

Template for School Child Protection Policy – 18 Feb. 2025

POCSO Act, a Summary



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The Protection of Children from Sexual Offences Act – 2012

Disclaimer: The summary is not a substitute for legal advice.

POCSO Act – Domain: The Protection of Children from Sexual Offences Act of 2012 is also commonly called the POCSO Act. Under the POCSO Act, a child is any person below 18 years. The Act applies to the whole of India. The nature of crime or offence under this Act is related to child **sexual abuse**. Under this Act, the offender is more than *18 years of age, in other words, an adult. Moreover, the victim or survivor is always below the age of 18 years, in other words, a child. A child may also commit a crime under the POCSO Act or any other criminal law, and the victim can be another child or an adult. However, all such cases are handled not under the POCSO Act or other corresponding criminal law but under the JJ Act. Remember, when a child commits any crime, the child is booked under corresponding criminal law but always dealt with under the JJ Act. For more details, refer to [Annexure 5 - JJ Act](#).

What is Crime? (Refer to Bibliography-Summaries - 2-Criminal_Justice_System): A crime is an intended action described, defined or codified in various criminal laws. The criminal intent is established from circumstances, evidence, and facts of a case under consideration. Sometimes, criminal intent is at the judge's or magistrate's discretion. Let us consider two examples for better understanding.

Example 1, a biology teacher explaining private parts to students will not come under the 'criminal intended action'.

Example 2, a domestic worker like a maid, changing a Kindergarten student's spoiled clothes despite the child's reluctance to do so will also not come under the 'criminal intended action'.

POCSO Cases - Codification: All offences under the POCSO Act are cognisable, meaning the police registers an FIR (refer to Bibliography-Summaries - 2-Criminal_Justice_System). Let us imagine three situations relevant to the POCSO Act and try to typecast them as *petty*, *serious* and *heinous*.

Situation 1, i.e., Obscene Images: A person shows obscene images to a child. Moreover, no touch is involved.

The POCSO Act defines it as **Sexual Harassment** and puts it in the **Petty offence** category.

Punishment: A jail term for 0 to 3 years and shall also be liable to fine. Thus, a guilty person may not be imprisoned but only fined. As a thumb rule, petty offences are bailable (refer to Bibliography-Summaries - 2-Criminal_Justice_System).

Situation 2, i.e., Touch. A person touches a child's private parts on top of their clothes.

POCSO defines it as **Sexual Assault**, and it is a **serious offence**.

Punishment: A fine and jail term for 3 to 5 years.

Situation 3, i.e., Insertion. A person inserts an object into a child's private parts.

POCSO defines it as **Penetrative Sexual Assault**, commonly called **rape**, and it is a **heinous offence**.

Punishment: A fine and jail term for more than 7 years and can even be life imprisonment.

Sexual Assault and Penetrative Sexual Assault can become aggravated, thus drawing more severe punishments.

An assault becomes **aggravated**—meaning more severe punishments, which may include the death penalty for **aggravated penetrative sexual assault**—when a person commits the offence while in a position of responsibility, trust, or authority and/or when the child victim is below 12 years old, among other circumstances. Who is a person in a responsible, trusted, and authoritative position? Such a person may be in uniform like police and military personnel, management or staff of a school and hospital, parents, guardians, etc.

POCSO is a special, child-centric, strict law – how?

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- **Child's – consent:** The consent of a child or their parents/guardians for a physical relationship with anyone is invalid under the POCSO Act and cannot be a line of defence.
- **Death Penalty:** POCSO has a provision for the death penalty for a child rapist.
- **Presumption:** We all know that every accused is presumed innocent until proven guilty under a fair trial. But in POCSO, just like Dowry Prohibition and Protection of Women from Domestic Violence Acts, it is the other way around. When a child blames a person for sexual abuse, it is presumed that the person has committed the offence – In other words, the burden of proof is on the accused.

Note: *It is important to note that 'the burden of proof is on the accused' does not mean the accused cannot hire a lawyer for their defence. It also does not mean that the testimony of a witness or CCTV recording favouring the accused is to be discarded. For example, a child blames Person X for touching them inappropriately. Incidentally, person Y was present when it happened. As a witness, Person Y says that the child had spilt the tea over its clothes, and Person X touched the child to help the child. So, an accused can always rely on such testimonies.*

- **Obligation to report:** Under POCSO, one has a legal and not only moral obligation to report. Moreover, the police have a legal obligation to register an FIR. Failures to do so are offences under POCSO. **Failure to report an offence is punishable with imprisonment of 0 to 6 months and/or a fine. Failure to register an FIR carries the same punishment for a police officer, with imprisonment of up to six months and/or a fine. For a senior person in an institution, such as an in-charge or headmistress in a school, the punishment for the same offence is imprisonment of 0 to one year and a fine.**

Note: *The mandatory reporting of offences under POCSO is the trickiest section as it creates moral and ethical dilemmas for the person willing to report the offence. The Act is silent about how much time a person can take before reporting a sexual offence. Reporting becomes problematic in school-based scenarios because there is no legal obligation for the person willing to report to inform the parents. It will be prudent to take the parents and the principal or management in confidence before reporting unless they are involved in the abuse.*

*Remember that the child's reluctance to report cannot be a reason for not reporting. Furthermore, there is a possibility that the child may change their statement or that no evidence of the crime was found after the investigation. But one can always **report in good faith under the law**. Reporting in good faith means you are sure that a crime has happened and reported the same. In such a case, you will not be held liable.*

Moreover, the POCSO Act does not permit any punitive measures whatsoever for a false complaint made by a child.

As a thumb rule, petty offences are bailable (Refer to Bibliography-Summaries - 2-Criminal_Justice_System).

- **Abetment:** Abetment, just like criminal intention, is quite a subjective matter. Abetment means deliberate support for a crime. It also implies behaviour or conduct that instigates crime. It is an offence under various criminal laws and has lesser punishment than the actual offence. However, under POCSO, abetment has the same punishment as an actual offence and can be even up to the death penalty. For example, in a gang rape, active is penetrative and passive; that is, being part of the gang at the time of rape are to be treated as 'active participation only'. Child traffickers who kidnap or abduct children for prostitution will also fall under the abetment for rape. **There is a caution here that not reporting an offence under certain conditions may be considered an abetment.**

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- **POCSO Supersedes:** POCSO supersedes all the other laws, meaning that if the definition of an offence under POCSO overlaps with any other criminal law, the 'more' punishment will be applicable under whichever law the punishment is more.
- **POCSO Courts:** Under the POCSO Act, district-wise child-friendly fast-track courts, commonly called POCSO courts, deal with the POCSO cases exclusively. The POCSO trials are in-camera, meaning the public cannot be present. There is a physical barrier between the accused and the child. The defence lawyer of the accused cannot question the child directly.
- **Special Police and Compensation to Victims:** There are special child-friendly police called the 'special juvenile police unit - SJPU' in each district that deals with the POCSO victims. Moreover, there is a provision of compensation to the child victim. The district legal services authorities (DLSA) provide the compensation.
- **Gender Neutral:** The POCSO Act is gender-neutral, i.e., it recognises that the victims and the perpetrators of the offence can be male, female or others. Moreover, the codification of offences is the same irrespective of crimes committed against boys, girls or others.

POCSO - Digital/Virtual Offences: Digital recording or its creation, storage, sharing, or broadcasting of any child-related obscene content, even if the characters of the digital content are virtual, like cartoon characters, etc., is defined as the **Use of Children for Pornographic Purposes** under POCSO. The punishment under it ranges from **petty to serious offences**. Sharing any pornographic material, if received on WhatsApp or any other social media platform, is an offence under the Act.

There is a caution here - extra precautions are to be taken while photographing or video-graphing children's performances at various functions in the school or on excursion trips. Moreover, the school's CCTV footage of children must be stored safely.

Identity of a child victim: Under POCSO, everyone has a legal obligation to protect the child victim's identity and various information that can lead to the child's identification. Failure to do so is a petty offence with 6 months to 1-year jail **and/or** a fine.

NCPCR: There are exclusive commissions like the National Commission for Protection of Child Rights (NCPCR) and State Commissions for Protection of Child Rights to look after child rights and monitor the implementation of POCSO and various matters related to JJ ACT. They are quasi-judiciary institutions, meaning the commission on suo-moto, i.e., on its own **or** on receipt of a complaint, can initiate an inquiry about a corporal punishment incident in a school. For investigation, send a summons to the school to know the facts of the case and then recommend the necessary action to the concerned authorities like the Police, Directorate of Education, etc.

Who to report: Anyone, including a child, can register child sexual abuse complaints. To report the offences under POCSO, the Act prescribes local police, a special juvenile police unit, and child helpline number 1098. One may also approach the commissions for the protection of child rights.

POCSO-E Box: The NCPCR and Ministry of Women & Child Development, Govt. of India have developed an online complaint mechanism called POCSO E-Box. It also has helpline numbers. Anyone, including a child, can register a complaint on the box. The child-friendly illustrative box directly connects the complainant with the NCPCR without the involvement of the police in the first instance. The POCSO E-Box empowers everyone, especially our children.

National Register-Police Verification: The national registry for sex offenders is essential for preventing child sexual abuse. It has a database of convicts. The data is not accessible to the public. Police can use this data whenever required, like verifying schools' staff background.

Medico-Legal Case - MLC: MLC refers to criminal cases that have both medical and legal implications. Typically, an MLC involves injuries, incidents, or situations where legal action or investigation is required, such as sexual assault, road traffic accidents, gunshots, etc. MLC plays a significant role in understanding the severity of the situation, making it a crucial starting point for police investigations in criminal cases.

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The guidelines for Medico-Legal Cases: The Ministry of Health and Family Welfare, Government of India, has guidelines and protocols for MLC care for victims/survivors of sexual violence. Though these guidelines are not for schools, schools should still be aware of them. These guidelines aim to standardise medical examination protocols for medical practitioners and ensure that survivors are treated promptly and sensitively. While the principles of medical examination and treatment for children remain the same as those for adults, it is important to keep some specific guidelines in mind:

- If the child is under 12, or temporarily or permanently mentally disabled, consent for examination must be obtained from the parent or guardian.
- Children may be accompanied by the abuser when they come for medical treatment, so be aware and screen when you suspect abuse. In such situations, a female person appointed by the head of the hospital/institution may be called in to be present during the examination.
- Please do not assume that because the child is young, they cannot provide a history. The use of dolls and body charts can facilitate history-seeking. For instance, you can ask the child to point to the part of the doll or the body chart where they feel pain or discomfort or to show how the incident occurred using the dolls or body chart.
- It is crucial to believe what is being reported by the child. There are misconceptions that children lie or that parents tutor them to make false complaints against others. Do not let such myths affect the way you respond to cases of child sexual abuse. Your belief in the child's report is a cornerstone of their healing process.
- The specific needs of children must be kept in mind while providing care to child survivors. Doses of treatment will have to be adjusted as required in terms of medical treatment. This adjustment is a testament to your competence and care for the child's well-being. For psychological support, it is imperative to speak with the carer/s of the survivor in addition to the survivor.
- Health professionals must make a note of the following aspects while screening for sexual abuse. Assurance of confidentiality and provision of privacy are keys to enabling children to speak about the abuse. However, it is important to remember that genital and anal examinations should not be conducted mechanically or routinely. Your respectful and considerate approach is crucial in these sensitive situations. A few indicators for routine enquiry are:
 - ✓ Pain on urination and /or defecation
 - ✓ Abdominal pain/generalised body aches
 - ✓ Inability to sleep
 - ✓ Sudden withdrawal from peers/ adults
 - ✓ Feelings of anxiety, nervousness, helplessness
 - ✓ Weight loss
 - ✓ Feelings of ending one's life