

Protection Of Children from Sexual Offences Act (POCSO Act)

With the intent to effectively address the evil of sexual exploitation and sexual abuse of children, Protection Of Children from Sexual Offences Act (POCSO) was passed by the parliament in the year 2012.

About POCSO Act

Given below is a table with the important facts about the Protection of Children from Sexual Offences Act:

Enactment Date:	June 19, 2012
Act Year:	2012
Short Title:	The Protection of Children from Sexual Offences Act, 2012
Long Title:	An Act to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto.
Ministry:	Ministry of Women and Child Development
Enforcement Date:	November 14, 2012

The Necessity of the POCSO Act

India has one of the largest populations of children in the world – Census data from 2011 shows that India has a population of 472 million children below the age of eighteen. Protection of children by the state is guaranteed to Indian citizens by an expansive reading of Article 21 of the [Constitution of India](#) and also mandated given India's status as a signatory to the UN Convention on the Rights of the Child. Before the implementation of the POCSO Act, the Goa Children's Act, 2003, was the only specific piece of child abuse legislation.

Child sexual abuse was prosecuted under the following sections of [the Indian Penal Code](#):

- I.P.C. (1860) 375- Rape
- I.P.C. (1860) 354- Outraging the modesty of a woman
- I.P.C. (1860) 377- Unnatural offences

However, such a measure had drawbacks since the IPC could not effectively protect the child due to various loopholes like:

- IPC 375 doesn't protect male victims or anyone from sexual acts of penetration other than "traditional" peno-vaginal intercourse.
- IPC 354 lacks a statutory definition of "modesty". It carries a weak penalty and is a compoundable offence. Further, it does not protect the "modesty" of a male child.
- In IPC 377, the term "unnatural offences" is not defined. It only applies to victims penetrated by their

attacker's sex act and is not designed to criminalise sexual abuse of children.

As such a **legislative reform** with a specific child protection act in mind was needed.

Salient features of the POCSO Act

- "Children" according to the Act are individuals aged below 18 years. The Act is gender-neutral.
- Different forms of sexual abuse including but not limited to sexual harassment, pornography, penetrative & non-penetrative assault are defined in the Act.
- Sexual assault is deemed to be "aggravated" under certain circumstances such as when the child is mentally ill. Also when the abuse is committed by the person in a position of trust such as a doctor, teacher, policeman, family member.
- Adequate provisions are made to avoid re-victimization of the Child at the hands of the judicial system. The Act assigns a policeman in the role of child protector during the investigation process.
- The Act stipulates that such steps must be taken which makes the investigation process as child-friendly as possible and the case is disposed of within one year from the date of reporting of the offence.
- The Act provides for the establishment of Special Courts for the trial of such offences and matters related to it.
- Under section 45 of the Act, the power to make rules lies with the central government.
- To monitor the implementation of the Act, the National Commission for the Protection of Child Rights (NCPCR) and State Commissions for the Protection of Child Rights (SCPCRs) have been made the designated authority. Both being statutory bodies.
- Section 42 A of the Act provides that in case of inconsistency with provisions of any other law, the POCSO Act shall override such provisions.
- The Act calls for mandatory reporting of sexual offences. A false complaint with intent to defame a person is punishable under the Act.

POCSO Act – General Principles

The Protection of Children from Sexual Offences Act, 2012 mentions 12 key principles which are to be followed by anyone, including the State Governments, the Child Welfare Committee,

the Police, the Special Courts, NGOs or any other professional present during the trial and assisting the child during the trial. These include:

1. **Right to life and survival** – A child must be shielded from any kind of physical, psychological, mental and emotional abuse and neglect
2. **Best interests of the child** – The primary consideration must be the harmonious development of the child
3. **Right to be treated with dignity and compassion** – Child victims should be treated in a caring and sensitive manner throughout the justice process
4. **Right to be protected from discrimination** – The justice process must be transparent and just; irrespective of the child's cultural, religious, linguistic or social orientation
5. **Right to special preventive measures** – It suggests, that victimised children are more likely to get abused again, thus, preventive measures and training must be given to them for self-protection
6. **Right to be informed** – The child victim or witness must be well informed of the legal proceedings
7. **Right to be heard and to express views and concerns** – Every child has the right to be heard in respect of matters affecting him/her
8. **Right to effective assistance** – financial, legal, counselling, health, social and educational services,

physical and psychological recovery services and other services necessary for the child's healing must be provided

9. **Right to Privacy** – The child's privacy and identity must be protected at all stages of the pre-trial and trial process
10. **Right to be protected from hardship during the justice process** – Secondary victimisation or hardships for a child during the justice procedure must be minimised
11. **Right to safety** – A child victim must be protected before, during and after the justice process
12. **Right to compensation** – The child victim may be awarded compensation for his/her relief and rehabilitation

An online complaint management system, POCSO e-box was launched in New Delhi by the Union Ministry of Women and Child development in order to facilitate easy and direct reporting of sexual offences against children and timely disposal of the cases under POCSO Act 2012.