



## POCSO – AN EFFECTIVE ACT OF THE ERA

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### INTRODUCTION.

Sexual offences in today's world is considered as one of the heinous crimes of the era. It's been impossible to completely eradicate it from the world specially from the country like India. There are wide ranges of the sexual offences which are categorized in the paper also the punishments for such offences. The main focus of the paper will be the sexual offences against the children that is below the age of 18, and the special act enacted in the year 2012 that is the Protection on Children from sexual offences (POCSO), 2012. The act gives a clear and wide image about such heinous crimes and the punishments as well.

The researcher will add up about the Indian penal code sections also which can be applicable for such crimes in order to increase the punishments or make it more harsh as well. The researcher will also deal with the duty of the police officials when such crime or offence takes place, also the procedure of the trial conducted after the crime has been committed will also be discussed in the paper as well. The Amendments made in the POSCO act in the year 2019 will also be discussed in detailed and its significance as well.

As generally as person who goes through all these things it becomes very hard for them to forget about it and move on specially when we talk about the children who are just below

18 and who are the survivors it's very tough for them to cope up from such crimes henceforth the researcher will also be discussing about the mental health of the survivors of the sexual offences as sexual offences has a long lasting effect on anyone specially the ones who are the survivors it affects their physical health as well as their mental health.

### OBJECTIVE OF THE PAPER

The main objective of the research is to well understand the meaning of the sexual offences, its essentials and the punishments awarded to the convicts. Also mainly the researcher will be discussing about the Protection of children from sexual offences act, 2012 that is (POCSO) at its best it's procedure the duty of the police officials and procedure of the trial conducted on such offences also what is the child welfare committee and its working as well

### RESEARCH QUESTIONS

1. What exactly is the POCSO Act and its essentials?
2. How is the trial conducted in such offences?

### RESEARCH METHODOLOGY.

The following research is the doctrinal research. All the information that has been collected by the researcher is the secondary source of information. The researcher in this research has used various different primary as well as the secondary resources various news articles various different case law, books POCSO Act has been specifically referred by the researcher.

### PROPOSED CHAPTER



- CHAPTER II
- CHAPTER IV

## CHAPTER I

## SEXUAL OFFENCES

Sexual offences occurs when someone does not give their consent to nay act which may be sexual or not. This offences can refer to a very broad range of the any sexual behaviour which makes the victim feel. Uncomfortable or threatens the victim it includes mainly

- 1.Rape
- 2.Sexual touch
- 3.Sexual assault.
4. Child sexual abuse.

What is consent?

Consent can be termed as basically the agreement between the two people who agrees to get into any sexual activity. In this context consent can be defined as the communication of both the people and I'm order to have any sexual activity every time consent is required it is mandatory to have consent every time there are also some exceptions to it as well. Specially if a child is under 12yeaes of age is legally understood that the child is not regarded to give a consent for any such activity and is the child foes it by default in the eyes of law it is considered as an offence as child is undermined to give consent for such activities.

This range of crimes is considered under the sexual crimes. Sexual offences can be in two ways in person which can also be called a offline Or physically or it can also be done online that can be termed as the by the social media. Sexual offences is considered to be the heinous crimes of the era Or in the society

no one can ever predict Or assume who can Or who cannot commit the sexual offences it can be anyone. The occurrence of the crime is generally done by the strangers, friends, family, ex partners, current partners, Or it juts can be anyone one cannot really rely or trust on anybody. Sexual offence is basically eligible for both the genders the crime can be done against a men or women too but the rate of sexual offences happening socially in the country like India the majority of the crimes are committed against the women by men. In order to get the clear picture of sexual offences as gender neutral it is prosecuted as a part of CPS violence against women and girls in which the VAWG strategy is been used In instinctly. This can be called as the overreaching framework that addresses and identifies then the crimes of sexual offences are exclusively not been committed only by men against the women. CPS is determined and specialized to secure the justice for all the victims it is gender neutral. It ensures justice for the victims both men and women as well. There are the wide ranges of the crimes that are categorized under the sexual offences. Some of them are as follows.

1.Domestic abuse – Domestic abuse is something which is seen generally everywhere day by day it occurs specially in the family matters in the argument of husband wife or between any of the family members it is been seen.

2.Rape – This is the most harsh and very commonly seen crime in specially country like india the number of rape cases in India has always been increasing. In one of the survey it is been observed that daily in every hour there are 3 girls raped in an hour. Which is really a big disappointment for the country.



3. Sexual offences – it is anything in simple language it can be termed as the unwanted touch of making a person uncomfortable by the acts or the way you touch the person.

4. Stalking – this can be termed and done both online as well as offline stalking is something which terms to following the person in person or on social media without the knowledge of the person and his permission.

5. Harassment – Harassing the person sexually or sometimes mentally or blackmailing the person because of something which creates problems to the person can be termed as the Harassment.

Honour based crimes are also included in the sexual offences as they are also related with the sexual assault of the person they are.

1. Forced marriage – this is also a common problem in the Indian society many girls even the boys are forced to marry without their will which creates problem for them sometimes it is also seen that many young girls who are below the age of 18 are also forced to marry which is illegal in our country.

2. Female genital mutilation – This is followed in many religions and traditions it is basically something where in the name of religion or something the females genital organs are removed or cut off it is illegal in many countries and this process is carried out non medically which is really risky with the life of the women.

3. Child abuse – when the children are constantly abused by anyone it can be whether any stranger family member friends etc. Abuse includes bad words, taunts, pointing out in every work, creating negativity among the children etc.

4. Human trafficking mainly focusing on the sexual exploitation- Human trafficking is basically the selling of the humans it can be children, girls, boys, senior citizens anyone. Mostly the trafficking of young girls is been observed for the sexual purpose they are used as the business objects for some people to sell and buy them in other countries or throughout the country as well.

5. Prostitution – it is something where the business of sex is carried out many girls are forced into this profession but it is illegal in many countries. Human trafficking victims are mostly found in this business are they are forced to do this.

6. Pornography – When the private pictures of the person the pictures basically which can cause damage to the image of the person or any videos can also be termed as the nude pictures and videos of the person leaked without the knowledge and permission of the person is termed as pornography.

Child abuse and the sexual offences are termed as very serious crimes that can have the long lasting effect on the victim as well as the survivors and sometimes on the convicts too.

## CHAPTER II POCSO ACT 2012

Protection of children from sexual offenses this act was made in the year 2012 and amended in the year 2012. It was basically made for the safety, security and dignified childhood for every child also the main aim of the act to be made was to make the provisions for the enhancements for the various offenses. Some of the salient features of this act and its amendments are as follows



1. This act was made gender neutral with the best interest of every child at every stage of his childhood and also to ensure the physical, mental, social, emotional, development of every child

2. Every child who is below 18 years is well defined in this act

3. This act has also included different forms of the sexual abuse in a clear view it includes

- a) Penetrating offenses
- b) Non-penetrating offenses
- c) sexual harassment
- d) pornography

It also deems sexual assaults to be aggravated under various circumstances when

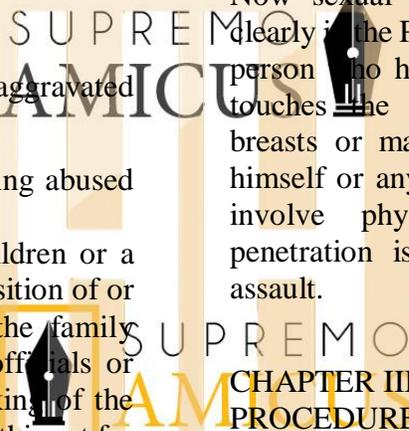
- a) When the child who is being abused gets mentally ill
- b) When the abuse is done to a children or a child by a person who is in the position of or interest of trust it can include the family member of a child, any police officials or teachers or the doctor the trafficking of the children has been also included in this act for the sexual purpose harsh punishment has been awarded to a convict
- c) Child pornography is also been defined any of the visual deflection of sexually explicit conduct of a person involving a child which majorly includes videos, photographs, digital or computer generated images also the actual child's indistinguishable form and image created and modified or adapted but appears to depict a child respectively.

According to POSCO Section 3 the definition of penetrative sexual assault has been defined as if any one penetrates his penis at any extend into any ones vagina, mouth, urethra or anus of any child or makes the child to do

so with himself or any person also if a person inserts any of the object or a part of his body into child's vagina, urethra, mouth or anus,

makes the child to do so with any other person also if a person manipulates any part of the body of the child which causes the penetration into the vagina, urethra, anus or any part of the body of the child and to do so with any other person also if a person applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so with any other person will be deemed as penetrative sexual assault

Now sexual assault is also defined very clearly in the POCSO act in section 7 that any person who having a sexual intension if he touches the child's vagina, penis, anus, breasts or makes the child to do so with himself or any other person which can also involve physical contact without ant penetration is said to commit the sexual assault.



CHAPTER III  
PROCEDURE OF POLICE OFFICIALS.

There is a given specific procedure of the police officials according the protection of children from. Sexual offences act, 2012(POCSO) respectively. As the concern is mainly about the children in the act so it becomes very important to handle such cases delicately in order to preserve the mental health and well being of the child who has been survived from such offence. There are various rules guidelines or can say duties of the police officials while handling the POCSO cases. Some of the duties of the police are given as follows.



1. As the rule 4 (1) of the POCSO act defines the main duty of the police is to provide all the information to the complainant when the police officials receive such information of the crime committed or where the crime is about to be done. The information that need to be provided by the police to the complainant is
  - Name and designation of the officer.
  - Address and the telephone number.
  - Also all the contact details, name, designation of the police officer who is being supervising the case.
2. As per the rule 4 (2) of the act when the information of the offence or where the offence is about to happen if such information is received by the police officials, it's the duty of the police official
  - To register the First information report that is FIR.
  - To provide a copy of the FIR to the complainant.
  - If there is an medical emergency of the child it is the duty of the police to provide the medical facility to the child as soon as possible.
  - The child should be accompanied with his parents, guardian or any person who is the position of trust with the child to the hospital.
  - To ensure the collection of the forensic examination as well.
  - To ensure that the child and his parents has all the necessary information about all the procedure also about the support person and legal advice and also the right to be represented as the lawyer as well.
3. The rule 4(3) of the POCSO Act it clearly states that when the child is being exploited by the person in position of trust of any family member or where the child is being residing or where the child shared the household also the child who is without any

parental support is also eligible to seek the help of police to produce the child in front of the child welfare committee within 24 hours as it is mandatory also to provide all the information report in writing to the Child Welfare committee as well as to produce the child in front of the social court with the report of the information of the offence given by the support person in writing and in special court also it is mandatory to produce the child in 24 hours as well.

4. Rule 4(11) states that the it's the duty of the police to inform about the developments of the case or the arrest of the accused and also various petition filed or application to the parents of the child or the support person or the Guardian respectively.
5. Rule 4(14) gives the basic information of the details that should be informed to the parents or support or the Guardian of the child are as follows.
  - All the available medical care.
  - Arrest of the convict.
  - Any release or the bail of the convict.
  - Available compensation for the victim.
  - Punishment awarded to the convict.
  - About the verdict.
  - All the procedural steps that are involved in the criminal prosecution.
6. Rule 5(3) states that no medical practitioner will be demanding any legal magisterial requisition in order to render any medical service or care.

#### CHAPTER IV

#### TRIAL PROCEDURE.

There are some of the specific provisions for the procedure of the trial of the reported offences in the POCSO act



Establishment of the special courts for the trial of the offences has been implemented under the POCSO act.

- The procedure should be totally child friendly in order to report, recording the evidence and investigation of the offence which also includes
- The recording that should be done of the child is mandatory to record the statement at the residence of the child or at any place the child chooses to do so.
- It is preferred that in order to record the statement a woman police official which will be not below the rank of sub inspector is preferred.
- The child will not be detained in the police station in the night in any circumstances.
- The police official while all the recording of the statement should be in the civil dress.
- The statement should be recorded only in the language that the child is comfortable with or speaks the official can take the assistance of any translator or the interpreter or any expert as per the child needs.
- The assistance of the special educator is also available of the child is special or disabled.
- All the medical examination that is conducted should only done in the presence of the parents of the child or the Guardian or the support person or the person who is in the interest of position of trust respectively.
- The medical examination should be conducted by the women doctor if in case the victim or the survivor is a girl.
- Aggressive questioning to the child or any kind of character assassination is strictly prohibited of the child when the in camera trial is been conducted.
- A child can ask for break he is free to have 13 frequent breaks during the whole trial.
- The child cannot be called by anyone repeatedly to testify.

## CHAPTER V SPECIFIC LAWS

There are laws against such offences in both the POCSO Act as well as the Indian penal code as well. According to the POCSO Act, 2012.

- Section 3 that is penetrative sexual assault according to this section the convict is awarded the imprisonment not less than ten years it can also extend for the life imprisonment for life and fine. Specially if the assault is against the child who is below 16 years is punishable for the imprisonment of not less than 20 years and fine and also can be extended for the life imprisonment.
- Section 5 of the act that is aggravated penetrative sexual assault, the punishment of not less than 20 years is awarded and the accused is also liable to pay the fine and the imprisonment can also extend for the life imprisonment as well under section 6
- Section 7 that is sexual assault it clearly states that any person who gets into a sexual contact with a child without penetration will be awarded punishment of not less than 3 years which may extend up to 5 years and will also be liable to pay the fine as well under section 8
- Section 9 that is aggravated sexual assault if the offence is done by any person in the authority he is liable for the imprisonment of not less than 5 years which may extend upto 7 years and liable to pay the fine under section 10 .
- Section 11 that is sexual harassment the punishment is awarded as three years imprisonment and liable to pay the fine under section 12 respectively.
- Section 14 that is use of the child for the pornography purpose in this the imprisonment is not less than 5 years and liable to pay the fine with the event of the



subsequent conviction can extend up to 7 years and fine under section 14(1)

- Use of child for the pornographic sexual assault is also punishable with the imprisonment of not less than 3 years which may also extend up to 5 years.

The offences which are punishable under the Indian penal code sections are

Section 166A, section 354A, section 354B, section 354C, section 354D, section 370, section 370A, section 375, section 376, section 376A, section 376C, section 376D, section 376E or section 509 respectively.

The Indian penal code provides the punishments with a greater degree for such offences. The act is an addition to such offences and not the derogation for may other provisions of any other laws. The POCSO Act is only applicable for the children below 18 and also applicable only for the child victim of survivor and the adult offender. If in any situation two minor children having sexual activity or sexual relations with each other will not be held in this act in such cases the provisions of Juvenile Justice board that is for the care and protection of the children act, 2000 will be applicable.

## CHAPTER VI

### SEXUAL ASSAULT AND MENTAL HEALTH.

It becomes very tough for the survivors to cope up from all the problems and trouble that they have faced it affects their mental health at a large extent and becomes very difficult for them to move on and go back to their normal life again. The survivors start to feel that their bodies are no longer their own

they start to disown their body they feel so guilt in them and shame as if it's all their fault and starts to blame themselves for whatever happened to them. Due to all this trauma and all the negative emotions their mental health starts to damage and collapse day by day according to the research the sexual assault survivors may face the following mental health conditions.

- Depression – this create them the feelings of no hopes or the despair themselves from everything and they stop to realise their self worth.
- Anxiety – many times it had being observed the survivors gets the constant panic attacks they are always afraid always have the fear that the attack may happen again and sometimes the chronic fear happens and they start getting afraid of the type of person who has done this to them.
- Posttraumatic stress ( PTSD) – This is something which is very common and seen in the survivors it create very intense memories of the abuse in their mind they start getting flashbacks of what has happened to them also experience the personality disruptions as well.
- Addiction – Researchers had observed and suggests that the sexual abuse survivors there are 26 times more chances of them getting addicted to drugs or alcohol or any addition as they helps to numb the pain of the abuses done in the past.

## CONCLUSION

The researchers has Discussed all the elements and each detail regarding the POCSO ACT AND SEXUAL OFFENCES at its best. One can conclude that what can amount to sexual offences it's essentials and the POCSO act and its essentials as well. The



procedure of police officials and the trial procedure can be concluded as the effective and significant for the process of the justice in such offences as well. It is also observed that the harsh punishments are awarded to the convicts including liability to pay the fine as well and not only POCSO provisions but also Indian penal code provisions are also available to award the punishments in a greater degree for such offences as well. The mental health of the survivors of the sexual assault is also being understood at its best.

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