

RIGHTS UNDER POCSO ACT, 2012

The Protection of Children from Sexual Offences Act (POCSO Act) was passed in 2012, which provides the punishment for penetrative, touch-based, as well as non-touch based sexual offences against children.

The primary goal of the Act is to put children first, including mechanisms for child-friendly reporting, evidence recording, investigations, and speedy trials through Special Courts. The statute requires Special Courts and procedures to hear cases involving children because it places paramount importance on the principle of 'best interests of the child.'

The POCSO Act came into force on November 14th, 2012.

Salient Features of the POCSO Act

Here is the list of essential features of the POCSO Act:

1. With a focus on safeguarding children's interests and well-being, the POCSO Act, 2012, was enacted to protect children from sexual assault, sexual harassment, and pornography.
2. A child is defined under the Act as anyone under the age of 18. It is a gender-neutral Act.
3. The law recognises that boys can also be subject to sexual assault.
4. The scope of sexual offences against children is made wider than even in the Indian Penal Code.
5. The Act enforces the children's right to safety from sexual abuse.
6. This Act establishes procedures to maintain the child-friendly criminal justice system and prevent re-traumatisation.
7. The National Commission for the Protection of Child Rights (NCPCR) and State Commissions for the Protection of Child Rights (SCPCRs) will monitor the implementation of the Act.
8. The definition of sexual assault was expanded to include non-penetrative assault and aggravated penetrative sexual assault.





9. Trafficking children for sexual purposes is also punishable by the provisions relating to abetment in the Act.

10. The POCSO Act defines child pornography as "any visual representation of sexually explicit conduct involving a child that is indistinguishable from a child or one that is created, adapted, or modified but appears to depict a child." Thus, it brings the digital or computer-generated content under the ambit of this Act.

Definition of Child Under the POCSO Act

The POCSO Act under section 2(d) defines a child as any person below the age of 18 years and protects all children under 18 years from any type of sexual abuse.

But, sometimes, it may be difficult to assess the age when the child appears to be on the borderline, and any error in determining the age would be detrimental to justice.

In these types of confusion, the court takes the help of section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015. Furthermore, according to section 34(1) of the POCSO Act, when a child commits an offence under the POCSO Act, he will be dealt with in line with the provisions of the Juvenile Justice (Care and Protection of Children) Act of 2015.

In *Jarnail Singh vs the State of Haryana* (AIR 2013), the Supreme Court ruled that the procedure for determining a child's age in conflict with the law can also be used to determine the age of a child victim.

The court said,

"Although Rule 12 is strictly applicable only to determine the age of a child in conflict with the law, we think that the statutory provision should administer, even to children who are victims of crimes. Our view is that from the minority's perspective, there is hardly any difference between a child in conflict with the law and a child who has been a victim of crime."

Process for Age-Determination Under Section 94 of the Juvenile Justice Act, 2015

Any court can follow this process before which the age of the child is in question.

Stage 1: When the child comes before the Special Court, and the court thinks it fit that the child is under 18 years of age. If not, the court will proceed to stage 2.





Stage 2: If the court finds it difficult to determine the age of the victim, then the court may order to:

- ✓ Get the birth certificate from school, matriculation or equivalent certification from the examination board.
- ✓ If the victim has no certificate mentioned above, he may also produce the birth certificate issued by corporations, municipalities or panchayats.
- ✓ If (1) and (2) are not available, the court may order an ossification test of the child. Bone ossification is measured by taking x-rays of a few bones to know how old a person is.

The Rights of the Child Under the POCSO Act

Following are the crucial rights of children provided under the POCSO Act:

1. Children can record their statement at home or at some other location they choose, preferably by a female police officer or by an officer at least as senior as a sub-inspector, dressed in civilian clothing.
2. The police should ensure that the child does not come in contact with the accused during the investigation.
3. The child should not be detained overnight at the police station, and their identity should not be disclosed to the public and media unless otherwise directed by the Special Court.
4. Female doctors should examine female survivors only in the presence of their parents or someone trusted by the child. If neither of those individuals is present, a woman nominated by the institution's medical director should conduct the examination.

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