



MPPSC

ADPO

Madhya Pradesh Public Service Commission (MPPSC)

Volume - 5

(Section - B)

POCSO Act, The Arms Act, The Sexual Harassment of Women at Workplace, The Essential Commodities Act, The Prevention of Damage to Public Property Act, The Wildlife (Protection) Act, 1972, The Explosive Substances Act, IT Act 2000 & Domestic Violence Act



S.No.	Chapter Name	Page No.
POCSO Act		
1.	Introduction	1
2.	Section 2 – Important Definitions	3
3.	Section 3 – Penetrative Sexual Assault	4
4.	Section 4 – Punishment for Penetrative Sexual Assault	4
5.	Section 5/9 – Aggravated Penetrative Sexual Assault / Aggravated Sexual Assault	4
6.	Section 6 – Punishment for Aggravated Penetrative Sexual Assault	6
7.	Section 10 – Punishment for Aggravated Sexual Assault	6
8.	Section 7 – Sexual Assault	6
9.	Section 8 – Punishment for Sexual Assault	6
10.	Section 11 – Sexual Harassment of a Child	6
11.	Section 12 – Punishment for Sexual Harassment:	7
12.	Section 13 – Use of Child for Pornographic Purposes	7
13.	Section 14 – Punishment for Using Child for Pornographic Purposes	7
14.	Section 15 – Punishment for Storage of Pornographic Material Involving a Child	7
15.	Section 16 – Abetment of an Offence	7
16.	Section 17 – Punishment for Abetment	8
17.	Section 18 – Punishment for Attempt to Commit an Offence	8
18.	Section 19 – Reporting of Offences	8
19.	Section 20 – Obligation of Media, Studios, etc., to Report	9
20.	Section 21 – Punishment for Failure to Report or Record a Case	9
21.	Section 22 – Punishment for False Complaint or False Information	9
22.	Section 23 – Procedure for Media	9
23.	Section 24 – Recording of Statement of a Child	10
24.	Section 25 – Recording of Statement of a Child by Magistrate	10
25.	Section 26 – Additional Provisions Regarding Statement to Be Recorded	11
26.	Section 27 – Medical Examination of a Child	11
27.	Section 28 – Designation of Special Courts	12
28.	Section 29 – Presumption as to Certain Offences	12

29.	Section 30 – Presumption of Culpable Mental State	13
30.	Section 31 – Application of Code of Criminal Procedure, 1973	13
31.	Section 32 – Special Public Prosecutors	13
32.	Section 33 – Procedure and Powers of Special Court	14
33.	Section 34 – Procedure in Case of Commission of Offence by Child and Determination of Age	14
34.	Section 35 – Time Period for Recording Evidence and Disposal of Case	15
35.	Section 36 – Child Not to See Accused While Testifying	15
36.	Section 37 – Trials to Be Conducted in Camera	15
37.	Section 38 – Interpreter or Expert Assistance During Evidence	16
38.	Section 39 – Guidelines for Child to Take Assistance of Experts	16
39.	Section 40 – Right of Child to Legal Assistance	16
40.	Section 41 – Exemption from Provisions of Sections 3 to 13 for Medical Examination	16
41.	Section 42 – Alternate Punishment When Offence Overlaps with IPC or IT Act	17
42.	Section 42A – Act Not in Derogation of Other Laws	17
43.	Section 43 – Public Awareness About the Act	17
44.	Section 44 – Monitoring Implementation of the Act	18
	The Arms Act, 1959	
45.	CHAPTER I – Preliminary (Sections 1-2)	19
46.	CHAPTER II - Acquisition, Possession, Manufacture, Sale, Import, Export and Transport of Arms and Ammunition (Sections 3-12)	26
47.	CHAPTER III - Provisions Relating to Licences (Sections 13-18)	33
48.	CHAPTER IV - Powers and Procedure (Sections 19-24B)	37
49.	CHAPTER V - Offences and Penalties (Sections 25-33)	43
50.	CHAPTER VI - Miscellaneous (Sections 34-46)	47
	The Sexual Harassment of Women at Workplace	
51.	The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013	50
52.	CHAPTER I - Preliminary (Sec-1 to 3)	53
53.	CHAPTER II – Constitution of ICC (Section 4)	60
54.	CHAPTER III – Constitution of Local Complaints Committee (LCC) (Sections 5-8)	61
55.	CHAPTER IV – Complaint (Sections 9-11)	64

56.	CHAPTER V - Inquiry into Complaint (Sections 12-18)	68
57.	CHAPTER VI - Duties of Employer (Section 19)	73
58.	CHAPTER VII - Duties and Powers of District Officer (Section 20)	74
59.	CHAPTER VIII – Miscellaneous (Sections 21-30)	75
The Essential Commodities Act, 1955		
60.	Section 1 - Short title and extent	77
61.	Section 2 - Definitions	77
62.	Section 2A - Essential commodities declaration, etc.	78
63.	Section 3 - Powers to control production, supply, distribution, etc., of essential commodities.	78
64.	Section 4 - Imposition of duties on State Governments, etc.	82
65.	Section 5 - Delegation of powers.	83
66.	Section 6 - Effect of orders inconsistent with other enactments.	83
67.	Section 6A - Confiscation of essential commodity.	83
68.	Section 6B - Payment of sale proceeds	85
69.	Section 7 - Penalties.	85
70.	Section 7A - Power of Central Government to recover certain amounts as arrears of land revenue.	86
71.	Section 8 - Attempts and abetment.	87
72.	Section 9 - False Statement.	88
73.	Section 10 - Offences by companies.	88
74.	Section 10A - Offences to be cognizable.	89
75.	Section 10B - Power of court to publish name, place of business, etc., of companies convicted under the Act.	89
76.	Section 10C - Presumption of culpable mental state.	90
77.	Section 11 - Cognizance of offences.	91
78.	Section 12 - Special provision regarding fine.	91
79.	Section 12A - Power to try summarily.	92
80.	Section 12B - Grant of injunction, etc., by civil courts.	94
81.	Section 13 - Presumption as to orders.	94
82.	Section 14 - Burden of proof in certain cases.	94
83.	Section 15 - Protection of action taken under Act.	94
84.	Section 15A - Prosecution of public servants.	95
85.	Section 16 - Repeals and savings.	95

	The Prevention of Damage to Public Property Act, 1984	
86.	Section 1 - Short title, extent and commencement.	97
87.	Section 2 - Definitions.	97
88.	Section 3 - Mischief causing damage to public property.	98
89.	Section 4 - Mischief causing damage to public property by fire or explosive substance.	99
90.	Section 5 - Special provisions regarding bail.	99
91.	Section 6 - Saving.	100
92.	Section 7 - Repeal and saving.	100
	The Wildlife (Protection) Act, 1972	
93.	Background — What led to the Act	101
94.	Objects— What the Act aims to achieve	101
95.	CHAPTER 1 – Preliminary (Sections 1-2)	103
96.	CHAPTER II - Authorities to be Appointed or Constituted Under this Act (Sections 3-8)	109
97.	CHAPTER III - Hunting of Wild Animals (Sections 9-17)	112
98.	CHAPTER IIIA - Protection of Specified Plants (Sections 17A-17H)	115
99.	CHAPTER IV - Protected Areas (Sections 18-38)	117
100.	CHAPTER IVA - Central Zoo Authority and Recognition of Zoos (Sections 38A-38J)	128
101.	CHAPTER IVB - National Tiger Conservation Authority (Sections 38K-38X)	132
102.	CHAPTER V - Trade or Commerce in Wild Animals, Animal Articles and Trophies (Sections 39-49)	139
103.	CHAPTER VA - Prohibition of Trade or Commerce in Trophies, Animal Articles, etc., Derived from Certain Animals (Sections 49A-49C)	144
104.	CHAPTER VI - Prevention and Detection of Offences (Sections 50-58)	148
105.	CHAPTER VIA - Forfeiture of Property Derived from Illegal Hunting and Trade (Sections 58A-58Y)	155
106.	CHAPTER VII – Miscellaneous (Sections 59-66)	162
	The Explosive Substances Act, 1908	
107.	Preamble	167
108.	Section 1: Extent and application	168
109.	Section 2 – Definition	168
110.	Section 3 – Punishment for causing explosion likely to endanger life or property	169
111.	Section 4 – Attempt, conspiracy, possession with intent	169

112.	Section 5 – Punishment for making or possessing explosives under suspicious circumstances	170
113.	Section 6 – Punishment of abettors	171
114.	Section 7 – Restriction on trial of offences	171
The Information Technology Act, 2000		
115.	The Act’s main purpose is:	172
116.	CHAPTER I – Preliminary (Sections 1-2)	173
117.	CHAPTER II - Digital Signature and Electronic Signature (Sections 3-3A)	183
118.	CHAPTER III - Electronic Governance (Sections 4-10A)	186
119.	CHAPTER IV - Attribution, Acknowledgement and Despatch of Electronic Records (Sections 11-13)	188
120.	CHAPTER V - Secure Electronic Records and Secure Electronic Signature (Sections 14-16)	190
121.	CHAPTER VI - Regulation of Certifying Authorities (Sections 17-34)	191
122.	CHAPTER VII - Electronic Signature Certificates (Sections 35-39)	195
123.	CHAPTER VIII - Duties of Subscribers (Sections 40-42)	197
124.	CHAPTER IX - Penalties, Compensation and Adjudication (Sections 43-47)	198
125.	CHAPTER X - The Appellate Tribunal (Sections 48-64)	202
126.	CHAPTER XI – Offences (Sections 65-78)	205
127.	CHAPTER XII - Intermediaries Not to be Liable in Certain Cases (Section 79)	217
128.	CHAPTER XIIA - Examiner of Electronic Evidence (Section 79A)	219
129.	CHAPTER XIII – Miscellaneous (Sections 80-94)	220
Domestic Violence Act, 2005		
1.	Background	228
2.	Legal Protections Against Domestic Violence	230
3.	Aims and Objectives of the Domestic Violence Act, 2005	231
4.	CHAPTER I – Preliminary (Sections: 1-2)	232
5.	CHAPTER II - Domestic Violence (Sections: 3)	239
6.	CHAPTER III - Powers and Duties of Protection Officers, Service Providers, etc. (Sections: 4-11)	241
7.	CHAPTER IV - Procedure for Obtaining orders of Reliefs (Sections: 12-29)	248
8.	CHAPTER V – Miscellaneous (Sections: 30-37)	263

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CHAPTER

POCSO Act

Protection of Children from Sexual Offences Act, 2012

- Act No. 32 of 2012
- Date of Assent: 19th June, 2012
- Date of Commencement: 14th November, 2012

Introduction

To address the grave issue of sexual abuse and exploitation of children, the Ministry of Women and Child Development introduced the Protection of Children from Sexual Offences (POCSO) Act, 2012. This legislation provides a comprehensive legal framework to protect children from offences such as sexual assault, sexual harassment, and pornography, and ensures the establishment of Special Courts for the speedy trial of such cases.

Key Objectives

- Protect children from sexual offences.
- Ensure child-friendly procedures during investigation and trial.
- Establish Special Courts for timely disposal of cases.
- Prioritize the best interest of the child at all stages.

2019 Amendment Highlights

- Enhanced punishments to deter perpetrators and reinforce child safety.
- Stricter penalties, including life imprisonment and death penalty for certain aggravated offences.
- Broadened definition and punishment for child pornography and digital sexual exploitation.

Salient Features of the POCSO Act

1. Gender Neutrality:

- ✓ The Act applies equally to both male and female children.
- ✓ Focuses on the welfare and best interests of the child.

2. Definition of a Child:

- ✓ Any person below the age of 18 years.
- ✓ The law prioritizes their physical, emotional, intellectual, and social development.

3. Types of Offences Covered:

- ✓ Penetrative sexual assault
- ✓ Non-penetrative sexual assault
- ✓ Sexual harassment
- ✓ Child pornography

4. **Aggravated Sexual Assault:**

- ✓ Occurs under special circumstances such as:
 - Offender is a police officer, public servant, family member, teacher, or doctor.
 - Victim is a mentally or physically disabled child.
 - Use of deadly weapons, drugs, or causing grievous hurt.

5. **Punishment and Deterrence:**

- ✓ Punishments range from simple imprisonment to rigorous life imprisonment.
- ✓ Fines may also be imposed depending on the gravity of the offence.

6. **Abetment and Attempt:**

- ✓ Trafficking of children for sexual purposes is punishable under abetment provisions.
- ✓ Attempting to commit any offence under the Act is also punishable.

7. **Child Pornography (as per 2019 Amendment):**

- ✓ Defined as any visual depiction of sexually explicit conduct involving a child.
- ✓ Includes:
 - Photographs and videos
 - Digital or computer-generated images
 - Adapted or morphed images that appear to depict a child

Constitutional and International Basis

- Article 15(3) of the Indian Constitution allows the State to make special laws for children.
- India acceded to the UN Convention on the Rights of the Child on 11th December, 1992.
- This Convention sets international standards for child protection.

International Obligations (as per UN Convention)

- State must take measures to prevent:
 - ✓ Inducement/coercion of a child into unlawful sexual activity
 - ✓ Exploitative use of children in prostitution
 - ✓ Use of children in pornographic performances or materials

Important Cases

➤ **Attorney General for India v. Satish and Another (2021)**

- ✓ The Supreme Court overruled a Bombay High Court decision that required 'skin-to-skin' contact for an act to qualify as sexual assault under Section 7 of the POCSO Act. The Court emphasized that sexual intent, not physical contact, is the crucial factor in determining such offences.

➤ **Just Rights for Children Alliance v. S. Harish (2024)**

- ✓ In this landmark judgment, the Court held that viewing, possessing, or storing material depicting minors engaged in sexual activity constitutes an offence under Section 15 of the POCSO Act and Section 67B of the Information Technology Act. The Court also recommended replacing the term 'child pornography' with 'Child Sexual Exploitative and Abuse Material' (CSEAM) to better reflect the gravity of the offence.

➤ **Jarnail Singh v. State of Haryana (2013)**

- ✓ The Court clarified that the procedures for determining the age of a child under the Juvenile Justice Act apply equally to victims under the POCSO Act, ensuring consistent age determination methods across related legislations.

➤ **Alakh Alok Srivastava v. Union of India (2018)**

- ✓ The Supreme Court directed the establishment of Special Courts for POCSO cases and mandated that trials be completed within one year from the date of cognizance, reinforcing the Act's emphasis on speedy justice for child victims.

➤ **Nipun Saxena v. Union of India (2019)**

- ✓ The Court underscored the importance of protecting the identity of child victims in sexual offence cases, directing that their names and identities should not be disclosed in any media or court proceedings, thereby safeguarding their privacy and dignity.

Section 2 – Important Definitions

➤ **(d) “child”** means any person below the age of eighteen years;

➤ **(da) Child Pornography**

"Child pornography" means:

- ✓ Any visual depiction of sexually explicit conduct involving a child.
- ✓ This includes:
 - Photographs
 - Videos
 - Digital or computer-generated images indistinguishable from a real child
 - Images created, adapted, or modified but appear to depict a child **Note:** It covers real and virtual (computer-generated) representations of children in explicit content.

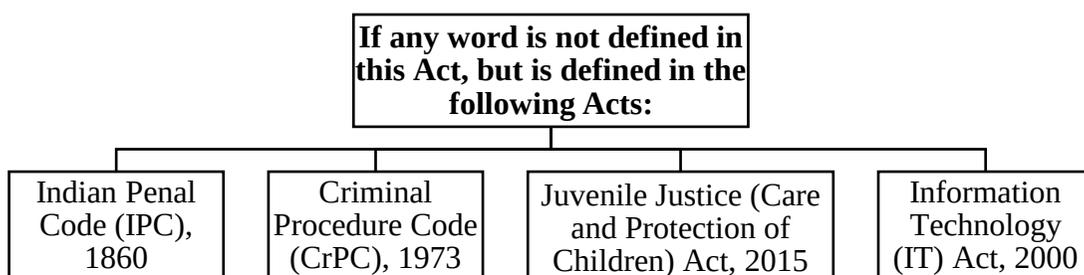
➤ **(k) Shared Household**

"Shared household" means:

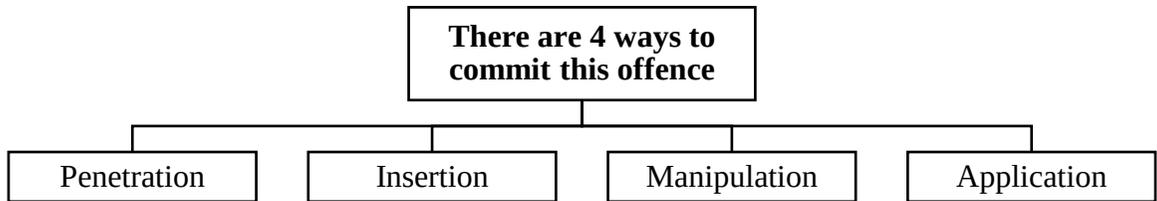
- ✓ A household where the accused:
 - Lives or
 - Has lived at any time,
- ✓ In a domestic relationship with the child

Note: This includes past or present domestic cohabitation with the child.

➤ **Interpretation Clause – Section 2(2)**



Section 3 – Penetrative Sexual Assault



- A person commits penetrative sexual assault if :
- ✓ He penetrates his penis into the vagina, mouth, urethra, or anus of a child, or makes the child do so to him or any other person.
 - ✓ He inserts any object or any body part (except the penis) into the vagina, urethra, or anus of the child, or makes the child do so to him or another person.
 - ✓ He manipulates any part of the child's body to cause penetration into the vagina, urethra, anus, or any part of the body, or makes the child do so.
 - ✓ He applies his mouth to the child's penis, vagina, anus, or urethra, or makes the child do so to him or any other person.

Section 4 – Punishment for Penetrative Sexual Assault

1. General Rule (Child below 18 years):

- ✓ **Punishment:**
 - **Imprisonment of not less than 10 years,**
 - **May extend to life imprisonment,**
 - **Fine** may also be imposed.

2. Stricter Punishment (Child below 16 years):

- ✓ **Punishment:**
 - **Imprisonment of not less than 20 years,**
 - May extend to **imprisonment for the remainder of the offender's natural life,**
 - **Fine** may also be imposed.

3. Use of Fine:

- ✓ The **fine** imposed must be:
 - **Just and reasonable,**
 - Specifically directed to be **paid to the child victim,**
 - To assist in **medical treatment** and **rehabilitation** of the child

Section 5/9 – Aggravated Penetrative Sexual Assault / Aggravated Sexual Assault

- A person commits **aggravated penetrative sexual assault or aggravated sexual assault** when the act of penetrative sexual assault happens under the following serious circumstances:
- ✓ If the offender is a police officer
 - And the act is committed within the police station where he is appointed, or
 - Inside any police premises, or
 - While on duty or otherwise, or
 - Where he is identified as a police officer.

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- ✓ If the offender is a member of armed forces or security forces
 - And the act is committed in an area under their deployment or command, or
 - While on duty or otherwise, or – Where he is identified as such.
 - ✓ If the offender is a public servant.
 - ✓ If the offender is part of the management or staff of
 - A jail, remand home, protection home, observation home, or any such custody home, and commits the offence on an inmate child.
 - ✓ If the offender is part of the management or staff of a hospital
 - And commits the act on a child in that hospital.
 - ✓ If the offender is part of an educational or religious institution
 - And commits the act on a child there.
 - ✓ If the act is committed by a group of people (gang assault)
 - Each member of the group is treated as if he alone committed the act.
 - ✓ If the offender uses weapons, fire, heated or corrosive substances.
 - ✓ If the act causes serious injury or harm, especially to the child's sexual organs.
 - ✓ If the act results in
 - Physical or mental disability of the child, or
 - Pregnancy of a girl child, or
 - Infection of HIV or other life-threatening disease, or
 - Death of the child.
 - ✓ If the child is mentally or physically disabled.
 - ✓ If the act is committed more than once.
 - ✓ If the child is below twelve years of age.
 - ✓ If the offender is a relative
 - Through blood, adoption, marriage, guardianship, or living in the same household.
 - ✓ If the offender is associated with an institution providing services to the child.
 - ✓ If the offender is in a position of trust or authority over the child
 - And commits the offence in the child's home, institution, or elsewhere.
 - ✓ If the child is known to be pregnant.
 - ✓ If the offender also tries to murder the child.
 - ✓ If the act occurs during communal or sectarian violence, or natural calamity.
 - ✓ If the offender was earlier convicted under POCSO or any sexual offence law.
 - ✓ If the child is made to strip or parade naked in public.
 - ✓ If the offender gives or arranges to give the child any drug, hormone, or chemical substance to make the child attain early sexual maturity. **** (Only included in Aggravated sexual assault)**

Section 6 – Punishment for Aggravated Penetrative Sexual Assault

Punishment:

- Minimum: 20 years of rigorous imprisonment
- Maximum: Life imprisonment (i.e., imprisonment for the remainder of the offender’s natural or life)

Death penalty

- Fine: Shall also be imposed

Use of Fine:

- The fine **must be paid to the victim**
- It should be **just and reasonable**
- Purpose:
 - ✓ To assist with **medical treatment**
 - ✓ To support the **rehabilitation** of the child

Section 10 – Punishment for Aggravated Sexual Assault

- Imprisonment for a term of not less than five years, which may extend to seven years, and fine.

Section 7 – Sexual Assault

- A person commits sexual assault if:
 - ✓ He touches the vagina, penis, anus, or breast of a child,
 - ✓ Or makes the child touch these parts of any person,
 - ✓ Or does any other act involving physical contact without penetration,
 - ✓ And such an act is done with sexual intent.

Section 8 – Punishment for Sexual Assault

- Minimum punishment: 3 years of imprisonment
- Maximum punishment: 5 years of imprisonment, & also liable to fine

Section 11 – Sexual Harassment of a Child

A person commits sexual harassment if, with sexual intent, they:	
1.	Speak, gesture, or show any object/body part meant to be seen or heard by the child.
2.	Make the child expose their body or any part of it.
3.	Show pornographic material to a child through any medium.
4.	Follow, watch, or contact a child repeatedly (including via electronic/digital means).
5.	Threaten to display real or fake sexual images/videos of the child in any media.
6.	Entice the child for pornographic purposes or give rewards for it.

Note: Whether the act was done with “sexual intent” is a question of fact and depends on the circumstances.

Section 12 – Punishment for Sexual Harassment:

- Imprisonment: May extend up to 3 years, &
- Also liable to fine

Section 13 – Use of Child for Pornographic Purposes

- Definition: Using a child in any form of media (TV, internet, print, etc.) for sexual gratification is an offence,
 - ✓ Which includes:
 - (a) Representation of sexual organs of a child.
 - (b) Use of child in real or simulated sexual acts (with or without penetration).
 - (c) Indecent or obscene representation of a child.
 - ✓ Explanation: "Use of a child" includes involving the child through any medium for preparation, production, offering, transmitting, publishing, facilitating, or distributing pornographic material.

Section 14 – Punishment for Using Child for Pornographic Purposes

- General Punishment:
 - ✓ Minimum 5 years imprisonment + fine.
 - ✓ On second/subsequent conviction: Minimum 7 years imprisonment + fine.
- Additional Punishment:
 - ✓ If the offender commits an offence under Section 3, 5, 7, or 9 while using the child in pornographic acts, they will also be punished under section 4, 6, 8, or 10 respectively, in addition to Sub section (1).

Section 15 – Punishment for Storage of Pornographic Material Involving a Child

- Storing child pornographic material with intent to share, and failing to delete/destroy/report:
 - ✓ Fine not less than ₹5,000.
 - ✓ For subsequent offence: Fine not less than ₹10,000.
- Storing for Transmission/Display/Distribution:
 - ✓ Imprisonment up to 3 years, or Fine, or Both.
- Storing for Commercial Purpose:
 - ✓ First conviction: Imprisonment of 3 to 5 years, or Fine, or Both.
 - ✓ Second/subsequent conviction: Imprisonment of 5 to 7 years + fine.

Section 16 – Abetment of an Offence

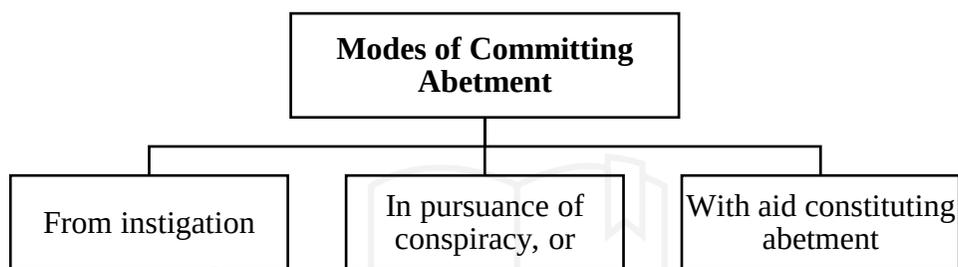
- A person abets an offence if they:
 - ✓ Instigate another to commit the offence.
 - ✓ Conspire with others to commit the offence, and some act or illegal omission is done in pursuance of it.
 - ✓ Intentionally aid the commission of the offence by act or illegal omission.

➤ **Explanations:**

- ✓ Explanation I: Wilful misrepresentation or concealment of material fact to cause or attempt to cause an act = instigation.
- ✓ Explanation II: Doing anything before or at the time of the act to facilitate its commission = aiding the act.
- ✓ Explanation III: Employing, harbouring, transporting or receiving a child using threat, force, coercion, fraud, etc., for the purpose of committing an offence under the Act = aiding.

Section 17 – Punishment for Abetment

- If the offence is committed as a result of abetment, the abettor shall receive the same punishment as the main offence.
- Explanation: An offence is said to be committed “in consequence of abetment” when it follows:



Section 18 – Punishment for Attempt to Commit an Offence

- Anyone who attempts to commit or cause an offence under this Act, and does any act towards its commission, shall be punished with:
 - ✓ Imprisonment up to half of the maximum punishment prescribed for that offence, or Fine, or Both.

Section 19 – Reporting of Offences

- Any person (including the child) who has apprehension or knowledge of an offence under the Act must report it to:
 - ✓ Special Juvenile Police Unit, or
 - ✓ Local police.
- The report shall:
 - ✓ Be given an entry number and recorded in writing.
 - ✓ Be read over to the informant.
 - ✓ Be entered in a register maintained by the police.
- If a child gives the report, it must be recorded in simple language the child understands.
- If needed, a qualified translator/interpreter shall be provided to help the child understand the content, especially if the recording language is unfamiliar to the child.
- If police find the child in need of care and protection, they must:
 - ✓ Record reasons in writing &
 - ✓ Arrange for immediate care, such as shelter home or hospital within 24 hours.

-
- The police must report the matter within 24 hours to:
 - ✓ The Child Welfare Committee, and
 - ✓ The Special Court (or Court of Session, if no Special Court exists),
 - ✓ Including details of care and protection taken.
 - ✓ Any person giving information in good faith is not liable to civil or criminal proceedings.

Section 20 – Obligation of Media, Studios, etc., to Report

- Any personnel from media, hotels, lodges, hospitals, clubs, studios, photographic facilities, etc., regardless of number of employees if come across sexually exploitative material involving a child (e.g., pornographic or obscene content), they must report it to:
 - ✓ Special Juvenile Police Unit, or
 - ✓ Local police.

Section 21 – Punishment for Failure to Report or Record a Case

- General failure to report u/s 19(1) or s. 20 or record u/s 19(2)(by any person):
 - ✓ Punishable with imprisonment up to 6 months, or fine, or both.
- Failure to report u/s 19(1) by person in charge of company/institution (regarding subordinate's offence):
 - ✓ Punishable with imprisonment up to 1 year and fine.
 - ✓ Exemption: These punishments do not apply to a child.

Section 22 – Punishment for False Complaint or False Information

- False complaint or false information with malicious intent (humiliate, extort, threaten, defame):
 - ✓ Punishable with imprisonment up to 6 months, or fine, or both.
- False complaints or information by a child: No punishment shall be imposed on the child.
- False complaint by an adult against a child (knowing it's false and victimizing the child):
 - ✓ Punishable with imprisonment up to 1 year, or fine, or both.

Section 23 – Procedure for Media

- No media/studio/photographic personnel shall report or comment on a child without complete and authentic information that might harm the child's reputation or privacy.
- Media cannot disclose child's name, address, photo, family, school, neighborhood, or any detail that reveals the child's identity.
 - ✓ Exception: Special Court may allow disclosure in the child's interest, with reasons recorded in writing.
- Owners/publishers are jointly and severally liable for their employees' acts or omissions.
- Punishment for violating Sub-section (1)/(2):
 - ✓ Imprisonment for not less than 6 months and up to 1 year, or fine, or both.

Section 24 – Recording of Statement of a Child

- **Objective:** To ensure the child victim is not traumatized during investigation and their comfort, dignity, and privacy are protected.
 - ✓ The child's statement must be recorded:
 - at the child's residence,
 - where the child usually resides, or
 - a place of the child's choice, as far as possible by a woman police officer not below the rank of Sub-Inspector.
 - ✓ The police officer recording the statement must not be in uniform.
 - ✓ While recording the statement, the child must not come in contact with the accused at any stage.
 - ✓ A child must not be detained overnight at any police station for any reason.
 - ✓ The identity of the child must be kept confidential from the public or media.
 - Exception: Only if the Special Court permits disclosure in the best interest of the child.

Section 25 – Recording of Statement of a Child by Magistrate

To ensure that a **child's statement** is recorded in a **sensitive, non-threatening, and legally sound** manner, prioritizing the **best interests of the child**.

1. **Applicability of Section 164 CrPC/183 BNSS (Statement Before Magistrate):**

- ✓ When the child's statement is recorded under **Section 164 CrPC/183 BNSS**, the **Magistrate must record it exactly as spoken** by the child—**without any alteration, coercion, or pressure**.

2. **Non-Obstante Clause:**

- ✓ A special overriding provision:
 - "Notwithstanding anything contrary in the CrPC..."
 - This ensures that if there is any **conflict with CrPC provisions**, the **POCSO provisions will prevail**.

3. **Advocate of the Accused Not Permitted:**

- ✓ **Exception to Section 164(1), first proviso of CrPC/ 183 BNSS:**
 - The **accused's advocate is NOT allowed** to be present during the recording of the child's statement.
 - This protects the child from **fear, influence, or intimidation** during such a sensitive process.

4. **Supply of Documents After Chargesheet:**

- ✓ Once the police files the **final report (chargesheet)** under **Section 173 CrPC/193 BNSS:**
 - The **Magistrate must provide** the child and their parents/guardian/legal representative with copies of:
 - ☞ FIR
 - ☞ Police report
 - ☞ Statements recorded
 - ☞ Any other documents as per **Section 207 CrPC/ 230 BNSS**.

Section 26 – Additional Provisions Regarding Statement to Be Recorded

Recording of the Child's Statement

1. Manner of Recording:

- ✓ The **Magistrate or police officer** must:
 - Record the **statement exactly as spoken** by the child.
 - Ensure the presence of the **child's parent**, guardian, or **any person the child trusts**.

2. Use of Translator or Interpreter (if required):

- ✓ May be used where the child faces **language barriers**.
- ✓ Must be:
 - **Qualified and experienced**
 - **Remunerated** as per prescribed government rules

3. Support for Children with Disabilities:

If the child has **mental or physical disabilities**, assistance can be sought from:

- ✓ A **special educator**
- ✓ A person **familiar with the child's mode of communication** (e.g., sign language interpreter)
- ✓ An **expert in that specific field**

4. Use of Audio-Visual Means:

- ✓ **Wherever possible**, the statement should be **video-recorded**.
- ✓ Benefits:
 - **Preserves authenticity**
 - Reduces the need for **repeated retelling** of traumatic experiences
 - Helps in creating **reliable and tamper-proof evidence**

Section 27 – Medical Examination of a Child

Medical Examination Without FIR/Complaint:

- A First Information Report (FIR) or Complaint is not mandatory for conducting the medical examination.
- Examination must be conducted in accordance with Section 164A CrPC/184 BNSS.
- This allows early collection of medical evidence and timely medical attention, even before formal complaint.

Examination of Female Victim:

- If the victim is a girl, the medical examination must be conducted by a woman doctor.

Presence of Trusted Person During Examination:

- The examination must be conducted in the presence of:
 - ✓ The child's parent, guardian, or
 - ✓ Any trusted person with whom the child feels safe.

If No Trusted Person is Available:

- In the absence of a parent/guardian/trusted person, the examination shall be conducted in the presence of a woman nominated by the head of the medical institution

Section 28 – Designation of Special Courts

Notification of Special Courts:

- The **State Government, in consultation with the Chief Justice of the High Court**, shall:
 - ✓ **Designate a Court of Session** in each district as a **Special Court** under the POCSO Act.

Proviso – Deemed Special Court:

- If a **Court of Session** has already been designated as:
 - ✓ A **Children’s Court** under the Commissions for Protection of Child Rights Act, 2005, or
 - ✓ A **Special Court** under any **other law** for similar purposes,
 - ✓ Then it shall be **deemed to be a Special Court** for the purpose of the POCSO Act.
(No need for separate notification again)

Power to Try Connected Offences:

- The Special Court can **also try offences other than POCSO** if they are **connected to the same incident**.
- This is in line with **Section 220 CrPC/243 BNSS** – joint trial of multiple offences by the same accused.
- **Example:** If the accused committed:
 - ✓ **Sexual assault (POCSO)**
 - ✓ **Criminal intimidation (IPC Section 506/ 351 BNS)**
 - ✓ Both offences can be tried together by the Special Court.

Jurisdiction Over IT Act Offences:

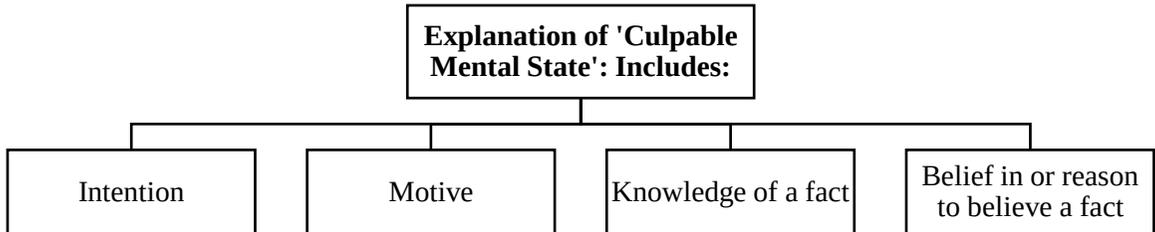
- The Special Court shall also have jurisdiction over **Section 67B of the IT Act, 2000**, which relates to:
 - ✓ **Sexually explicit content involving children** (e.g., child pornography),
 - ✓ **Online abuse**, and
 - ✓ **Facilitation of child sexual exploitation using electronic means**.

Section 29 – Presumption as to Certain Offences

- If a person is prosecuted for:
 - ✓ Committing,
 - ✓ Abetting, or
 - ✓ Attempting to commit any offence under Section 3, 5, 7 or 9 of this Act,
 - ✓ Then, the Special Court shall presume that the accused has committed or abetted or attempted the offence, unless the contrary is proved.
- **Effect:**
 - ✓ Burden of proof shifts to the accused.
 - ✓ The accused must prove that he did not commit or abet the offence.

Section 30 – Presumption of Culpable Mental State

- Presumption of Mental State:
 - ✓ In any prosecution under this Act that requires a culpable mental state, the Special Court shall presume the existence of such mental state.
 - ✓ However, the accused can take a defence and prove that he did not have the required mental state.



- Standard of Proof:
 - ✓ The accused can only disprove culpable mental state if:
 - The Special Court is satisfied beyond reasonable doubt that he did not have such mental state.
 - **Note:** This is stricter than the normal civil standard (i.e., preponderance of probability).

Section 31 – Application of Code of Criminal Procedure, 1973

- Unless this Act provides otherwise:
 - ✓ The provisions of the Code of Criminal Procedure, 1973 (CrPC) shall apply to all proceedings before a Special Court.
 - ✓ This includes provisions relating to bail, bonds, and other procedural aspects.
- Effect:
 - ✓ The Special Court under the POCSO Act is treated as a Court of Sessions.
 - ✓ The person conducting the prosecution in the Special Court is deemed to be a Public Prosecutor under the CrPC.

Section 32 – Special Public Prosecutors

- Appointment: The State Government shall appoint a Special Public Prosecutor for each
 - ✓ Special Court by publishing a notification in the Official Gazette.
 - ✓ For conducting cases only under the provisions of this Act.
- Eligibility: The advocate must have at **least 7 years of legal practice** to be eligible for appointment.
- A Special Public Prosecutor is considered a Public Prosecutor as per Section 2(u) of the CrPC. Hence, all CrPC provisions related to Public Prosecutors will apply to them.

Section 33 – Procedure and Powers of Special Court

- This section ensures that the trial process is child-friendly, speedy, and sensitive to the child's needs.
 - ✓ The Special Court can take cognizance directly (i.e., without committal) based on:
 - A police report, or
 - A complaint detailing the offence.
 - ✓ Questions for examination-in-chief, cross-examination, or re-examination are:
 - First communicated to the Special Court, not directly to the child.
 - The Court then puts the questions to the child in an appropriate manner.
 - ✓ The Court may allow frequent breaks to reduce stress and fatigue for the child.
 - ✓ The Court must create a comfortable environment by allowing the presence of:
 - A parent, guardian, friend, or relative in whom the child has trust.
 - ✓ The child should not be called repeatedly to give testimony.
 - ✓ The Court must:
 - Prevent aggressive questioning, and
 - Protect the child's dignity at all times.
 - ✓ The child's identity must be kept confidential during investigation and trial.
 - Disclosure may be allowed only if: -
 - ☞ The Court records reasons in writing,
 - ☞ It is in the best interest of the child.
 - Explanation: Identity includes name, family, school, relatives, neighborhood, etc.
 - ✓ The Court may order compensation to the child: - For physical or mental trauma, or
 - For immediate rehabilitation.
 - ✓ The Special Court:
 - Has all powers of a Court of Session,
 - Must follow CrPC procedures as applicable to Sessions trials, unless the POCSO
 - Act says otherwise.

Section 34 – Procedure in Case of Commission of Offence by Child and Determination of Age

- This section deals with situations where the accused is a child and how the court should determine age.
 - ✓ If a child commits any offence under the POCSO Act, they shall be dealt with under the Juvenile Justice (Care and Protection of Children) Act, 2015.
 - That means they will not be tried like adults, but as per the juvenile justice procedures.
 - ✓ If there is any doubt or dispute about the age of the person involved, the Special Court will determine the age. The court must be satisfied about the age, and must record reasons in writing for its decision.

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- ✓ If later it is proved that the age determined by the court was incorrect, the order passed earlier will still remain valid.
 - This ensures that the proceedings are not invalidated due to age determination errors made in good faith.

Section 35 – Time Period for Recording Evidence and Disposal of Case

- This section aims to ensure a speedy trial and quick disposal of the case to reduce the trauma for the child.
 - ✓ Recording Child's Evidence:
 - The evidence of the child must be recorded within thirty days from the date the Special Court takes cognizance of the offence.
 - If there is any delay, the court must record the reasons in writing.
 - ✓ Completion of Trial:
 - The entire trial should be completed within one year, as far as possible, from the date the court takes cognizance of the offence.

Section 36 – Child Not to See Accused While Testifying

- No Direct Exposure to Accused:
 - ✓ The Special Court must ensure that the child is not exposed to the accused at the time of giving evidence.
 - ✓ However, the accused must be able to hear the child's statement and communicate with their lawyer.
- Methods to Prevent Exposure: The court may use:
 - ✓ Video conferencing
 - ✓ Single visibility mirrors
 - ✓ Curtains
 - ✓ Any other device
- These methods ensure protection and comfort for the child while maintaining the accused's right to a fair trial.

Section 37 – Trials to Be Conducted in Camera

- All trials under this Act must be conducted in camera, meaning privately and not open to the public.
- Parents or trusted persons of the child may be present to support the child.
- **Proviso:** If the court feels the child needs to be examined somewhere other than the court (like home or hospital), it may issue a commission under Section 284 CrPC/ 319 BNSS, to record the evidence at that location.

Section 38 – Interpreter or Expert Assistance During Evidence

- Translator or Interpreter:
 - ✓ If needed, the court can take help from a translator or interpreter while recording the child's evidence.
 - ✓ They must have the prescribed qualifications, experience, and will be paid as per rules.
- Special Educator or Communication Expert:
 - ✓ If the child has a mental or physical disability, the court may seek help from:
 - A special educator
 - A person familiar with the child's way of communicating
 - Or an expert in that field
 - ✓ They too must have the required qualifications, experience, and will be paid accordingly.

Section 39 – Guidelines for Child to Take Assistance of Experts

- The State Government shall prepare guidelines for involving: 1. NGOs (Non-Governmental Organisations)
 - ✓ Professionals and Experts in:
 - Psychology
 - Social work
 - Physical health
 - Mental health
 - Child development
- These experts can assist the child during the pre-trial and trial stages.
- This helps in providing emotional and psychological support to the child.

Section 40 – Right of Child to Legal Assistance

- The family or guardian of the child has the right to appoint a lawyer of their choice to assist during proceedings under this Act.
- This is subject to the proviso of Section 301 of the Code of Criminal Procedure, 1973, which governs how private lawyers may assist in prosecutions.
- If the family or guardian cannot afford a lawyer, the Legal Services Authority must provide free legal aid.

Section 41 – Exemption from Provisions of Sections 3 to 13 for Medical Examination

- Sections 3 to 13 of this Act (which define various sexual offences) do not apply in cases of:
 - ✓ Medical examination or medical treatment of a child,
- Provided that such examination or treatment is done with the consent of the child's parents or guardian.
- This prevents genuine medical care from being misunderstood as an offence.

Section 42 – Alternate Punishment When Offence Overlaps with IPC or IT Act

➤ If an act is punishable both under this Act and under:

IPC Section	BNS Equivalent	Offence Description
166A	199	Public servant disobeying direction under law
354A	75	Sexual harassment
354B	76	Assault to disrobe a woman
354C	77	Voyeurism
354D	78	Stalking
370	143	Trafficking of persons
370A	144	Exploitation of trafficked person
375	63	Rape
376	64	Punishment for rape
376A	66	Rape leading to death or vegetative state
376C	68	Sexual intercourse by person in authority
376D	70	Gang rape
376E	71	Repeat offender

- ✓ Information Technology Act, 2000 (e.g., Section 67B)
- ✓ This section ensures **no double punishment**.
- ✓ When the **same act** is punishable under both **POCSO** and **IPC**, the **harsher punishment will apply**.
- ✓ The court has the **discretion to apply the law** which imposes a **greater degree of punishment**.

Section 42A – Act Not in Derogation of Other Laws

- This Act is in addition to other laws, not a replacement.
- If there is a conflict or inconsistency between POCSO and any other law:
 - ✓ The POCSO Act will prevail over the conflicting law only to the extent of the inconsistency.
- Purpose: To ensure maximum protection for children, even if similar provisions exist in other laws.

Section 43 – Public Awareness About the Act

- Both Central and State Governments must take steps to promote awareness of the Act:
 - ✓ Wide publicity of the Act through:
 - Television
 - Radio
 - Print media
 - At regular intervals
 - ☞ Target audience: General public, children, parents, guardians

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- ✓ Training of officials, including:
 - Central and State Government officers
 - Police and other concerned persons
 - ☞ The training must be periodic and relate to the implementation of the Act

Section 44 – Monitoring Implementation of the Act

- Monitoring Bodies:
 - ✓ The National Commission for Protection of Child Rights (NCPCR) or
 - ✓ The State Commission for Protection of Child Rights (SCPCR)
 - These commissions must also monitor the implementation of POCSO Act in addition to their usual functions under the Commissions for Protection of Child Rights Act, 2005.
- Powers While Inquiring:
 - ✓ While inquiring into any POCSO offence, the NCPCR or SCPCR will have same powers as under the 2005 Act.
- Annual Report Requirement:
 - ✓ These Commissions must include their POCSO-related activities in their Annual Report, as required under Section 16 of the 2005 Act.

