

**INTERNATIONAL JOURNAL OF LAW  
MANAGEMENT & HUMANITIES**  
**[ISSN 2581-5369]**

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**Volume 4 | Issue 1**  
**2021**

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## Is the POCSO Act Bailable?

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### ABSTRACT

*Children who are the incarnations of the almighty, are treated in very bad condition. But it is well said that whenever and wherever any wrong activity happens, the almighty gives the directions to correct that mistake. As a result, the Indian Judiciary made a law known as POCSO Act, 2012, which talks about the protection of child rights from Sexual Offences. The culprits use the children for satisfying their lust. The author wonders, how can a man so much cruel that he rapes his own daughter, who is just 12 years old?*

*As per POCSO Act, the offences are considered as non-bailable offence. The author has very beautifully enshrined the purpose of this act, through various amendments in the said Act. The Author has nicely explained this act through various illustrations, and moreover the author has used some of the constitutional provisions to explain it in a more detailed manner.*

*Nowadays, it has been observed that people tend to misuse such sexual harassment laws. In order to mainly get compensation from the court persons started to misuse such laws. But the law is equal for all. Where there is no such prima facie evidence in the case then the court will give the order to IO (Investigation Officer) to have a strong Investigation and then to file a proper Charge sheet before the court. So, with regard to a chance of getting bail, the whole matter is depending after the completion of the filing of charge sheet before the court.*

*The author humbly requests the readers to kindly go through this article for once, and the author assures that through this small initiative, all the offenders might think at least thrice or more before doing this offence.*

*Afterall, we all are a part of this beautiful India, known as "the GOLDEN BIRD OF INDIA".*

*"Childhood should be carefree, playing in the sun: not living a nightmare in the darkness of the soul"*

**- Dave Pelzer**

The POCSO Act, 2012 is a widespread law to provide for the protection of children from the

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offences of sexual assault, sexual harassment and pornography, while safeguarding 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 act also boast of incorporating child-friendly procedure of reporting, recording of evidence, investigation of trial of offence and speedy trial of such cases.

This act is a non- bailable offence and defines a child as any person below the age of 18 years and protection to all children from penetrative sexual assault, aggravated penetrative sexual assault, sexual assault, aggravated sexual assault, sexual harassment, use of a child for pornographic purposes and abetment. It has also prescribed punishment for each of them from simple to rigorous imprisonment including for the failure of reporting of such cases if known from the period of six months. Every crime of child sexual abuse should be reported. If a person who has information of any abuse fails to report, they may face imprisonment up to six months or may be fined or both.

Whereas, Article 15(3) constitution of India, 1949, empowers to make special provisions for children. It 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.

All offences under the POCSO Act are considered as grave offences. Hence they are POCSO can become effective only if a police complaint is lodged reporting a child sex abuse instance where the nature of the case is of such nature that it will have an adverse effect on the society. In that case it is the police personnel is 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 police are also required to bring the matter to the attention of the Child Welfare Committee (CWC) within 24 hours of receiving the report, so the CWC may then proceed where required to make further arrangements for the safety and security of the child.

Nowadays, it has been observed that people tend to misuse such sexual harassment laws. In order to mainly get compensation from the court persons started to misuse such laws. But, the law is equal for all. Where there is no such prima facie evidence in the case then the court will give the order to IO (Investigation Officer) to have a strong Investigation and then to file

a proper Charge sheet before the court. So, with regard to a chance of getting bail, the whole matter is depending after the completion of the filing of charge sheet before the court.

Punishment for offences covered in this act are of hazardous nature i.e simple to rigorous according to the nature of offence. Offence like Penetrative Sexual Assault will be not less than ten years which may extend to imprisonment for life, and fine, aggravated Penetrative Sexual Assault will be not less than twenty years which may extend to imprisonment for life, and fine, Sexual Assault will be not less than three years which may extend to five years, and fine. aggravated Sexual Assault by a person in authority will be not less than five years which may extend to seven years, and fine, sexual Harassment of the Child will be three years and fine, Use of Child for Pornographic Purposes will be not less than Five years and fine and in the event of subsequent conviction, seven years and fine, use of child for pornographic purposes resulting in penetrative sexual assault will be not less than 10 years, Use of child for pornographic purposes resulting in aggravated penetrative sexual assault will be Not less than 20 years and fine, Use of child for pornographic purposes resulting in sexual assault will be Not less than three years which may extend upto five years, Use of child for pornographic purposes resulting in aggravated sexual assault will be Not less than five years which may extend to seven years.

Any person, who stores or possesses pornographic material in any form involving a child, but fails to delete or destroy or report the same to the designated authority or for transmitting or propagating or displaying or distributing in any manner at any time except for the purpose of reporting or for commercial purpose as may be prescribed, with an intention to share or transmit child pornography or for use as evidence in court, shall be punished with imprisonment of either description Upto three years of imprisonment, or with fine, or both as stated by honorable justice.

*But in areas, there is some kind of negligence due to which families suffers the most.*

Children who have been sexually abused are not only traumatized as a result of their experience but are also more vulnerable to further and repeated abuse and at risk of secondary. 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, children's rights or how to deal and communicate 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

relieve 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, families 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, minimize the risks of health problems, enhance the recovery of the child and prevent further trauma. This can be achieved through action that addresses 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-victimized in the course of the justice delivery process. In addition to this, it also has to be ensured that the child is steered towards the path of healing, recovery and rehabilitation. The prevention of child sexual abuse, protection of victims, justice delivery, and rehabilitation of victims are not isolated issues. The achievement of these objectives requires a co-ordinated response of all the key players, which include the police, prosecution, Courts, medical institutions, psychologists and counselors, as well as institutions that provide social services to the children. The protection of children from violence and abuse thus requires an integrated and coordinated approach. Needless to say, the identification and understanding of the roles of each of these professionals is crucial to avoid duplication and promote effective convergence.

#### Amendment in POCSO Act

To combat rising cases of child sex abuse, the Union Cabinet approved **amendments** to strengthen the **POCSO Act** by including death penalty for aggravated sexual assault on children, besides providing stringent punishments for other crimes against minors, officials said

The modification in the law will address the need for stringent measures against rising trend of child sex abuse in the country and combat the menace of relatively new kind of crimes, the government said, stressing that the strong penal provisions will act as a deterrent. It intends to protect the interests of vulnerable children in times of distress and ensures their safety and

dignity. The amendment is aimed at establishing clarity regarding the aspects of child abuse and punishment also curb the child pornography.

### Conclusion

Sexual offence of child is such an heinous crime defines under Protection of Child from Sexual Offence (POCSO) Act, 2012.

The issue of Child Sexual Abuse is widespread across India, impacting children of all ages, socio-economic classes and genders. Half of the country's children face some form of sexual abuse.

Despite its high prevalence, violence against children is often hidden, unseen or under-reported. It is not widely acknowledged or understood. In a country where sexuality is a taboo, the vocabulary to communicate around sexuality and sexual abuse is non-existent. Caregivers often do not have the knowledge or comfort to support children either by being watchful or by talking to them and hand-holding them in the case of abuse. In such a context, the onus is on the education system to provide children with the essential life skills to identify unsafe touches and situations and seek help. However, the education system makes little effort to address it. This restricts initialization and adherence to therapy and counseling. What compounds the problem is that only a few NGOs are actively working in this space in a focused manner.

POCSO Act no doubts a good legislation and certainly a welcoming step to stop child sexual abuse and curb the PORNOGRAPHY.

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