

## **Protection of Children from Sexual Offences Act, 2012 – An Overview**

**By:**

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Almost one fourth of India's population is in the age group of 0-14 years and our country has one of the world's largest population of children estimated at 444 million children. The Constitution of India under Directive Principles of State Policy vide Article 39 (f) mandates states to formulate policies to ensure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. Our Constitution also provides protection for children from being abused or forced by economic necessity to enter occupations unsuited to their age or strength. Despite the safeguards provided by the Constitution, children remain a vulnerable populace in our country and are victims of several crimes committed against them. Crimes against children, especially the crimes of sexual nature have adverse impact on the victim child and leaves them with a lifelong trauma.

### **BACKGROUND OF PENAL LAWS IN INDIA DEALING WITH CHILD**

#### **SEXUAL ABUSE:**

With each passing year, crimes against children are on a steep rise and until 2012, we did not have a law dedicated to address crimes against children, especially ones of sexual nature. Prior to 2012, Goa Children's Act, 2003 and Rules, 2004 and sections 354, 375, 377 of Indian Penal Code, 1860 were the only provisions dealing with any offences committed against children. Even though United Nations had adopted the Convention on the Rights of Child in 1989, India did not have any specific law addressing the offences against children until the enactment of Protection of Children from Sexual Offences Act, 2012 (hereinafter POCSO Act). The provisions under Goa Children's Act, 2003 and Rules, 2004 and sections 354, 375, 377 of Indian Penal Code, 1860 did not protect male child and 'modesty' and 'unnatural offence' were not

defined under Indian Penal Code which made it difficult to apply these laws in offences committed against children. To curb the growing cases of child sexual abuse in our country, POCSO Act was enacted in the year 2012 and it came into force on 14-11-2012.

### **THE EXTENT OF CHILD SEXUAL ABUSE IN INDIA:**

“The National Crime Records Bureau (2016) findings made it abundantly evident that child rape was involved in 36,022 (34.4%) of the cases recorded under the Protection of Children from Sexual Offences Act of 2012. The highest percentages of child abuse instances (15.3%, 13.6%, and 13.1%, respectively) were reported in Uttar Pradesh, Maharashtra, and Madhya Pradesh. According to a recent study on the frequency of sexual abuse among adolescents in Kerala, 36% of males and 35% of girls had suffered sexual abuse at some point in their lives. Shocking findings from a comparable survey undertaken by the Government of India on 17,220 children and adolescents to determine the prevalence of sexual abuse indicated that every second child in the country was sexually molested; among them, 52.94% were boys and 47.06% were girls. Assam reported the most cases of sexual abuse (57.27%), followed by Delhi (41%), Andhra Pradesh (33.87%), and Bihar (33.27%).<sup>1</sup>

### **Protection of Children from Sexual Offences Act, 2012:**

POCSO Act is a gender neutral legislation providing for the welfare and safety of children irrespective of their gender. As per section 2(d) of POCSO Act, a child is any person who is below eighteen years of age. A victim under the Act can be a male or female child. The Act does not create any distinction between the victim or the perpetrators on the basis of their gender. There are instances when women are convicted under this Act for child sexual abuse.

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<sup>1</sup> <https://www.jkpi.org/pocso-act-features-challenges-controversies-and-recommendations/>

## **NATURE OF OFFENCES:**

The POCSO Act is a comprehensive legislation containing 9 chapters dealing with the offences, punishment and procedure. There are three broad categories of sexual offences under POCSO Act:

1. Sexual Assault - (i) Penetrative sexual assault (sections 3 and 4) ,  
(ii) Aggravated Penetrative sexual assault (sections 5 and 6)
2. Sexual Harassment (sections 11 and 12)
3. Using child for pornography (section 13)

## **SEXUAL ASSAULT:**

Section 7 of POCSO Act defines sexual assault as, *“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”*. Touching the private parts (genitals and breast) of a child or making the child touch the private parts of another person with sexual intent without penetration is sexual assault. Punishment for sexual assault as per Section 8 is imprisonment for a term not less 3 years but may extend upto 5 years and fine.

## **AGGRAVATED SEXUAL ASSAULT:**

Sexual assaults on a child by a police officer within the vicinity of a police station, by armed forces within the limits of their area, by a public servant, by the staff of jails, hospitals or educational institutions are considered aggravated sexual assaults. As per section 10, punishment for aggravated sexual assault is imprisonment for a period not less than 5 years but may extend upto 7 years and fine.

## **PENETRATIVE SEXUAL ASSAULT:**

Section 3 of POCSO Act deals with penetrative sexual assault. As per section 3, *A person is said to commit “penetrative sexual assault” if—*

*(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or*

*makes the child to do so with him or any other person; or*

*(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina,*

*the urethra or anus of the child or makes the child to do so with him or any other person; or*

*(c) he manipulates any part of the body of the child so as to cause penetration into the vagina,*

*urethra, anus or any part of body of the child or makes the child to do so with him or any other*

*person; or*

*(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so*

*to such person or any other person.*

As per Section 4, punishment for penetrative sexual assault is imprisonment for a period not less than 10 years but may extend to life and fine; and in cases of penetrative sexual assault on a child below the age of 16 years, punishment is imprisonment for a period not less than 20 and may extend upto imprisonment for life which means the remainder of natural life of that person and fine. Fine imposed under this section must be reasonable and it must be paid to the victim to meet media expenses and rehabilitation.

### **AGGRAVATED PENETRATIVE SEXUAL ASSAULT:**

Section 5 of POCSO Act lays down the cases in which penetrative sexual assault amounts to aggravated penetrative sexual assault. Penetrative sexual assaults on a child by a police officer within the vicinity of a police station, by armed forces within the limits of their area, by a public servant, by the staff of jails, hospitals or educational institutions are considered aggravated penetrative sexual assault and are punishable under Section 6 of the POCSO Act. As per section 6, punishment for aggravated penetrative sexual assault is rigorous imprisonment for a period not less than 20 years which may extend to life, which means the remainder of that person's natural life and fine or death. 2019 amendment to section 6 has made the punishment for this offence more stringent.

## **SEXUAL HARASSMENT:**

Section 11 of POCSO Act defines sexual harassment. It includes six cases which constitute sexual harassment of a child.<sup>2</sup>

1. First, if anyone utters any word or makes any sound or exhibits any object with sexual intent to a child.
2. Second, if anyone makes a child exhibit his body so that it is seen by the offender or any other person.
3. Third, if any person shows any child any form or media for pornographic purposes.
4. Fourth, if anyone constantly watches or stalks a child directly or online.
5. Fifth, if anyone threatens to use a real or fabricated depiction of any part of the body of the child or the involvement of the child in a sexual act through electronic, film or digital.
6. Sixth, if anyone entices a child for pornographic purposes.

As per section 12 of the POCSO Act, punishment for sexual harassment of a child is imprisonment for a period which may extend up to 3 years and fine.

## **USING CHILD FOR PORNOGRAPHY:**

Section 13 of POCSO Act states that anyone who uses a child for pornographic purposes by either representing the sexual organs of the child or using a child in real or simulated sexual acts or representing a child indecently or obscenely in programmes or advertisements on television or on internet, commits the offence under this section and is liable in accordance with Sections 14 and 15 of the POCSO Act.<sup>3</sup> Punishment under section 14 is imprisonment for a period not less than 5 years and fine and in case of second or subsequent conviction, period of imprisonment shall not be less than 7 years and fine. Punishment under section 15 for storing or possessing of pornographic material involving child is fine not less than five thousand rupees and in case of second or subsequent offence, fine shall not be less than ten thousand rupees. Punishment for storing or possessing 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 is imprisonment for a period which may extend up to 3 years or with fine or with both. Punishment for storing or possessing pornographic material in any form involving a child for commercial purpose shall be punished on the first conviction with

<sup>2</sup> <https://blog.ipleaders.in/pocso-act-everything-you-need-to-know/>

<sup>3</sup> <https://blog.ipleaders.in/pocso-act-everything-you-need-to-know/>

imprisonment of either description which shall not be less than 3 years which may extend to 5 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 5 years which may extend to 7 years and shall also be liable to fine.

### **ABETMENT OF CHILD SEXUAL ABUSE:**

“Section 16 of POCSO Act defines the abetment of the offence. The following acts constitute abetment of offence under the POCSO Act:

- Instigating any person to commit that offence;
- Engaging in any conspiracy with one or more persons to commit any offence when any illegal act or omission takes place in consequence of that conspiracy;
- Aiding to commit that offence intentionally.

The punishment for the abetment of offence is specified under Section 17 of the POCSO Act, 2012 according to which a person who abets the commission of an offence and the offence is executed is to be punished with the punishment that has been provided for that offence under the POCSO Act.”<sup>4</sup>

### **ATTEMPT TO CHILD SEXUAL ABUSE:**

Section 18 enunciates that attempt to commit any offence under the POCSO Act, 2012 is also an offence inviting either of the two following punishments:<sup>5</sup>

- Imprisonment provided for that offence for a term extending upto one-half of the imprisonment for life, with or without fine;
- Imprisonment provided for that offence for a term extending upto one-half of the longest term of imprisonment with or without fine.

### **TRIAL OF CASES UNDER POCSO ACT:**

Chapter VII of the POCSO Act provides for establishment of special courts in each district for trial of offences under this Act. Section 28 provides for designation of a sessions court as a special court in each district for speedy trial of offences under this Act by the State Government in consultation with the Chief Justice of the High Court.

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4 <https://blog.iplayers.in/pocso-act-everything-you-need-to-know/>

5 <https://blog.iplayers.in/pocso-act-everything-you-need-to-know/>

This section also confers jurisdiction on special courts 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.

### **TIMELINES UNDER POCSO ACT:**

Section 35 of POCSO Act lays down the following timelines:

1. Recording evidence of the child: 30 days from the date of taking cognizance of the offence,
2. Completion of trial: 1 year from the date of taking cognizance of the offence.

“In the case of *Shubham Vilas Tayade vs. State of Maharashtra (Crl.W.P. No. 68 of 2018, dt. 31-01-2018)*, the Special Court allowed the prosecution for recording evidence after 30 days of taking cognizance. This order was challenged by the accused, being violative of Section 35 of the POCSO Act. However, the Hon’ble High Court of Bombay agreed with the counterargument of the APP that as the accused did not challenge the application of the prosecution so he cannot challenge the order. Furthermore, it was observed that even otherwise, the Special Court can record evidence after 30 days and the only rider provided by Section 35 is that the reasons for the delay have to be recorded.”<sup>6</sup>

### **MEDICAL EXAMINATION:**

It is essential that the medical examination of a child is conducted with utmost care and precaution. Rule 5(3) of the POCSO Rules, 2012 makes the provision that no medical facility or practitioner who renders emergency medical care to a child should ask for any kind of legal or other documentation before providing such care. Apart from this, Section 27 of the POCSO Act lays down certain laws regarding the conduct of medical examinations. These are as follows:<sup>7</sup>

- The medical examination has to be conducted in accordance with Section 164A of the Criminal Procedure Code, 1973.
- A medical examination of a girl is to be conducted by a woman practitioner.

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<sup>6</sup> <https://blog.iplayers.in/pocso-act-everything-you-need-to-know/>

<sup>7</sup> <https://blog.iplayers.in/pocso-act-everything-you-need-to-know/>

- It should be conducted in the presence of a person in whom the child has trust, for example, his/ her parents, otherwise in the presence of a woman nominated by the head of the medical institution.

### **CHILD FRIENDLY INVESTIGATION AND TRIAL:**

Sections 24, 26 and 33 of the POCSO Act lay down the procedure of investigation and trial which has been formulated keeping in mind the needs of a child. The following points are taken into consideration while investigating any crime under POCSO Act:<sup>8</sup>

- i. The statement of the child is to be recorded at his/ her place of residence and generally by a woman police officer.
- ii. The officer who is to record the statement of the child should not be wearing a uniform.
- iii. The officer should ensure that the child does not come in contact with the accused during the examination.
- iv. A child is not to be detained in the police station at night.
- v. The officer should ensure that the identity of the child is not revealed.
- vi. The statement of the child is to be recorded in the presence of a person in whom the child has trust, for example, their parents.
- vii. The statement of the child is to be recorded via audio-video electronic means.
- viii. The assistance of the translators or interpreters should be taken wherever necessary.
- ix. Frequent breaks are to be allowed during the trial.
- x. The special court has to ensure that the child is not called to repeatedly testify in the trial court.
- xi. Aggressive questioning of the child is not permitted during the trial.

### **LAST SEEN THEORY:**

The theory of last seen is applied in the child sexual abuse trials. According to this theory, the person who is last seen with the victim is assumed to be the perpetrator of the offence when the time gap between the point when they were last seen alive is so minute that it is not possible that any other person could have committed the crime.<sup>9</sup> However, the Hon'ble Supreme Court in *Shyamal Ghosh vs. State of West Bengal reported in AIR 2012 SC 3539* held that it is not reasonable for the courts to apply last seen theory when the time gap is large.

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8 <https://blog.iplayers.in/pocso-act-everything-you-need-to-know/>

9 <https://blog.iplayers.in/pocso-act-everything-you-need-to-know/>



## **PRESUMPTIONS UNDER POCSO ACT:**

Sections 29 and 30 of the POCSO Act are ‘reverse onus’ provisions, i.e., a provision wherein the burden of proving the element of a crime is placed on the accused person. This is a departure from the golden rule prescribing the State to prove all the elements of a crime beyond reasonable doubt. According to section 29, when an accused is ‘prosecuted’ for certain offences under the POCSO Act, it is obligatory for the court to presume that he/she has committed, or abetted or attempted to commit the offence for which he/she is prosecuted. Section 30 deals with ‘presumption of culpable mental state’. Section 30 makes it obligatory on a judge to presume the existence of required culpable mental state of the accused.<sup>10</sup>

“Section 30(1) states that, the Special Court ‘shall presume’ the existence of culpable mental state of the accused. The expression ‘shall presume’ under section 30(1) makes it ‘obligatory’ for a judge to presume the required ‘culpable mental state’.<sup>1</sup> For example, the ‘required culpable mental state’ under sections 7 and 11 of the POCSO Act is ‘sexual intention’. It means in any prosecution for an offence under section 7 or 11 the Court has to presume ‘sexual intention’ on the part of the accused. And in case of any other offence, the Court has to presume the mens rea required for that particular offence. Section 30 further states that: “it shall be a defense 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.” It means, the presumption under section 30(1) is rebuttable. The expression “mental state with respect to the act charged as an offence” is important. It speaks about ‘specific mental state’ which is ‘required’ for constituting an offence charged against the accused. It means, the Court has to presume only that mental state which is required by the definition of the offence charged. The definition of the offence charged, therefore, is a sufficient guide for a judge to ascertain as to what kind of culpable mental state is required; and there was no need to incorporate separate explanation for the same. Explanation to section 30, therefore, is not only needless; but also that it misguides the Court to presume ‘any’ culpable mental state even beyond the culpable mental state ‘required for constituting

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<sup>10</sup> Dr. Pendhankar, PH, ‘Ferocious presumption under the POCSO Act’,  
<https://www.aironline.in/WW/fullContent.html>

the offence charged’.”<sup>11</sup>

“Sub-section (2) to section 30 speaks about the extent of proof. Sub-section (2) states that: “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.” Thus, in order to rebut the presumption of guilt raised against him, the accused must prove “beyond reasonable doubt” the fact that, he has no required culpable mental state required in the offence charged against him. And if he succeeds in proving this fact ‘beyond reasonable doubt’ then only the fact will be said to be proved. Proving a fact on the basis of “preponderance of probability”, thus, will not be sufficient; and this is expressly stated in the section itself. It means, if an accused is charged for an offence, for example, under section 7, for touching certain parts of a child’s body, the Court has to presume culpable mental state, i.e., ‘sexual intention’ of the accused. But, if the accused takes a defence that he had no such mental state, i.e., ‘sexual intention’ he has to prove this fact<sup>2</sup> ‘beyond reasonable doubt’. And if he succeeds in proving this fact ‘beyond reasonable doubt’ then only the fact will be said to be proved. Proving a fact on the basis of “preponderance of probability”, thus, will not be sufficient.”<sup>12</sup>

### **CRITIQUE ON SECTION 29 AND 30 OF POCSO ACT:**

“The burden that is shifted on the accused to prove his innocence must meet the ‘test of reasonableness and liberty’ enshrined under Articles 14 and 21 of the Constitution. Those tests, inter alia, are: ‘foundational fact test’, i.e., presumption of guilt can be drawn only when certain foundational facts are proved by the prosecution; ‘rational connection test’, i.e., there must be a rational connection between the ‘foundational fact proved’ and the ‘ultimate fact presumed’. Further, the burden resting on the accused to prove his innocence should not be as onerous as that which lies on the prosecution; meaning thereby, accused can discharge the burden that lies on him by

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11 Dr. Pendhankar, PH, ‘Ferocious presumption under the POCSO Act’,  
<https://www.aironline.in/WW/fullContent.html>

12 Dr. Pendhankar, PH, ‘Ferocious presumption under the POCSO Act’,  
<https://www.aironline.in/WW/fullContent.html>

‘preponderance of probabilities’. Sections 29 and 30 of the POCSO Act, as stated above, does not stand to either of these tests.<sup>13</sup>

Section 30 mandates the court to presume ‘culpable mental state’ of the accused on the sole basis that, he/she is “charged” under any of the offence in the POCSO Act. It does not lay down any parameter of foundational facts to be proved by the prosecution from which the court may lead to an inference in respect of guilt/mens rea of the accused. Section 30, thus, disregards the well-established principle of law that, ‘an inference of one fact can be drawn only when the prosecution has proved some foundational fact’.<sup>14</sup>

### **COMPENSATION UNDER POCSO ACT:**

Section 33(8) of POCSO Act deals with compensation to the child victims. The section reads thus: *(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.* Rule 7 of the Protection of Children from Sexual Offences Rules, 2012 comprehensively deals with the compensation to the victim child under POCSO Act. Rule 7 reads as under:

*7. 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 immediate 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, makes a direction for the award of*

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<sup>13</sup> Dr. Pendhankar, PH, ‘Ferocious presumption under the POCSO Act’, <https://www.aironline.in/WW/fullContent.html>

<sup>14</sup> Dr. Pendhankar, PH, ‘Ferocious presumption under the POCSO Act’, <https://www.aironline.in/WW/fullContent.html>

*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 his medical treatment for physical and/or mental health;*
- (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 his 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 or any other laws 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 his 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.*

The Hon'ble High Court of Calcutta in ***Bijoy @ Guddu Das vs. State of West Bengal reported in (2017) 2 Cal LJ 224***<sup>15</sup> while dealing with award of compensation under POCSO Act held that "Compensation envisaged under the aforesaid provision of law may be awarded by the Special Court at the interim stage also for immediate relief and rehabilitation of a child victim in light of the parameters laid down under Sub-Rule (3) of Rule 7 of the aforesaid Rules. Such compensation payable by the State is independent of the compensation which may be directed to be paid by the convict upon conviction in terms of Section 357(2) and (3) of the Code. The philosophy of awarding compensation by the State is in the nature of a reparation to the victim of crime on its failure to discharge its sovereign duty to protect and preserve sanctity and safety of the individual from the ravages of such crime". The court also made reference to Victim Compensation Fund notified by State Government under Section 357-A Cr.P.C. prescribing the minimum amount of compensation that may be awarded for various offences/injuries in the schedule thereunder which is as follows:

Schedule Sl. No. Description of Injuries/Loss Minimum Amount of Compensation

1. Acid Attack Rs.3 lakhs
2. Rape Rs.3 lakhs
3. Physical abuse of minor Rs.2 lakhs
4. Rehabilitation of victim of Human Trafficking or other offences like witch hunting etc. Rs.1 lakh
5. Sexual assault (Excluding rape) Rs.50,000/-
6. Death Rs.2 lakhs
7. Permanent Disability (80% or more) Rs.2 lakhs
8. Partial Disability (40% to 80%) Rs.1 lakh
9. Burns affecting greater than 25% of the body (excluding Acid Attack cases) Rs.2 lakhs
10. Loss of foetus Rs.50,000/-

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15 <https://indiankanoon.org/doc/22883435/>

11. Loss of fertility Rs.1.5 lakhs Note: If the victim is less than 14 years of age, the compensation shall be increased by 50% over the amount specified above.

Referring to the above, the Hon'ble Calcutta Court held that “ *The aforesaid scheme is, therefore, lays down the minimum limit for award of compensation in cases of offences relating to rape, sexual assault (excluding rape), physical abuse of minor etc. It also provides for a hike of 50% of the amount of compensation if the victim is below 14 years of age. Although offences under POCSO are not specifically mentioned in the Schedule, the cognate nature of offences of penetrative sexual assault or aggravated penetrative sexual assault punishable under Sections 4 & 6 of POCSO when compared with rape and that of sexual assault with sections 6 & 8 of POCSO, prompts me to hold that the duty of the State to award compensation to victims under the aforesaid Fund would extend to such offences also. The Special Court, therefore, while dealing with such offences may make orders of interim or final compensation to victim from the Fund made available by the State. It is further clarified that a conjoint reading of the Section 33(8) of the Act along with Rule 7 of the Rules made it amply clear that the power of the Special Court to award interim/final compensation is not restricted to the terms of the Victim Compensation Fund promulgated by the State but empowers the Court to award such reasonable and just amount as may be determined by it in the facts of the case in the light of the parameters laid down in Rule 7(3) of the aforesaid Rules to provide succour to a child victim. Upon orders being passed by the Special Court relating to such compensation the State Government shall pay the compensation so ordered by the Special Court within 30 days of the receipt of the order by itself or through the State Legal Services Authority or the District Legal Services Authority in whose hands the Victim Compensation Fund may be entrusted. It is also made clear that it shall be open to the Special Court in appropriate cases to grant compensation over and above the limit proposed under the scheme inasmuch as the scheme merely lays down the minimum limits of such compensation and does not provide for a upper limit which is left open to the judicial discretion of the Court to be determined in the light of the parameters laid down in Rule 7(3) of the aforesaid Rules.*”

### **SOME OTHER IMPORTANT FEATURES OF POCSO ACT:**

**Confidentiality of the victim's identity:** “Section 23 of the POCSO Act provides for the procedure of media and imposes the duty to maintain the child victim's identity unless the Special Court has allowed the disclosure. Section 23(2) states, “no reports in any media shall disclose the identity of a child including his name, address, photograph, family details, school, neighbourhood and any other particulars which may lead to the disclosure of the identity of the child”. In the

landmark case of *Bijoy @ Guddu Das v. The State of West Bengal* (cited supra), the Calcutta High Court reiterated the law made under Section 23 and declared that any person including a police officer shall be prosecuted if he/ she commits such a breach.”<sup>16</sup>

**Gender-neutral provisions:** “Another glaring feature of the POCSO Act is that it does not create any distinction between the victim or the perpetrators on the basis of their gender. This overcomes one of the biggest shortcomings of the Indian Penal Code’s provisions. The definition of child includes anyone below 18 years of age and in several cases, the courts have even convicted women for engaging in child sexual abuse incidents.”<sup>17</sup>

**Mandatory reporting of child abuse cases:** “Sexual abuse cases happen behind closed doors and the elders attempt to hide these incidents due to the stigma that is attached to these crimes. Consequently, for the proper implementation of the POCSO Act, reporting of these incidents by the third parties who have the knowledge or apprehension of such offences, has been made mandatory under Sections 19 to [22](#) of the POCSO Act. These laws have been made on the basis of assumptions that children are vulnerable and helpless and society has the duty to protect the interests of the children.”<sup>18</sup>

#### **SKIN TO SKIN CONTACT CASE:**

The Hon’ble Supreme Court in *Attorney General Of India vs. Satish & Others reported in 2021 SCC Online SC 42*, had set aside the judgement passed by Bombay High Court which held that skin to skin contact is necessary to punish the offender for sexual assault under Section 8 of the POCSO Act. The Supreme Court held that the most important ingredient to constitute the offence of sexual assault under Section 7 of the Act would be the “sexual intent” and not the “skin to skin” contact with the child and any narrow interpretation of the provision which would defeat the object of the provision would not be accepted.<sup>19</sup>

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16 <https://blog.ipleaders.in/pocso-act-everything-you-need-to-know/>

17 <https://blog.ipleaders.in/pocso-act-everything-you-need-to-know/>

18 <https://blog.ipleaders.in/pocso-act-everything-you-need-to-know/>

19 [https://legalvidhiya.com/salient-features-of-protection-of-children-from-sexual-offences-act-2012/#\\_ftn4](https://legalvidhiya.com/salient-features-of-protection-of-children-from-sexual-offences-act-2012/#_ftn4)

## **SHORTCOMINGS OF POCSO ACT:**

### **PROBLEM WITH LAST SEEN THEORY:**

The last seen theory can lead to wrongful conviction in several cases and therefore, it cannot be applied without circumstantial evidence. It was held by the Hon'ble Supreme Court in the case of **Anjan Kumar Sarma v. State of Assam** reported in **(2017) 14 SCC 359**, that the last seen theory is a weak piece of evidence and cannot be relied upon single-handedly.<sup>20</sup>

### **SILENT ON CONSENSUAL SEXUAL ACTIVITIES:**

In case of sexual intercourse with consent, one of which is minor, the partner who is not minor can be prosecuted under the POCSO Act as the consent of a minor is not considered relevant under this Act.<sup>21</sup>

### **FALSE COMPLAINTS BY CHILDREN ARE NOT PUNISHABLE:**

Section 22 of the POCSO Act provides for the punishment to the persons who file a false complaint in order to humiliate, extort, threaten or defame another person. However, a child is exempted from any such punishment which is a loophole as many people take advantage of this exemption and misuse this provision.<sup>22</sup>

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20 <https://blog.ipleaders.in/pocso-act-everything-you-need-to-know/>

21 <https://blog.ipleaders.in/pocso-act-everything-you-need-to-know/>

22 <https://blog.ipleaders.in/pocso-act-everything-you-need-to-know/>



## **CONCLUSION:**

India had no legislation until 2012 to address the evil offences committed against male and female children. POCSO Act being a gender neutral legislation aims to provide safety to children and punish the offenders based on gravity of offences committed against children and addresses all aspects of child sexual abuse. The Act was amended in the year 2019 making punishments under the Act more stringent. Sensitization of public regarding child sexual abuse and POCSO Act is very essential in view of low rate of reporting of crimes under the Act. Child sexual abuse is a multidimensional problem with medical, social, psychological and legal implications. Child sexual abuse cases seldom present with definite symptoms of genital trauma. As a result, evaluating a victim of child sexual abuse involves specialized knowledge and methods in history collection, forensic interrogation, and medical examination. Involvement of a mental health expert is necessary during investigation and trial stage to mitigate and address the adverse effects of child sexual abuse on victim children's mental health.