

# Child Sexual Abuse POCSO ACT



*“ Safety and securities don’t just happen, they are the result of collective consensus and public investment. We owe our children, the most vulnerable citizens in our society, a life free of violence and fear” .-Nelson Mandela*

# Sexual Offences against Women in Indian Penal Code

- Provision of Indian Penal Code, 1860, covered the offences committed against children.
- **Section 292** and **293** deals with the obscenity
- **Section 372**: Selling of minor children for purpose of prostitution
- **Section 376 (2) (f)**: punishment of rape, when a woman who is being raped is under 12 year of age, is imprisonment for a term not less than 10 years and may extend to life.
- **Section 377**: Unnatural Offence-this section is gender neutral and whenever a victim of sexual child abuse is a boy, this section is applicable.
- **Section 67B(20)** of Information Technology(IT) Act, 2000 took care of online abuse of a child and even transmitting or publishing any sexually exploitative content of the child is punishable.

# RAPE

- Rape as a tool: communal violence
- During partition – women sold, raped, massacred
- Anti sikh massacre :1984: no committee took cognizance of it.
- Babri Masjid – 1992 – mass rapes in Surat
- Salwa judum: sexual abuse in camps by police officers : *operation green hunt*
- Rape as a punishment: seol Madhya Pradesh
- Bilkis Bano's case

Gujarat riots – 2002 – cutting of breasts, inserting various objects into vagina, paraded naked in the public view, abdomens of pregnant women were ripped open.



# Naroda Patia

- NARODA PATIA, AHMEDABAD, FEBRUARY 28, 2002[3] “The mob started chasing us with burning tyres after we were forced to leave Gangotri society. It was then that they raped many girls. We saw about 8-10 rapes. We saw them strip 16-year-old Mehrunissa. They were stripping themselves and beckoning to the girls. Then they raped them right there on the road. We saw a girl’s vagina being slit open. Then they were burnt. Now there is no evidence.”
- Source: Kulsum Bibi, Shah e Alam Camp, March 27, 2002**
- “I saw Farzana being raped by Guddu Chara. Farzana was about 13 years old. She was a resident of Hussain Nagar. They put a saria (rod) in Farzana’s stomach. She was later burnt. 12 year old Noorjahan was also raped. The rapists were Guddu, Suresh and Naresh Chara and Haria. I also saw Bhawani Singh, who works in the State Transport Department kill 5 men and a boy.”

# Tanjam Manorama

North East States: State sponsored terrorism



# Procedural Impediments

- Rape Victim --- an accomplice
- Gurmeet Singh: delay in lodging of FIR,  
Discrepancies in the evidence: testimony of rape  
victim : no suspicion
- Delhi Domestic Working Unions Forum:  
compensation to rape victims
- Bodhisatwa Gautham : interim compensation

# Protection of children from sexual offences act (POSCO) 2012



**1 in 6 children are sexually abused.  
75% don't tell.**

Most children don't talk about sexual abuse. So we have to. If you're worried about your own or someone else's behaviour with a child, or use of illegal websites, the sooner you act the sooner you stop the damage.  
Call us confidentially to help or visit [www.stopitnow.org.uk](http://www.stopitnow.org.uk)

To **stop** child sexual abuse  
we need to **start talking** about it

**stop it now!**  
AN EXTENSIVE  
CHILD PROTECTION SERVICE

Freephone  
**0800 1000 900**

# Object of the Act

- *“An Act to protect from offences of sexual assault, sexual harassment and pornography and provides for the establishment of special courts for trial of such offences and for matters connected therewith or incidental thereto.”*
- ‘The Protection of Children from Sexual Offences Act (POCSO Act), 32 of 2012
- with the competent legislative authority under the article 15(3) of the constitution of India.
- Article 15(3) constitution of India states that *“nothing in this article shall prevent from making any special provision for women and children”*.
- On 11th December 1992, Government of India also acceded to the Convention on the Rights of Child, adopted by the General Assembly of the United Nation, which prescribed a set of standards followed by all State parties in securing the best interests of the child.

# Why The POCSO Act, 2012

- Provisions of Indian penal code, 1860 **were not gender neutral**, for eg: Section 376 is only concerned with the female, the male child was left out.
- Failure to curb the crime of child sexual abuse and less efficacy of the previous provision. The need for the POCSO Act was reflected by different surveys conducted by the government of India. In 2007, the survey conducted by the Ministry of Women and Child development in which 12,500 children participated across 13 states, showed that 53% of the children said that they have been subjected to one or more forms of sexual abuse.
- **Increase in the number of child abuse cases**: A total of 33,098 cases of CSA were reported in the nation during the year 2011 when compared to 26,694 reported in 2010 which increased by 24%.
- When the abuser is a family member itself, the question of child safety and protection remains unanswered. The first study on CSA in India was conducted by Recovery and Healing from Incest, an Indian non-government organization (NGO) in 1998. The majority (76%) of the participants reported being abused during childhood or adolescence.
- Despite provisions in the Information and Technology Act, 2000 that deals with child pornography were not enough to stop online child abuse.

# Gender Neutral

- Any Child can be a victim of sexual offence or pornography etc. irrespective of gender. 'Child' means any person below the age of eighteen years [section 2(d)].
- Under the POCSO Act victim's gender is immaterial. According to the World Health Organization, one out of every 4 girls and one out of every 7 boys are victims of sexual abuse.
- The national survey conducted by the Ministry of Women & Children Development in 2007 shows that 57% of children who said that they have experienced one or more form of sexual abuse, were boys.
- The offender can be male, female or transgender irrespective of their age. When an offence under this act is committed by a child, such child shall be dealt with under the provision of the Juvenile Justice (Care and Protection of Children) Act, 2000 ( Section 34).

# Penetrative Sexual Assault and Punishment

- **Section 3** defines penetrative sexual assault,
- When a person penetrates any object or part of his body, to an extent, into vagina, mouth, urethra or anus of a child or makes the child do so with him or any other person. Also when he manipulates any part of the body of the child so as to cause penetration or apply his mouth and makes the child do so with such person or any other person.
- **Section 4** the prescribed punishment is imprisonment for either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also liable to fine.

# Sexual Assault and punishment

## Therefore

- **Section 7** defines 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.
- **Section 8** Whoever commits sexual assault shall be punished with the imprisonment of either description for a term which shall not less than three years but which may extend to five years, and shall also be liable to fine.

# Sexual Harassment and punishment

## Therefore

- **Section 11** defines sexual harassment,
- A person is said to commit sexual harassment upon a child when such a person with sexual intent-
- Any person utters or makes any sound, or makes any gesture or exhibits any object or part of the body with the intention that such word or sound shall be heard, or such gesture or object or part of the body shall be seen by the child; or
- Makes a child do such things mentioned hereinafter;
- Entices or Showing a child anything which may relate to pornography or pornographic purposes, watching or contacts child either directly or digitally, threatens to use a real or fabricated depiction through electronic, film, or digital or any other mode, of any body part of the child
- Explanation: Any question that involves “sexual intent” shall be a question of fact.

# The aggravated form of sexual offences

- This act recognizes the aggravated form of the penetrative sexual assault and sexual assault when these are committed by the **police officer, public servant, armed personnel, or member of security forces** etc. One can say that this act is quite more serious when the protector is the perpetrator.
- **Section 5** – aggravated penetrative sexual assault and its punishment under Section 6 **is minimum of 10 years** of imprisonment which may extend to a term of life, and shall also liable for fine.
- **Section 9** – aggravated sexual assault and its punishment under section 10 is a minimum of 5 years imprisonment which may extend to 7 years, and shall also liable for fine.

# Using the child for pornographic purpose

- **Section 13**, using a child in any media, for the purpose of sexual gratification, which includes-Representation of sexual organs of a child. Engaging a child in real or simulated sexual acts. Indecent or obscene representation of child shall be guilty of using a child for pornographic purposes.
- The explanation provided with section 13 states that the expression “use of 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** recognises different levels of punishment for the different level of actus rea. Generally, life imprisonment which may extend to 5 years is provided in Sub Section (1), if a person using a child for pornography commits an offence under section 3 of the Act, by directly participating in the pornographic act, the prescribed punishment is life imprisonment and shall also be liable for fine.
- When a person stores, for commercial purposes any pornographic material which is sexual exploitive of a child, shall be punished with imprisonment for 3 years or with fine or both.

# Mandatory reporting of cases

- Where to complaint any offence relating to child sexual abuse?
- **Section 19 (1)** makes it mandatory for any person, who has apprehension that an offence under this Act is likely to be committed or has knowledge that such offence has been committed, to report it either to the Special Juvenile Police Unit or to the Local Police.
- **Section 20** requires a mandatory reporting, when any person encounters with any material or object with are sexually exploitative of the child.

# Special Provisions - Procedure

- **Special provision for recording the statement of the victim (Section 24)**
- Place of recording of the statement will be of child's choice and comfort.
- The police officer while recording statement must not be in uniform and also make sure that at no point of time child come in contact in any way with the offender.
- No child shall be detained **in the night** for any reason.
- **Special courts, their powers & procedure for recording of evidence**
- For the purpose of the speedy trial, the State Government must establish a court of session to be a **special court (section 28)**.
- While trying an offence under this Act, a Special Court can also try an offence, with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same time.
- **The burden of proof lies on accused (section 29).**

# Contd..

- Special public prosecutor to be appointed by the state government, the person appointed must be in practice for at least 7 years.
- The court presumes all the type of culpable mental state of the accused [**section 30(1)**].
- POCSO Act ensures punishment for all offenders irrespective of gender or age.
- The court can take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which discloses such offence [**Section 33(1)**].
- The court may permit frequent breaks for the child during a trial.
- The court shall not call the child repeatedly to testify.

# Protection of child victim

- On the reasonable grounds Special Juvenile Police Unit or Local Police, after recorded in writing, such child shall be provided with care and protection homes within 24 hours of the report [**Section 29(5)**]
- The 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.
- **Note:** In case a child is abused or likely to be abused by a family member, then he/she must be taken out of the custody of his/her family (Rule 4 of POCSO Rules).

# Recent development in the POCSO Act

- [The Criminal Law Amendment \(CLA\) Act, 2013](#)
- After receiving the President's assent on 2nd April 2013, the CLA Act amended the Section 42 and inserted a new Section 42A in the POCSO Act. Section 42A provides that the provisions of POCSO Act shall be in addition to and not in derogation with the provisions of any other law, and in case of inconsistency, the provisions of the POCSO Act shall have an overriding effect to the extent of the inconsistency.
- [The Criminal Law \(Amendment\) Ordinance, No. 2 of 2018](#)
- An Ordinance further to amend the Indian Penal Code, 1860; Indian Evidence Act, 1872; The Code of Criminal Procedure, 1973; and the POCSO Act, 2012 was introduced by the President. It amends Section 42 of the POCSO Act by inserting the Section 376DA, 376DB of Indian Penal Code, 1860
- **Section 376DA** – Where woman under 16 years of age is raped by one or more persons, then each (acting in furtherance of common intention) of them shall be imprisoned for the remainder of that person's natural life, and with fine.
- **Section 367DB**. Where woman under 12 years of age is raped by one or more persons, then each (acting in furtherance of common intention) of them shall be punished with life imprisonment, and fine, or with death.



# Case studies

- In State vs. Shaheed Ali, the allegations against the accused were “of taking away physically challenged girl, who could not hear or speak, in a public park for committing sexual assault upon her”.
- The girl by nodding her head and gestures confirmed that she was taken by the accused and was apprehended by the security guard.” The accused was convicted under Section 10 of the POCSO Act.



# Case studies

- May 15<sup>th</sup> 2018, Minor raped in Pune, case registered beneath POCSO Act, Pune (Maharashtra) [India], could five (ANI): A three-year-old girl was allegedly raped by a 20-year-old man in Bhosari in Pune earlier on.
- July 12<sup>th</sup> 2018, A high school boy was sexually assaulted and traumatised for about 10 months by five of his classmates in a school in north Bengaluru. Victor developed extreme fear and began to display abnormal behaviour. He would throw himself about, punch and scratch himself. He also became aggressive, beating up his parents and running away from home time and again.

- **Aug 28, 2015 : Delhi University Girl Sues Mother For Domestic Violence And Sexual Abuse.**  
“Prerna cited a number of instances of her mother's questionable behaviour.
- **" One morning, my mother entered my room while I was sleeping and groped me. When she started feeling me up, I resisted and pushed her away. She insisted that I should not resist and accused me of sleeping around with men."**

- July 5<sup>th</sup>, 2018  
A two-year-old boy was allegedly sexually assaulted inside the premises of a playschool in Kolkata's Behala area. The parents of the toddler have filed a police complaint and an FIR has been registered under the POCSO (Protection of Children from Sexual Offences) Act. The child's mother said that he was crying uncontrollably when she picked him up from school that day. She thought he was unwell but raised an alarm when she noticed he was bleeding from his private parts.



- March 16<sup>th</sup>, 2018, Mohali: A 35-year-old man abducted the seven-year-old daughter of the neighbor and kept her in a small carton for 24 hours. Accused heavily sedated her and also taped her mouth.



If you don't stop  
this... who will?