses or death penalty.

3. Using a child for pornographic purposes:

Is now punishable with imprisonment of not less than 5 years, with fine.

4. Storage of pornographic material :

Is now punishable with enhanced imprisonment ranging between three to five years, or a fine, or both. In addition to storage of child pornographic material, failure to delete or destroy or report child pornographic materials, or transmitting or distributing the same will also be punishable, except when done for use as evidence.

5. Higher Punishment to prevail:

If an offence is punishable under the POSCO Act, The Indian Penal Code, 1860 or the Information Technology Act, 2000, the higher prescribed penalty will prevail.

**Conclusion:**

POCSO Act only allows justice for children who are victims of sexual offence but also takes into account the best interests and well-being of the child. POCSO Act provides for child-friendly measures as for instance, it clearly mentions that the child need not be taken to the police station to report a case of sexual offence. Special Courts which are established for the purpose for providing speed trial. Special Court can take cognizance of any offence under this act upon receiving a complaint or on the police report itself. A child-friendly atmosphere shall be created by the Court, i.e. it can allow the family members or guardian to be present in Court.

In addition to that the Government implements a scheme for setting up of 1023 Fast Track Special Courts (FTSC's) for expeditious trial and disposal of Cases related to rape and POCSO Act. As on 26.08.2020 there are 597 FTSC's functional out of which 321 are exclusive POCSO Courts.

This is revealed by the National Crime Records Bureau's (NRCB) latest report published on 9<sup>th</sup> January, 2020. Crimes under protection of children from sexual offences (POCSO) Act stands at the second single largest category of crimes committed against children with 39,827 cases registered in one year.

However the number of cases of child sexual abuse under the POCSO Act has increased.

Proper check and balance should be maintained for enforcement of POCSO Act and also have a check on this mechanism to reduce the cases of child sex abuse, pornography, child harassment. Judiciary has also a role to play as their check and balance is mandatory for enforcement of right of child. Judiciary has with different pronouncement secured the right of children who have suffered sexual abuse and interprets provisions enumerated in POCSO Act. The children are most vulnerable group in the section of society. This act is gender biased from interpretation as it focuses more on girl child rather than boy child. As sexual abuse has been increased drastically. The mechanism under the act should be simpler so that child and their family do not fear to report the case.

Social awareness will play a major role which will encourage the child and family to report the cases of sexual abuse.

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