

Special Legislations - I

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Protection Of Children From Sexual Offences ACT, 2012

POCSO act 2012

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.

Section 1:

Definition

If the child is less than 12 years, the court sentence capital punishment

Note

Who is a child?

→ "child" means any person below the age of eighteen years.

Sec-28 Special Court:

→ Who listen this type of cases.

→ Session Court's officer will be there.

Additional session judge

session judge

} lead the court

→ State govt. appoint a special public prosecutor from the side of victim.

Govt. Adv. is called
Public Prosecutor

Sexual Offences Against Children

Section 3 :- Penetrative sexual assault

Penetration → Insert something (can be anything either body part or an object) into a child's sexual organ.

If touches with mouth or makes the child to do so; covers under this section.

Section 4 :- Punishments for Sec 3

Min 7 years in imprisonment

OR

Life imprisonment

OR

Fine ~~with~~ and imprisonment

Section 5 :- Aggravated penetrative sexual assault

Upgraded version of section 3

Gravity of offence increase

- Policeman (incharge of Thana)
- Doctor
- NGO / Shelterhome incharge
- Armed force officer
- Priest of temple.
- When it done by showing some weapon.
- If the sexual organ of a child destroyed.
- If handicapped either mentally or physically.
- If the victim gets pregnant.
- Transferring any serious disease like AIDS etc.

Where if someone is sheltered & kills secure and if it happened there sec 3 offences will be there, as well as sec 5 offences will also be there.

- Repeating the same offence with the same child. (2)
- Mentally / physically ill child.
- ~~Provision~~ If a blood relative commit the offence.

or adoption or illegal adoption or any other case, when a child is living with the person in same home.
- If minor is pregnant (with legal marriage) & offence happened attracts sec-5
- Attempt to murder after rape.
- While community violence ^{offence} has committed.
- If someone already had punishment and repeat the offence.
- After committing the offence, taking victim ~~to the~~ naked in front of public or public place.
- Making or viralizing the offensive video.

There is no value of
 consent of minor in the
 eye of court.

Section 6 :- Punishment for sec 5

Min 10 years

or

Life imprisonment

or

Imprisonment and fine both

Section 7 :- Sexual assault

- touching a child with sexual intent or touching private parts.

- All activity before inserting anything comes under this section.

Section 8 :- Punishment for sec - 7

Min 3 years or Max 5 years

OR

Fine and Imprisonment both

Section 9 :- Aggravated sexual assault

Upgraded version of section 7

If offence committed by

- Police officer
- Armed forces officer
- public servant
- staff of hospital
- staff of Jail
- gang sexual assault
- By showing weapons.
- Physically / Mentally ill child.
- Repeats more than once
- If child is less than 12 years.

Section 10 :- Punishment for section 9

Min 5 years or Max 7 years

OR

imprisonment and fine both

Section 11 :- Sexual harassment

(3)

- Utters any word or makes any sound or gesture or exhibits any object or part of body
- Makes a child exhibits his body or any part.
- Shows any object to a child in any form of media for pornographic purpose.
- repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means.
- threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act.
- entices a child for pornographic purpose or gives gratification therefor.

Section 12 :- Punishment for sec 11

Upto 3 years

or

imprisonment and fine both

Section 13 :- Use of child for pornographic purpose

- Uses a child in any form of media
 - programme
 - Advertisement
 - Internet
- representation of sexual organ of a child.
- usage of a child engaged in real or simulated sexual acts (with or without penetration)

Section 14 :- Punishment for sec - 13

1. if usage a child for pornographic purpose

For first time up to 5 years or fine.

if same person repeat the same offence (even of second or extend to 7 years subsequent conviction)

OR

imprisonment and fine both

2. sec 3 + directly participating in pornographic acts

Min 10 years

OR

Life imprisonment

OR

imprisonment and fine both

3. Using the child for pornographic purposes commits an offence of sec - 5 + directly participates in pornographic acts

Life imprisonment

OR

imprisonment and fine both

4) Offence of sec-13 + section 7 and directly participate ④

Min 6 years and Max 8 years

OR

imprisonment and fine both

5) Offence of sec-13 + sec 9 and directly participate

Min 8 years and max 10 years

OR

imprisonment and fine both

Section 15 :- Punishment for storage of pornographic material involving child

- Any pornographic material in any form involving a child is stored.

Up to 3 years of imprisonment

OR

Fine

OR

Both

Section 16 :- Abetment of an offence

Abetment
making someone else to do so

First → ^{Motivate of person to do.} Instigates any person to do that offence.

Second → ^{to be a part of planning} Engages with one or more other person or persons in any conspiracy for doing of that offence.

Third → ^{Helping a criminal} Intentionally aids, by any act or illegal omission

Section 17:- Punishment for sec-16

punishment will be same as the offence happened in any section.

e.g. if offence happens as per sec 7, then the sec 7's punishment will be sentence.

Section 18:- Punishment for attempt to commit an offence

Tried to do the offence

- The 50% of ~~the~~ offence will be sentenced.

e.g. if ~~off~~ some someone tries to commit offence of section 7, then in this section the 50% of punishment will be sentenced according to sec. 7.

(5)

Procedure For Reporting of Cases

Section 19: Reporting of offence offences

File report in:

- Nearest police station
- Special unit
- It is a responsibility of a policeman to note down the report as it is in FIR. (Without interpretation)
- Police will give a unique number.
- FIR should be in simple language.
- If linguistic difficulty faced by police
 - Police has to get a linguistic expert.
 - Fee paid by the police only. (Officially)
- If the child needs the treatment either mental or physical, or if the child has no shelter.
 - Police will take him to hospital or in shelter home.
 - All bills & invoices ~~by~~ paid by the govt. or police.
- Police has to inform & serve a copy of the FIR to ~~the~~ special court (if not then session court) within 24 hrs.
- Police has also to serve a copy of FIR to child welfare (Bal ~~&~~ kalyan Samiti)
- ADJ or DJ ^{will appoint} in special court. ~~or~~ If not special court then session court judge will ~~not~~ hear this case. (They called special judge)

- If a informer is a layman, there will no liability of ~~that person~~. civil or criminal on that person.

Section 20: Obligation of media, studio and photographic facilities to report cases.

- If a person ~~media person~~ knows ^{or has information} about the crime, it's duty of the person to report the policestation

Section 21: Punishment for failure to report or record a case. (Punishment of sec 20)

- upto 6 month imprisonment or Fine
- if a ~~person~~ ^{adult} knows that a subordinate has committed a ~~crime~~ in POCSO act. Then the punishment will be 1 year (if not informed to police)

Section 22: Punishment for false complaint or false information

- if false complain against sec 3, 5, 7 29
 - Police will file a new complaint
 - 6 month imprisonment (for adult)
- if a child & files a false complaint then he will be released ~~free~~ free.
- if a false report against a child & it informer (adult) report on behalf of the child then the ~~punishment~~ punishment will be 1 year.

Sec 23 : Process for media:

- Should not make any comment for victim.
- Media can't express the identity.
- Media means electronic media, print media etc.

Punishment :

Min 6 months or Max 1 year

OR

Fine and Prison both.

Sec 24 : Recording of statement of child:

- it will be done by investigation incharge.
- No one allow to investigate less than the post of sub-inspector.
- In case of girl victim, police should not be in there official out-fit. & statement should be taken by ~~one~~ female police, in case of girl victim.
- the police should go and take statement as per the child's convenient.
- In no circumstances the victim will not stay in night at police station (if he goes there)
- It is the duty of police officer to publish the victim's identity. Until the court gives the order.
- While recording the statement of child, the accused should not be present there.

Section 25: Recording statement of a child by Magistrate

- Statement will be recorded in front of Magistrate.
- The statement will record under IPC 164 of Cr. PC.
- There is no value of auth of child, due to this they ask several questions to make him comfort.
- If a child is paranoid only magistrate & child will be only there. And magistrate will take statement by himself.
- In case the child is very low in age then any one person will be allowed, to make him comfort. And the person should not allow to speak.
- The copy of statement will be provided by police after presenting the charge sheet. And it will be free of cost.
- Statement will be recorded for single time only.

no auth
& no sign required.

Cr.PC sec-161
Police will record
Statement

Cr.PC sec 164
Police will get
record in front of
Magistrate. And need
to take auth before
recording statement.
- At the end of the
statement the sign
of person is required.

Sec 26: Additional provisions regarding statement to be recorded:

- Magistrate will allow one person.
- Magistrate will record the statement.
- The statement will be recorded by magistrate by any medium. (e-media, audio, video).
- if a child is mentally physically handicap or there is linguistic problem then the expert of the subject will be called.

Sec 27 - Medical examination of child:

(7)

- For a girl child, the medical test to be done by a female doctor (preferred)
- His/ Her ~~guard~~ present parents or the one with whom he/she feel comfortable with, who should be present.
- if no relatives are there; then the female police officer or any female from the related NGO.
(preferred)
- The potency test of the accused is also done in this case.

Sec 28 - Designation of Special Court:

- The State govt. shall in consultation with H.C. & designate a special court.
- The power is equivalent to session court.
- Where there is no special court; the session court will have the power of special court and cases will be heard there as special court.
- On request of victim, the investigation will be done in the supervision of special court.

Gazette
Official
Newspaper of
govt.

V. Imp.

Sec 29 - Presumption as to certain offences:

↙ ↘
reality imagination

- presumption of certain sections 3, 5, 7, 9, 11 & 13
- it is presumed that accused is offender until he proves himself ~~to be~~ innocent. [it is the revert of general principle]

Sec 30 - Presumption of culpable mental state:

- support sec 29.
- it is presumed that accused is with the criminal mentality.

Sec 31 : Application of Code of Criminal Procedure

- All ~~not~~ Criminal procedure will be done by session court.

Sec 32 : Special public prosecutor —

- The State govt. appoint a special public prosecutor.
- Who has min. 7 years of experience.
- All other qualification should be acc. to Cr.P.C.
- Represent the State (govt. or victim)
- Fee / Salary will be paid by govt./State.

Sec 33 : Powers and Procedures of Special Court —

- Special court can cognizance in case of Child.
at the first site the court feel it fits the case.
- Only those witness can witness, whose name is present in charge sheet and true type of examination will happen:
 - a) examination -in- chief
 - b) Cross-examination
 - c) re-examination
- Child Question can't be ~~asked~~ ^{asked} directly by the child / victim by any Advocate.
- To ask question to child inform the question to the court.
- Special court permit frequent breaks for the child during the trial.
- Special court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom a child has trust or confidence, to be present in the court.
- Special court make sure not to call victim again and again.

- No question should be asked about the character of the child. ④
- The Sp. Court will make sure ~~not to make~~ to maintain privacy of the child.
- if court feels that child has physically or morally loss, then court will order to compensate the victim by victim compensation scheme.
- Special court will exercise all the powers of session court power by Cr.P.C.

Sec 34 : Determination of age by Special Court

- Priority is given to the govt. document.
- If none of the doc. present; then the medical team will check and tell the age.

Sec 35: Period for recording of evidence of child and disposal of case

- The evidence of the child shall be recorded within a period of 1 month. of the special court taking cognizance.
- If court fails to record the statement within one month; then court has to mention reason for the delay.
- Special court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.

Sec 36: Child not to see accused at the time of testifying

- The Sp. C shall ensure that the child is not exposed to the accused at the ~~at~~ time of recording of the evidence.
- While at the same time ensuring that the accused is in a position to hear the statement of the child & communicate with his advocate.
- The court can record evidence using video method; where identification is not required

Sec 37: Trials to be conducted in camera

(वाक्य क्रमांक)

- Giving security & privacy to the child.
- These ~~are~~ Sp.C are closed courts; no one else (outsider) allowed in the court while ~~trial~~ statement recording.

Sec 38: Expert while recording evidence of the child.

- Whenever necessary, the court may take the assistance of a translator having such qualifications.
- Court has to mention the reason for the requirement of translator.

Sec 39: Guidelines for child to take assistance of experts, etc

- Govt will issue a guideline to provide training or legal help to child in schools, ~~& colleges~~ with the help of NGOs or other bodies.

Sec 40: Right of child to take assistance of legal practitioner

- There is a full right to take legal services by paying there fee.
- If a case when there is no money to pay fee; they have to apply in court and ~~the~~ court will help ~~to~~ the child.

Sec 41: Provisions of sec 3 to 13 not to apply in certain cases

- In case of medical examination or medical treatment of child.
- Such medical examination/treatment is undertaken with the consent of his parents or guardian.
- Here the intention is good; And it is preferred to be done by female Dr. or a ~~not~~ female will be present their.

Sec 42: Alternative Punishment

(9)

- Whichever punishment is higher will be considered either in IPC or POCSO.
- IPC, POCSO, ST/SC & IT Act.
- An offence punishable under this Act and also under section 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376 [A, AB, B, C, D, DA, DB], 376E or Sec 509 of IPC (45 of 1860).

Sec 43A: Public awareness about Act

- State & Central govt. has to make some prog. for the awareness of public
- It can be done through media (T.V., Internet, Radio)
- Govt will organise training programs for police officers & other concerned officers / persons.

Sec 44: Monitoring of Implementation of Act

- National Commission for Protection of Child Rights constituted.
- They will send reports to the govt.
- NCPCR monitor the implementation.

Sec 45: Power to make rules

traditional methods : 8000

buddhist & new religion traditional methods -

Sec 46: Power to remove difficulties to 312 in article

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where also does not exist similar situations with respect
to the 3428 3428 3428 3428 3428 3428 3428 3428 3428
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new methods have been introduced : 8000

and they need more or less time to adapt & take
time to adapt & to get used to new methods
which will be adopted from various other fields
of study & research because this is
a field of research which requires more time &
more efforts to adapt to new methods

for the introduction of new methods : 8000

that will be adopted and continued benefited -

through out at different levels like first -

methodological at various 8000 -

short time at least : 8000

W.M.C. 2008