

Victims of Sexual Offences

Police and You
Know Your Rights



CHRI
Commonwealth Human Rights Initiative

VICTIMS OF SEXUAL VIOLENCE OFFENCES

Sexual violence against women and children is widespread. Women and children are vulnerable to sexual assault within family and intimate relationships in the home; as well as in public spaces. For decades, legal provisions on sexual violence were totally inadequate. Before 2012, there was no separate legislation dealing with child sexual abuse. Before 2013, only two provisions of the Indian Penal Code (IPC) dealt with sexual violence – Section 376 punished a limited definition of rape, and Section 354 punished “outraging the modesty of a woman” which applied only to routine incidents of molestation. Various kinds of sexual assault, based on differing levels of harm, injury and degradation, were entirely missing from the law, which means victims could not report them.

Laws finally changed in 2012 and 2013. The *Protection of Children from Sexual Offences Act 2012* (POCSO Act) punishes sexual offences committed against children below 18 years of age. The IPC now contains an expanded definition of rape as well as various other sexual offences, including sexual harassment, forced disrobing, voyeurism, and stalking. Please note that sexual offences in the IPC are gender specific. The provisions (with the exception of Section 377) apply only to women as victims, while the perpetrators are men. The POCSO Act protects both boys and girls from sexual offences.

The police have new duties and have to follow special procedures when acting for women and child victims of sexual violence. This pamphlet tells you about the new offences of sexual violence, and the duties and procedures the police must follow.

1. SEXUAL OFFENCES AGAINST WOMEN

The *Criminal Law (Amendment) Act, 2013 and 2018* brought several changes to the IPC in relation to rape and created other sexual offences.

WHAT DOES THE LAW SAY ON RAPE?

Previously, rape only included penetration of the penis into the vagina. It is now rape for a man to, when done against the will or without the valid consent of a woman:

- a. Penetrate his penis into her vagina, mouth, urethra or anus;
- b. Insert any object or a body part into her vagina, urethra or anus;
- c. Apply his mouth to her vagina, anus or urethra;
- d. Manipulate a body part of hers so as to cause penetration into her vagina, urethra or anus; and
- e. Make her do any of the above with him or any other person.

The punishment for rape is between 10 years and life imprisonment, and a fine. Persons committing rape on a woman under the age of 16 years shall be subject to rigorous imprisonment for not less than 20 years, but which may extend to imprisonment for life, and with fine. **[Sections 375 and 376, Indian Penal Code]**

In aggravated circumstances, the punishment is harsher. For instance, when a police officer or public servant rapes a woman in his custody, the punishment is between 20 years and life imprisonment, and a fine. Gang-rape, where a woman is raped by one or more men, attracts a punishment of between 20 years and life and with fine. Finally, a man who causes the death of a woman, or a persistent vegetative state in the course of committing rape, attracts imprisonment for 20 years to life, or with the death penalty and fine. **[Sections 376, 376A and 376D, Indian Penal Code]**

A person committing the rape on a woman under 12 years of age, shall be subjected to rigorous imprisonment of not less than 20 years, but which may extend to imprisonment for life, with fine or with death. **[Section 376 AB, Indian Penal Code]**

If a man who is in a position of authority – such as a public servant or manager of a jail, women’s/children’s institution or hospital – induces a woman under his charge or present in the premises to have sexual intercourse with him, and such sexual intercourse does not amount to rape, he can be punished with imprisonment for between 5 and 10 years. **[Section 376C, Indian Penal Code]**

Persons committing gang-rape on a woman under the age of 16 years shall be subject to rigorous imprisonment for life and with fine. **[Section 376DA, Indian Penal Code]**

A person committing the gang-rape on a woman under 12 years of age, shall be subjected to imprisonment for the remainder of the person’s natural life, with fine or with death. **[Section 376DB, Indian Penal Code]**

SEXUAL ABUSE WITHIN MARRIAGE

Under the Indian Penal Code, sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape. Only if you are living separately from your husband (irrespective of whether you are judicially separated or not) can he be punished for having non-consensual sexual intercourse with you. The punishment in such cases is imprisonment for 2 to 7 years, and a fine. **[Section 376B of the Indian Penal Code]**

If your husband is sexually abusing you, you can file a civil case under the Protection of Women from Domestic Violence Act, 2005; and in the case of a child between 15 to 18 years, under the POCSO Act. Under the Protection of Women from Domestic Violence Act, 2005, sexual abuse includes “any conduct of a sexual nature that abuses, humiliates, degrades or

otherwise violates the dignity of woman”. [Section 3 of the Protection of Women from Domestic Violence Act, 2005]

WHAT ARE THE OTHER SEXUAL OFFENCES?

The table below lists the other offences, and their punishments, brought under the IPC in 2013:

Offence	Indian Penal Code Section	Punishment
<i>Sexual harassment by a man through-</i> (i) <i>unwelcome physical contact / advances;</i> (ii) <i>a demand for sexual favours;</i> (iii) <i>showing pornography; or</i> (iv) <i>making sexually coloured remarks.</i>	354A	For (i), (ii) and (iii): Imprisonment of up to 3 years, a fine or both. For (iv): Imprisonment of up to 1 year, fine or both.
<i>Forced disrobing – a man who assaults a woman with the intention to take her clothes off.</i>	354B	Imprisonment for 3 to 7 years and a fine.
<i>Voyeurism – a man who watches, photographs or disseminates an image of a woman in a private act.</i>	354C	First conviction: Imprisonment for 1 to 3 years and a fine Subsequent conviction: Imprisonment for 3 to 7 years and a fine.
<i>Stalking – A man who:</i> (i) <i>follows a woman and attempts to contact her, despite a clear indication of her disinterest; or</i> (ii) <i>monitors the use by a woman of the internet, email or other electronic communication.</i>	354D	First conviction: Imprisonment of up to 3 years and a fine Subsequent conviction: Imprisonment for up to 5 years and a fine.
<i>Trafficking of person/s is an offence committed by a person who for the purpose of exploitation (a) recruits (b) transports (c) harbors (d) transfers or (e) receives a person or persons by firstly using threats, secondly, using force / coercion, thirdly, by abduction, fourthly, by practicing fraud, fifthly, by abuse of power or sixthly by inducement commits the offence of trafficking. The offence includes trafficking of minors, and also includes trafficking by a public servant or police officer as the perpetrator. Exploitation includes sexual exploitation.</i>	370	Trafficking of person: Imprisonment for 7 to 10 years and a fine Trafficking of more than one person: Imprisonment of not less than 10 years which may extend to life and a fine Trafficking of a minor: Imprisonment of not less than 10 years which may extend to life and a fine Trafficking of more than one minor: Imprisonment of not less than 14 years which may extend to life and a fine Person convicted of trafficking a minor more than once: Life imprisonment with fine Public servant or police officer involved in trafficking a minor: Life imprisonment with fine

HOW CAN YOU REGISTER YOUR CASE WITH THE POLICE?

You can report an offence by registering a First Information Report (FIR). The police must register an FIR of any person who has knowledge of the commission of a cognizable offence. The Code of Criminal Procedure lays down the procedure to be followed by the police when recording your complaint.

[Section 154, Code of Criminal Procedure]

If a police officer fails to register an FIR for rape or any of the above sexual offences, s/he can be punished with imprisonment between 6 months to 2 years, and a fine.

[Section 166A(c), Indian Penal Code]

As far as possible, the victim should be the person who registers the FIR. If you go yourself to the police station, the law requires that only a woman police officer, or if a woman police officer is not available, any woman government officer records your FIR. If you are mentally or physically disabled (even temporarily), the FIR must be recorded at your residence or location of your choice in the presence of an interpreter/special educator, and it must be videographed. The police are also required to get your statement recorded by a Judicial Magistrate as soon as possible.

[Section 154(a) – (c), Code of Criminal Procedure]

You cannot be compelled by the police to go to any place for questioning other than your residence.

[Section 160, Code of Criminal Procedure]

MEDICAL EXAMINATION OF A RAPE VICTIM

The police must send a woman making a complaint of rape to a registered medical practitioner within 24 hours from the time of receiving her complaint.

[Section 164A, Code of Criminal Procedure]

The law requires that all hospitals – public or private – shall immediately provide first aid or medical treatment free of cost to victims of rape.

[Section 357C, Code of Criminal Procedure]

2. SEXUAL OFFENCES AGAINST CHILDREN

In 2012 the POCSO Act was introduced to protect children from sexual assault, sexual harassment and pornography. It applies to children of both sexes below the age of 18. Both men and women can be offenders under POCSO. The main offences are set out in the table below.

Offence	POCSO Section	Punishment
<i>Penetrative Sexual Assault – a man who penetrates his penis into, applies his mouth to, or inserts any body part or object into the vagina, mouth, urethra or anus of a child, or makes a child do any of the above with any other person</i>	3	Imprisonment for 7 years to life, and a fine
<i>Sexual Assault – whoever, with sexual intent, touches the vagina, penis, anus or breast of a child or makes the child touch these body parts of any person</i>	7	Imprisonment of 3 to 5 years, and a fine
<i>Sexual harassment of a child – a person who, with sexual intent: utters words or sounds, makes any gesture or exhibits any object or body part; makes a child exhibit his or her body part; or repeatedly follows, watches or contacts a child</i>	11	Imprisonment of up to 3 years and a fine
<i>Use of child for pornographic purposes</i>	13	Imprisonment of up to 5 years and a fine Subsequent conviction: imprisonment of up to 7 years and a fine

In aggravating circumstances, the punishments for *penetrative sexual assault* and *sexual assault* are harsher. For instance, penetrative sexual assault by a police officer, public servant or staff of a hospital attracts imprisonment of 10 years to life imprisonment, and a fine.

[Sections 5 and 9, POCSO Act]

HOW CAN YOU REPORT AN OFFENCE TO THE POLICE?

In the case of sexual offences committed against a child, you report information to the local police or the Special Juvenile Police Unit (SJPU). The police must record the complaint in writing and read it over to the person making the complaint, which must be entered into a book kept by the SJPU. The local police or the SJPU must then report the matter to the Child Welfare Committee and the Special Court within 24 hours.

If a child victim makes the complaint, it must be written in simple language that ensures the child can understand the contents. If needed, a translator or interpreter must be provided to the child.

[Section 19, POCSO Act]

Where the SJPU or local police is satisfied that the child against whom an offence has been committed is in need of care and protection – including admitting the child into a shelter home or to the nearest hospital – it shall, after recording reasons in writing, arrange for this within 24 hours.

[Section 19(5), POCSO Act]

SPECIAL JUVENILE POLICE UNIT

Special Juvenile Police Units are established under the Juvenile Justice (Care and Protection of Children) Act, 2000. Section 63 requires that there shall be a Special Juvenile Police Unit created in every district and city to co-ordinate and to upgrade the police's treatment of children. It also mandates every police station to have at least one officer designated as the 'juvenile or the child welfare officer' who is properly trained to handle children.

SPECIAL PROCEDURES TO RECORD A CHILD'S STATEMENT

The police must record the statement of a child at the child's residence. No child shall be detained in the police station at night for any reason.

[Section 24, POCSO Act]

A woman police officer not below the rank of Sub-Inspector shall record the child's statement. She should not be in uniform while doing so, and must record the statement in the presence of the child's parents, or any other person in whom the child has confidence. Where possible, the police officer shall ensure that the statement is also audio-video recorded.

[Section 24 and 26, POCSO Act]

The police officer conducting the investigation, shall, while examining the child, ensure that at no point of time the child comes into contact with the accused. The police officer shall also ensure that the identity of the child is protected from the media.

[Section 24, POCSO Act]

ABOUT CHRI

The Commonwealth Human Rights Initiative (CHRI) is an international, independent non-profit organisation headquartered in India. Its objectives are to promote the practical realisation of human rights in the Commonwealth. CHRI advocates for greater adherence to human rights standards.

Our programmes are:

- ❖ Access to Justice (Police Reforms)
- ❖ Access to Justice (Prison Reforms)
- ❖ Access to Information
- ❖ International Advocacy and Programming



Commonwealth Human Rights Initiative

3rd floor, Siddhartha Chambers,
55A, Kalu Sarai, New Delhi- 110016 (India)
Phone : +91-11-43180200 | Fax : +91-11-4318-0217
E-mail: info@humanrightsinitiative.org
Website <http://www.humanrightsinitiative.org>