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LAWBY WRITES
DECODING THE ACT SERIES

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THE POCSO ACT

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Children deserve an environment where they feel safe, protected, and heard. Yet for years, inadequate legal safeguards left many young victims without a clear mechanism for reporting abuse or seeking justice.

The Protection of Children from Sexual Offences (POCSO) Act, 2012 transformed this landscape by introducing a strong, child-centric legal framework. It ensures that every child-regardless of age, gender, or background-has the right to protection from sexual offences, supported by sensitive reporting procedures, special courts, and strict punishment for offenders.

The Act stands as a commitment to safeguarding childhood, ensuring that no child grows up in fear or silence.

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The POCSO Act -
How can misuse be stopped?
How can children be truly protected?

In India as of January 2025, 754 Fast Track Courts, Including 404 POCSO Courts functional in 30 states, dispose over 3.06 Lakh cases as per Ministry of Women and Child Development dated 21st March 2025. The POCSO Act is undoubtedly helping the cause of stopping child sexual abuse. However, certain grey areas need attention and immediate action.

In ***Suhara v. Muhammed Jaleel (Mat. Appeal Nos. 182 & 198 of 2019),*** The Kerala High Court upheld custody of a 2-year-old child to the father and rejected allegations of sexual abuse under POCSO, noting lack of credible evidence. The Court highlighted a "**growing tendency in the recent years to foist false crimes against the biological father alleging sexual abuse of own child misusing the provisions of the POCSO Act**" during custody disputes.

The misuse of the law could derail the intent of the Act as what qualifies as abuse gets an unrealistic wider meaning. The Courts must create a nuanced playbook to ensure that innocent persons are protected from being branded as child sexual offenders.

According to a news report in the Indian Express dated 1st November 2025, **1.84 lakh children were reported missing across the city of Delhi, from 2015 to 2025. 1.33 lakh were traced, leaving 50,771 still unaccounted for. One can only imagine the plight of such missing children**. The core argument for learning the POCSO Act would be to empower a legal practitioner to assist the court in rendering justice to the young children who have no means of protecting themselves against perpetrators who live amongst us. Every child saved is us safeguarding our nation's future.

Do read to learn and educate.

HISTORY OF THE ACT

1971

42nd Law Commission Report (IPC Review)

- Identified sexual offences against children under IPC (rape, indecent acts, buggery).
- Did not recommend penalising a woman's sexual act toward a boy, calling such cases rare.

1992

India signed the UNCRC

- Committed to protecting children from all forms of exploitation and abuse.
- Created international pressure for child-specific legal protections.

1997

156th Law Commission Report (IPC Revision)

- Highlighted severe under-reporting of child sexual offences.
- Noted that most offenders were known to the child.
- Recommended broader definitions, stricter punishments, and victim-sensitive procedures.

2000

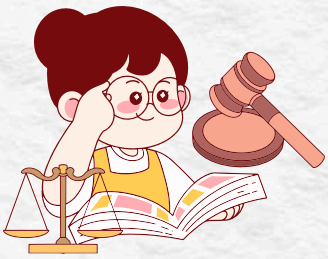
172nd Law Commission Report

- Was prepared following the Supreme Court's direction in ***Sakshi v. Union of India (2004 Supp(2) SCR 723).***
- Stated that the existing rape law (Sec. 375 IPC) was inadequate for covering child sexual abuse.
- Recommended including non-penile forms of assault and strengthening protections.

2000

Juvenile Justice Act, 2000

- Defined a child in need of care and protection to include children who were abused or likely to be abused sexually, **[Section 2(14)(viii)].**
- Established welfare mechanisms but not offence-specific provisions.



2004

The Supreme Court in *Sakshi v. Union of India (2004 Supp(2) SCR 723)*

- Declined to reinterpret "rape" under **Sec. 375 IPC** to include all forms of penetration.
- Issued mandatory directions, including:
  - Conducting trials in camera, Using child-friendly procedures, Applying these protections even to **Sec. 354** and **Sec. 377** IPC cases.

2005

The Commission for Protection of Child Rights Act, 2005

- Established the NCPCR and SCPCRs.
- Addressed offences such as trafficking, pornography, and prostitution.

2007

National Study on Child Abuse (MWCD)

- Found that 53% of children had faced one or more forms of sexual abuse.
- Reported that a child under 16 was raped every 155 minutes.
- Revealed massive gaps in reporting, awareness, and legal protection.
- Created an urgent need for a dedicated law.

2011

The POCSO Bill drafted

- Was drafted by the MWCD after multi-ministerial consultations.
- Introduced child-centric definitions, including non-penetrative assault, sexual harassment, and child pornography.
- Proposed Special Courts and strict procedural safeguards.

2012

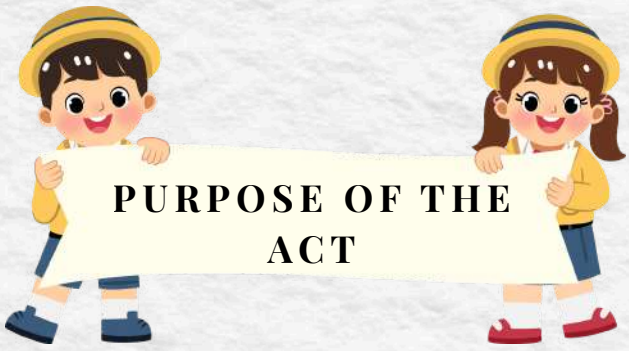
The POCSO Act enacted

- Became the first comprehensive, gender-neutral, child-specific law on sexual offences.
- Defined, criminalised, and detailed procedures for reporting, investigation, and trial of offences.

2019

The POCSO Amendment Act

- Introduced stricter punishments, including the death penalty for aggravated penetrative assault.
- Criminalised digital and online child abuse, including the production and distribution of child pornography.



Who are **covered** under this Act?

Any "child" below the age of **eighteen years** [Section 2(d)]

What types of **offences** are covered in the Act?

"Penetrative sexual assault" **[Section 3]**, "Aggravated penetrative sexual assault" **[Section 5]**, "Sexual assault" **[Section 7]**, and "Sexual harassment" **[Section 11]**

KEY PROVISIONS OF THE ACT

Offence	Definition (Legal Elements)	Relevant Sections	Punishment
Penetrative Sexual Assault	– Penetration of penis/object/body part into vagina, mouth, urethra, anus of a child. – Manipulation of body to cause penetration. “ – Conduct must be with **sexual intent**.	Sec. 3 & Sec. 4	**Min. 10 years Rigorous Imprisonment(RI)**, may extend further. **If child < 16:** Min. **20 years RI**.
Aggravated Penetrative Sexual Assault	– Offence committed by persons in **positions of trust or authority** (police, armed forces, teachers, doctors, wardens, staff of hospitals/hostels/jails). – Gang assault, use of weapon, grievous hurt, death. – Offence on child **below 12**. – Repeat offender.	Sec. 5 & Sec. 6	**Min. 20 years RI**, may extend to **life (natural life)** or **death penalty**.
Sexual Assault	– Physical contact **without penetration**. – Must be done **with sexual intent**. – Includes touching the child’s private parts or making the child touch others'.	Sec. 7 & Sec. 8	**3–5 years RI + fine**.
Aggravated Sexual Assault	– Sexual assault committed by individuals in **positions of responsibility**. – Gang assault, grievous hurt. – Child below **12 years**.	Sec. 9 & Sec. 10	**5–7 years RI + fine**.
Sexual Harassment	– Words/gestures with sexual intent. – Showing pornographic material to a child. – Displaying body parts. – Repeated stalking or contacting a child.	Sec. 11 & Sec. 12	**Up to 3 years + fine**.

FAQ CORNER

What is the punishment for using a child for pornographic purposes?

Minimum 5 years' imprisonment + fine

For a second or subsequent conviction: Minimum 7 years' imprisonment + fine [Sections 13 & 14]

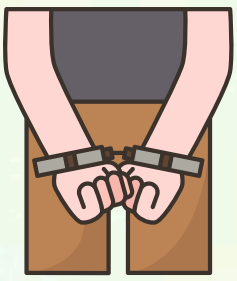
Is watching, storing, or sharing child pornography also a crime?

Yes. Possessing, viewing, storing, sharing, transmitting, distributing, or displaying child pornographic material is punishable, especially if done for sharing, transmission, or commercial use. **[Section 15]**

What if someone fails to delete or report child pornographic content?

Fine of at least **Rs. 5,000**

For **repeat offences**: fine of at least **Rs. 10,000**



What are the penalties under POCSO for failing to report child abuse?

Anyone who hides or fails to report a child abuse can face up to **6 months' imprisonment, or fine, or both**. If the person responsible is **in charge of an institution and fails to report** abuse by a subordinate, the punishment can go up to **1 year imprisonment + fine. [Section 21]**

FAQ CORNER

How should a child's report be recorded?
Must be recorded in writing
In simple, child-friendly language
Translator/interpreter must be provided if needed [Section 19]

What is the punishment for storing or possessing child porn for sharing or display?
If the material is not stored for reporting or court use: **Imprisonment up to 3 years, or Fine, or Both**

What happens if someone makes a false complaint?
False complaints made to harass, threaten, or defame someone are punishable with up to 6 months' imprisonment or a fine. Children are exempt from punishment for false complaints. [Section 22]

Who must be present when a child's statement is recorded, and what assistance can the child receive?
A parent or any person the **child trusts** must be present. The child can get help from a translator, interpreter, special educator, or expert, and the statement should be audio-video recorded where possible. **[Section 26]**

FAQ CORNER

How should the medical examination of a girl child be conducted?
By a woman doctor and in the presence of a trusted person.
[Section 27]

Are POCSO trials open to the public?
No. They must be conducted in camera (privately).
[Section 37]

What are the time limits for POCSO cases?
Child's evidence: within 30 days of cognizance
Entire trial: ideally within 1 year
[Section 35]

Can the Court order compensation?
Yes. The Court may order compensation for trauma and for immediate rehabilitation.
[Section 33]

WHAT IS THE PRESENT SCENARIO OF THIS ACT?

The POCSO Act, 2012, has undergone significant change since its enactment in 2012, transforming India's approach to combating **child sexual abuse.** Following its amendments in 2019, the POCSO Act has introduced more stringent punishment, including the **death penalty for committing sexual crimes on children**, with a view to deterring the perpetrators & preventing such crimes.

According to a press release by the **Minister of State for Women and Child Development, "National Council of Educational Research and Training (NCERT)** has published Childline **1098**, which is a **24x7x365 toll-free Helpline for children** and POCSO E-box on the back side of the front cover of all the course books from class 6th to class 12th to equip the children with the information regarding the possible modes of protection/ complaints and emergency outreach".

HOW ARE STATES IMPLEMENTING POCSO TODAY?

Since October 2019, the Department of Justice has been implementing a Centrally Sponsored Scheme to set up Fast Track Special Courts (FTSCs), including exclusive POCSO Courts across the nation for expeditious trial relating to sexual offences. Out of 31 States and UTs eligible, 30 have joined this scheme. As of August 2025, **773 FTSCs**, including **400 exclusive POCSO (ePOCSO) Courts**, are functional in 29 States/UTs, which have disposed of more than **3,44,000 pending cases**.

Despite these significant developments, Many courts remain overburdened, resulting in trial delays and growing backlogs, with some cases extending far beyond the mandated one-year disposal period under the POCSO Act. Focus must shift from merely setting up courts to strengthening their efficiency through better training, capacity-building, and coordination to ensure faster, more sensitive justice under the POCSO framework nationwide.

Naming or revealing any detail of a child victim (including photos on social media) is a punishable offence - even if **done unintentionally** by media, relatives, or NGOs.

According to the **National Crime Records Bureau(NCRB)** report, a total of **1,77,335** cases of crime against children were registered during 2023, showing an increase of 9.2% over 2022 (**1,62,449 cases**).

In 2023, POCSO cases accounted for **38.2%** of the overall crime rate under the head “Crime against Children”.

You can file a **POCSO complaint** online through the NCPCR POCSO e-Box or by emailing **cp.ncpcr@nic.in.**
Complaints can also be submitted in **person, by post, or through a messenger**.

HOW THE COURTS HAVE INTERPRETED & ADJUDICATED?

1.Case insight: The judgment reaffirmed the State's constitutional duty to effectively implement the POCSO Act, 2012 and ensure swift disposal of child sexual assault cases.

Case Title: *Alakh Alok Srivastava v. Union of India [(2018) 5 SCC 651]*

Relevant Provisions: Sections 28, 33 and 37 of the Protection of Children from Sexual Offences Act, 2012, Article 21 and 32 of Constitution of India.

Legal Question: Whether the Supreme Court should issue directions to ensure the speedy trial and effective implementation of the POCSO Act, 2012, in light of increasing cases of sexual offences against children and the inefficiencies in the justice delivery system?

Context:
The petitioner, Advocate Alakh Alok Srivastava, filed a Public Interest Litigation (PIL) under Article 32 of the Constitution after the horrific sexual assault of an eight-month-old girl in Delhi. The petition highlighted the alarming rise in child sexual abuse cases and the slow pace of adjudication under the POCSO Act. It sought urgent directions from the Supreme Court to improve the implementation framework, ensure appointment of trained prosecutors, and establish special courts dedicated to handling POCSO cases swiftly and sensitively.

Final Verdict:
The Supreme Court, recognizing the **gravity of the situation**, issued a series of binding directions to strengthen the enforcement of the POCSO Act. The Court directed that:

i. **Special POCSO Courts be established in every district across India to ensure the speedy disposal of such cases.**
ii. **Special Public Prosecutors and child psychologists were appointed to assist the courts in maintaining a child-friendly environment during trials.**
iii. **Periodic monitoring mechanisms were instituted at the High Court level to oversee compliance and address delays.**

The Union Government and State Governments were directed to ensure the effective implementation of POCSO provisions through adequate infrastructure, awareness initiatives, and training programs. The Court held that justice for child victims had to be both prompt and compassionate, observing that any delay in justice amounted to a denial of the victim's fundamental rights under Article 21 of the Constitution.

2.Case insight: The judgment held that a minor's consent is legally irrelevant in sexual offences and that the victim's age must be determined strictly in accordance with Rule 12 of the Juvenile Justice Rules, 2007.

Case Title: *Jarnail Singh v. State of Haryana [(2013) 7 SCC 263]*

Relevant Provisions: Sections 376(g) and 120-B of the Indian Penal Code, 1860. Sections 164 and 313 of Code of Criminal Procedure, 1973.

Legal Question: Whether the prosecutrix was a minor at the time of the offence and whether the alleged sexual intercourse between the accused and the prosecutrix could be considered consensual, thereby determining criminal liability under Sections 366, 376(g), and 120-B IPC.

Context:

The case involved the abduction and gang rape of a 15-year-old girl on 25 March 1993 by her neighbour, Jarnail Singh, and his accomplices. The victim was recovered four days later from the accused's custody in Haridwar. In her Section 164 CrPC statement, she stated that the accused forcibly took her away, rendered her unconscious, and raped her. Medical and forensic reports confirmed sexual assault.The Trial Court convicted the accused under Sections 366, 376(g), and 120-B IPC, sentencing him to 10 years' rigorous imprisonment, which the High Court upheld. The accused appealed, claiming the act was consensual and the victim was not a minor.

Final Verdict:

The Supreme Court dismissed the appeal, affirming both the **conviction and the sentence** awarded by the lower courts. The Court held that the **consent of a minor is legally irrelevant in cases of sexual intercourse under Section 376 of the IPC.**

It further ruled that Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 must be followed for determining the age of a victim, giving priority to documentary evidence, such as a matriculation or school certificate over medical opinion.

Referring to the school certificate (Exhibit PG) proved by the Headmaster, the Court noted that the prosecutor's date of birth was 15 May 1977, thereby establishing that she was below sixteen years of age at the time of the offence. The Court also distinguished the precedent of ***Sunil v. State of Haryana (AIR 2010 SC 392)***, observing that the 2007 Rules had not been considered in that case.

Consequently, it concluded that the prosecutrix was a **minor victim of gang rape,** and the alleged consent was **immaterial in law**, making the act statutory rape. Thus, the conviction and the **sentence of ten years' rigorous imprisonment were upheld**.

3. Case insight: The judgment held that sexual intercourse with a wife below 18 years amounts to rape, reading down Exception 2 to Section 375 IPC to uphold the bodily integrity and dignity of minor girls in line with POCSO and international child rights norms.

Case Title: *Independent Thought v. Union of India [(2017) 10 SCC 800]*

Relevant Provision: Exception 2 to Section 375 of the Indian Penal Code, 1860; Section 5(n) and Section 42A of the Protection of Children from Sexual Offences Act, 2012; Sections 3, 9, 13 of the Prohibition of Child Marriage Act, 2006; Article 15(3) and Article 21 of the Constitution of India.

Legal Question: Whether Exception 2 to Section 375 IPC, which permitted a husband to have sexual intercourse with his wife aged between 15 and 18 years, violates the constitutional rights of the girl child and contradicts the POCSO Act and Prohibition of Child Marriage Act, 2006?

Context:
The petitioner, Independent Thought, a child rights NGO, filed a Public Interest Litigation under Article 32challenging the constitutionality of Exception 2 to Section 375 IPC. The provision allowed marital intercourse with a wife above 15 years, thereby excluding minor married girls from rape protection. The petitioner argued that this distinction between married and unmarried girls was arbitrary, discriminatory, and contrary to India's obligations under international conventions like CEDAW and the Convention on the Rights of the Child (CRC). The Union Government opposed the plea, citing sociocultural realities of child marriage. However, various reports from the Law Commission of India, UNICEF, and National Family Health Survey highlighted the grave physical, psychological, and social consequences of child marriage and early sexual intercourse.

Final Verdict:
The Supreme Court, per Justices Madan B. Lokur and Deepak Gupta, held that sexual intercourse by a man with his wife below **18 years of age** amounts to rape, thereby reading down Exception 2 to Section 375 IPC.

The Court ruled that the exception violated Articles 14, 15(3), and 21 of the Constitution and contradicted the spirit of the POCSO Act, **which criminalizes all sexual acts with persons below 18 years.** It emphasized that child marriage is not a license for sexual exploitation and that the law must prioritize the best interest of the child.

The Court harmonized conflicting statutes, holding that in case of **inconsistency, the POCSO Act will prevail due to Section 42A.** This judgment effectively criminalized marital rape of minor wives and reinforced India's constitutional and international commitment to protect children's rights.

4. Case insight: The judgment reaffirmed a victim-centric criminal justice approach by strengthening protections for survivors of sexual offences in line with Article 21.

Case Title: Nipun Saxena v. Union of India [2018 INSC 1192]

Relevant Provision: Section 228A of the Indian Penal Code, 1860; Section 23 of the Protection of Children from Sexual Offences Act, 2012; and Article 21 of the Constitution of India.

Legal Question: Whether the identity of victims of sexual offenses, including minors, should be protected under Indian law, and if so, what measures should be implemented to ensure such protection?

Context:
The case arose from a Public Interest Litigation (PIL) filed by Nipun Saxena, highlighting the rampant violation of Section 228A of the Indian Penal Code (IPC) and Section 23 of the Protection of Children from Sexual Offences (POCSO) Act. These provisions mandate the non-disclosure of a victim's identity in sexual offense cases. The petition underscored the need for stringent enforcement of these laws to protect victims from societal stigma and media exploitation.

Final Verdict:
The Supreme Court held that the **identity of victims of sexual offenses**, including minors, must be strictly protected under law to safeguard their dignity and privacy.

The Court directed that **no person, institution, or media outlet shall print, publish, or broadcast any information** that could reveal the victim's identity. Exceptions are allowed only with **authorization from a competent authority**, such as in cases involving deceased or mentally ill victims. Media houses and individuals can be held jointly and severally liable for violations of this rule.

The Court also emphasized the effective implementation of its directives through mechanisms such as **child-friendly courts and One-Stop Centres**, ensuring that victims are not subjected to further trauma or societal stigma.

Case Title & Citation	Legal Question	Context	Final Verdict	Relevant Provisions
Alakh Alok Srivastava v. Union of India (2018) 5 SCC 651	Whether the Supreme Court should issue directions to ensure speedy trial and effective implementation of the POCSO Act in view of rising child sexual assault cases and delays in the justice system.	A PIL was filed under Article 32 after the brutal assault of an 8-month-old child, highlighting delays, lack of trained prosecutors, and the need for dedicated POCSO courts.	SC issued binding directions: creation of Special POCSO Courts in every district; appointment of Special Public Prosecutors and child psychologists; High Court-level monitoring; and enhancement of infrastructure and training to ensure child-friendly and speedy justice.	Sections 28, 33 & 37 of POCSO Act; Articles 21 & 32 of the Constitution.
Jarnail Singh v. State of Haryana (2013) 7 SCC 263	Whether the prosecutrix was a minor and whether the alleged intercourse could be considered consensual, affecting liability under Sections 366, 376(g), and 120-B IPC.	Case involved abduction and gang rape of a 15-year-old girl. Medical and school records established her age. Accused claimed the act was consensual and she was not a minor.	SC upheld conviction. Held that consent of a minor is legally irrelevant; age must be determined as per Rule 12 of the JJ Rules, prioritising documentary evidence (school certificate). The girl was a minor; offence constituted statutory rape.	Sections 376(g) & 120-B IPC; Sections 164 & 313 CrPC; Rule 12 of JJ Rules, 2007.
Independent Thought v. Union of India (2017) 10 SCC 800	Whether Exception 2 to Section 375 IPC—which permitted marital intercourse with a wife aged 15–18—violates constitutional rights of minor girls and contradicts POCSO and child-protection laws.	A PIL challenged the marital rape exception for minor wives. Petitioner argued discrimination between married and unmarried minors, conflict with POCSO, PCMA, and international child rights norms.	SC read down Exception 2; held that sex with a wife below 18 is rape. Exception violated Articles 14, 15(3), 21 and contradicted POCSO. Clarified that child marriage cannot legitimise sexual exploitation; POCSO prevails via Section 42A.	Exception 2 to Section 375 IPC; Sections 5(n) & 42A POCSO; Sections 3, 9, 13 PCMA; Articles 15(3) & 21.
Nipun Saxena v. Union of India (2018 INSC 1192)	Whether the identity of victims of sexual offences, including minors, should be protected, and what mechanisms are needed to ensure such protection.	PIL filed highlighting frequent violations of laws prohibiting disclosure of sexual offence victims' identities, especially by media.	SC held identity of all victims of sexual offences must be protected. No publication of identifying details unless authorised. Media/institutions liable for violations. Directed creation of child-friendly mechanisms and One-Stop Centres to preserve victims' dignity.	Section 228A IPC; Section 23 POCSO Act; Article 21 of the Constitution.

LAWBY WRITES

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