

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

NO. The Gazette of India EXTRAORDINARY 11 — WE 1 PART 11 — Section 1 PUBLISHED BY AUTHORITY 20. 2012' 30, 1934 No. 341 NFW DELHI. WEDNESDAY, JUNE 20, 2012/ 30.1934 (S.A. Separate paging given to this Part in order that it may be filed as a separate compilation. MINISTRY OF LAW AND JUSTICE (Legislative Department) The Act of Parliament enacted with the assent of the President on the 9th June, 2012. hereby PROVISION OF CHILDREN SEXUAL OFFENCES ACT, 2012 An Act to protect children from offences of sexual assault, sexual and pornography and provide for establishment of Special Courts for such offences and for matters connected therewith or incidental thereto. clause (3) of article of the Constitution. empowers the State to make special provisions for children: the Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, which has prescribed a set of standards to be followed by all States in securing the best interests of the child. As it is necessary, for the proper development of the child that his or her right to privacy and be protected and respected by every and through all stages of judicial process the child. Also it is imperative that the State operates in a manner that the best interest and welfare of the child are regarded as being of paramount importance to ensure the healthy physical, emotional, intellectual and social development of the child. The State parties to the Convention on the Rights of the Child required to undertake all appropriate national, bilateral and multilateral measures to prevent (a) the inducement or coercion of a child to engage in any unlawful sexual activity, (b) the exploitation of children in prostitution or other forms of sexual exploitation, (c) the exploitative use of children in pornographic performances and materials, and (d) sexual exploitation and sexual abuse of children. These provisions are to be effectively addressed by Parliament in the Sixty-third Year of the Republic of India as follows: CHAPTER I. (1) This Act may be called the Protection of Children from Sexual Offences Act, 2012. (2) It extends to the whole of India except the State of Jammu and Kashmir. (3) It shall come into force on such date as the President may by order in writing appoint. 2. (1) In this Act, unless the context otherwise requires, "aggravated penetrative sexual assault" has the same meaning as assigned to it in section (h) "aggravated sexual assault" has the same meaning as assigned to section 9, (c) "armed forces or security forces" means armed forces of the Union or security forces or police forces, as specified in the Schedule, "child" means any person below the age of eighteen years. (e) "domestic relationship" shall have the same meaning as assigned to it in clause (f) of section 2 of the Protection of Women from Domestic Violence Act, 2006. "penetrative sexual assault" has the same meaning as assigned to it in section (g) "prescribed" means prescribed by rules under this Act. (h) "religious" has the same meaning as assigned to it in the Religious Institutions and Places of Worship Act, 1954. "sexual assault" has the same meaning as assigned to it in section "sexual harassment" has the same meaning as assigned to it in section 1. "shared household" means a household where the person charged with the offence lives or has lived at any time in a domestic relationship with the child. (t) "Special Court" means a court designated as such under section 28. (m) "Special Public Prosecutor" means a Public Prosecutor appointed under section 32. (2) The words and expressions used herein and not defined but defined in the Indian Penal Code, Code of Criminal Procedure, 1973, the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Information Technology Act, 2000 shall have the meanings respectively assigned to them in the said Codes or the Acts. 3. A person is said to commit "penetrative sexual assault" if (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or he inserts, to any extent, any object or a part of the body of himself or any other person into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or (b) he manipulates any part of the body of the child so as to cause penetration into the urethra, anus or any part of the body of the child or makes the child to do so with him or any other person; or (c) he applies his mouth to the penis, vagina, anus, or the child or makes the child to do so to such person or any other person.

4. Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine. (a) Whoever, being a police officer, commits penetrative sexual assault on a child (i) at the police station or places at which he is appointed, or (ii) the premises of any station house, or not in the police station, to which he is

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(p) whoever. being tn a positjon of trust or authorttv ofa child, congngts sexual or, the child an Insetiitton or home of the child ot anywhere else. ot (g? whoeusr commits sexual assault on a child knowing the child ts pregnant', or (r) whocver commits sexual assault on a child and attempts to murder the child. ot (s) *hocver commits sexual assault on a child in the course of communal ot sectanan or (t) whoever commits sewiil assault on a chid and who has been previously cons having committed any efléncé under an) sexual offence punishable under arr. other for the time hetr,g in force•. or commits sexual assault on a child and makes the child to ot parade naked it', sajd te commit aggravated sexual assault IO. Whoever, commits aggravated sexual assault be pur.,shcd rsonmc:it of etther description a terr whych shall less Bu; which cvtend to sesen years. and shall also bc habie to tine 11. A person said to commit harassment upon a wher Intern. 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I (the person using the child for pornographic purposes comnnts an Otléncé referred to •an section 9, hv directly participating pornographic acts. he shall be punjshed tmpösonrv:nt of descnpt:or, term wh:ch not bc less etght years whtch may extend to ten years. and shall also bc liable to tine If. Any person. who stores. for commercta; purposes pomog:aphjc :r.alcriii' In form tn•.ols a child shall be pt:mshed of Cither description to th:ee years or fine ot with both Arlk.vrn 16. A person abets an offence. who Instigates any person to dc that offence. or First Secondly.— Engages one or more other person or persons in any för the doing of that oflénce. an act or illegal omission takes place in pursuance of conspracy, and in order IO the doing of that offence. or Thirdly - Intentionally aids. by any act or illegal omisstion, the doing of that offence - A person who. by misrepresentation orby wtiful conceatmen' of a materidj fact. which he is bound to disclose, voluntar;iy causes or procures, or attempts to cause Ot procure a thing to be done. is said w instigate the doing of that offence 11 — Whoever. either poor (0 or at the time of commission of an act. does anything in order to facilitate the commission of that act. and thereby the commissiër, thereof. is to aid the dom* of that act !!! uthocver employ harbours,

receives or a child by or threat or use of force or other forms of coercion, abduction, fraud, abuse of position, vulnerability or the receipt of payments benefits consent of a person another to the offence under this Act. 'Said did the of that act 17. abets any offence under this Act, if the act abetted is consequence of the offence, shall be punished with imprisonment. • An act or offence is said to be consequence if committed consequence of the or pursuant to the conspiracy the which constitutes the abetment 18. Whoever attempts to commit any offence punishable under this Act or offence (to be committed, and such attempt, does any of the offence, shall be punished with imprisonment any description provided the offence. a term which extend the imprisonment for to that. both 19. j) in Code of Criminal Procedure: person, including the child/ who has apprehension that offence this like's to be committed or that such an offence he does such •.o Special ver. given under i) shall be ascribed an identification number and recorded (h) he read over, to the shall be entered a book to be kept the Police (3) Where the report under sub-section (1) is given by a child same recorded under sub-section (2) a Simple language so that the child understands contents being recorded. (4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an Interpreter, having such qualifications, experience and or, payment of such fees as may be prescribed, shall be added to the efforts to understand the same. Where the Special Juvenile Police Unit or local police satisfied that the child against whom an offence has been committed need care and protection, then, after recording the reasons, make immediate arrangement to him such and protection (including admitting the child to shelter home or to the nearest place of the report. (h) The Police of the area and the special Court or Where no has been designated, to the Child Abuse Investigation Unit need the and (person shall arrange whether the in good faith for the purpose of sub-section 20, Any personnel the medical or hospital for club photographic facilities, by whatever name called The employed there shall, on coming across any object which is of the child including pornography, sexually-related or making Obscene representation of child or through the use of any medium, shall provide such to the: Special Juvenile Police Unit, or to the local police, as the case may be 21. Any person, who fails to report the commission of an offence under sub-section (1) of section 19 or section 20 or who fails to record such •) section 19(1) shall be punished with imprisonment either description may to months or fine or With Any person, being in-charge of any company or called) who fails report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished With imprisonment which may extend to one year or fine of rupees five thousand or both. 22. j) person, who imp: such month' or time or Where been made of shall Whoever, against child, he such child an', the Under this. A. : shall be SFLAI OF INDIA 23.) person shall make any report from media or studio or photographic facilities without having complete and information, which may have the effect of lowering his reputation or bringing upon his privacy. No reports in any media shall disclose, the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity, of the child Provided that if reasons to be recorded in writing, the Special Court competent to try the under the Act, may permit such disclosure. if In its opinion such disclosure in the interest of the child the publisher or owner Of the or studio photographical shall he and if, able the acts and of his employee Any person contravenes the provision, shall be liable to be punished. } imprisonment of either description person, shall not be less than months but which extend one year time or fine 60th CHAIRMAN VI 24. (i) The statement of the child shall be recorded at the residence of the Child or at a place where he usually resides or at the place of his choice and as far practicable a senior police officer not below the rank of sub-inspector police officer shall be recording the statement of child shall not be in uniform the police officer making the investigation, shall, while examining the child, ensure that at no point of time the child come in the contact in any way with the accused (4) No child shall be detained in the police station in the night for any reason (5) The police officer shall ensure that the (detention of the child is protected from the public, unless otherwise directed by the Special Court In the interest of the child 25. If the statement of the child is being recorded under section 164 of the Code of Criminal Procedure, 1973 (herein referred to as Code) recording such statement shall, notwithstanding anything contained therein, record the statement as spoken Provided that the provisions contained in the first proviso to sub-section of the Code shall, so far it permits the presence of the accused shall not apply in this case (2) The Magistrate shall provide to the child and his parents or his representative, a copy of the document specified under section 207 Of the Code, upon the final report being filed by the police under section 173 of that Code. 26. Where the Magistrate or the police officer, as the case may be, shall record the

statement, as spoken by the child in the presence of the parents of the child or another person whom the child has trust or confidence. (2) Wherever necessary, the Magistrate or the police officer, as the case may be, may take the assistance of a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, while recording the statement of the child. (3) The Magistrate or the police officer, as the case may be, if a child having a mental or physical disability seeks the assistance of a special juvenile educator or any member of the community of the child or an open field, having such qualifications, experience and on payment of such fees as prescribed, record the statement of the child. (4) Wherever possible, the Magistrate or the police officer, as the case may be, ensure that the statement of the child is also recorded by audio-video electronic means. CHILD PROTECTION ACT OF INDIA EXTRAORDINARY Section 16. (1) The medical examination of a child in respect of whom an offence has been committed under this Act, shall, notwithstanding that an Information Report or complaint has not been registered for the offence under this Act, be conducted in accordance with section 16-A of the Code of Criminal Procedure. (2) In case the victim is a girl child, the medical examination shall be conducted by a woman doctor; (3) The medical examination shall be conducted in the presence of the parent of the child or any other person whom the child reposes trust or confidence; (4) Where, in case the parent of the child or other person referred to in sub-section (3) cannot be present, for any reason, during the medical examination of the child, the medical examination shall be conducted in the presence of a person nominated by the head of the institution. (5) For the purposes of providing legal aid, the State Government, with the Chief Justice of the High Court, by notification in the Official Gazette, designate each a Court of Session to be a Special Court for the Act. Provided that if a Court of Session is notified as a children's court under the Commissions for Protection of Child Rights Act, 2005 or a Special Court designated for similar purposes under any other law for the time being in force, then, such court shall be deemed to be a Special Court under this section. (6) While trying an offence under this Act, a Special Court shall also try any offence other than the offence referred to in sub-section (1) with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial. (7) The Special Court constituted under this Act, notwithstanding anything in the Information Technology Act, 2008, shall have jurisdiction to try offences under section 67B of that Act in so far as it relates to publication or transmission of sexually explicit material depicting children in any act, or conduct or in a manner that facilitates abuse of children. (8) A person or to 3. S. With this Act, it is provided by section 30. (1) In prosecution for an offence under this Act, mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove that he had such mental state with respect to the act charged as an offence in that prosecution. (2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability. Explanation: In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

31. Save as provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (including the provisions relating to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution in a Special Court, shall be deemed to be a Public Prosecutor. THE GAZETTE OF INDIA EXTRAORDINARY 11-32. (1) The State Government shall, by notification in the Official Gazette, appoint a Special Public Prosecutor (or even a Special Court for conducting cases only under the provisions of this Act. (2) A person shall be eligible to be appointed as a Special Public Prosecutor under sub-section (1) only if he had been in practice for not less than seven years as an advocate. (3) Every person appointed as a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and provision of that Code shall have effect accordingly. CHAPTER IV PROCEDURE AND POWERS OF SPECIAL COURTS AND RECORDING OF EVIDENCE 33. (1) A Special Court may take cognizance of any offence, without the accused being produced and committed to it for trial, upon receiving a complaint or facts which constitute such offence, or Special Court 2 of 1974. 56 of 2000 upon a police report of such facts, (2) The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child, (3) The Special Court may, if it considers necessary, permit frequent breaks for the

child during the trial. (4) The Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court. (5) The Special Court shall ensure that the child is not called repeatedly to testify in the court. (6) The Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial. (7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial: Provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child. Explanation. For the purposes of this sub-section, the identity of the child shall include the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed. (8) In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child. (9) Subject to the provisions of this Act, the Special Court shall, for the purpose of the trial of any offence under this Act, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, and as far as may be, in accordance with the procedure specified in the Code of Criminal Procedure, 1973 for trial before a Court of Session. 34. (1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000. (2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination. Procedure for determination of age of child. (3) If the Special Court is satisfied that the age of a person determined under sub-section (2) is not the correct age of that person. (4) The Special Court shall ensure that the child is not exposed in any way to the accused at the time of recording of the evidence, while the same time ensuring that the accused is in a position to hear the statement of the child and communicate with his advocate. (5) For the purposes of sub-section (1), the Special Court may record the statement of a child through video conferencing or by utilising single visible screens or curtains or other device.

37. The Special Court shall try cases camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence Provided that where the Special Court of the opinion that the child needs be examined at a place other than the court, shall proceed to do so in accordance with the provisions of section 284 of the Code of Criminal Procedure, 1973. (1) Wherever necessary, the Court take the assistance of a or Interpreter having such qualifications, experience and on such as to prescribe and supervise the recording of the evidence of the child. (2) If the child has a mental or physical disability, the Special Court may take the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed to record the evidence of the child. Provisions of sections 13 to 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000 shall apply to the child. CHAPTER IX 39. Subject to such rules as may be made in this behalf the State shall prepare guidelines for the use of non-governmental organisations, professionals and or persons having knowledge of psychology, physical health, mental health child development to be associated with the pre-trial and trial stage to the child. 40. Subject to the provisions of section 37 of the Code of Criminal Procedure, 1973 the family or the guardian of the child shall be entitled to the assistance of a counsel for any offence under this Act. Provided that if the father or the guardian of the child is unable to afford a counsel, the Legal Services Authority shall provide a lawyer to them, 41. The provisions of sections 3 to 13 (both inclusive) shall not apply to the case of medical examination or medical treatment of a child when such medical examination or medical treatment is undertaken with the consent of his parents or guardian.

42. Where an act or omission constitute an offence punishable under this Act and also under any other law for the time being in force, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under such law or this Act as provides for punishment which is greater in degree.

13. Central and every State to the of this Act are Wde [tied. e the televtston. radio and the punt medld at Ijiiervais •x,ake the genoæ pubi'C, cbiidren C, wet! as parents and guardians the provts,ons thw the the Central the lading the imparted periodic on the to the the presosi0t» ot the Act 44. t,') ommissaofi tor Protection ot constituwtd ur,dcr ot as the case he. thc tot Protect'on of constituted under section 17, o; the for Pro:cctien ofCh'ld R•.Qhty shall, jn add:tian 10 the functions assigned to them under that Act, ti:e tnpieimentanonofthe provistons of this Act such manner as may be prescr:bed. Ille National Comnuss:on or, the cwse may be, the State Commisston. referred to in sub-section shall. while Inquiring into any matter relating to any offence under Act. have the same powers as are vested tn i: under the Commissions for Protection of Chi ld Rights Act. (3) I he National (omnusslon or, as the case may be. the State Commissmn. referred to sub-section (li. shail. also its activities under this section, in the annual report referred in section i6 ot-the Commissions for Protection Rights Act. 45. 'The Central Government may. by notification in the C)fticiali Gazette, make ruics for carrymg out the purposes of this Act particular. and *Ithon: prejudice to the generality. the ti.rvgotne• powers. such n. ics mas Ide or Ing matters. the qualifications and expertenec• of. and 'hve fees payable t". a lal are. of fthe ch4ld or an expert that field. undet sub-section (4) of section subsections (2) and (; of section 26 and section (h) care and protccoon and emergency medical treatment ot' the under sub-section (5) ot' sectson 19' (c) the payncr,t of compensation undeg sub-section (8) of section 33. the manner of periodic monitorang of the provisions ot-the Act under sub-section () section 44 L very rule made under this section shall be lawd soon as Be after it macfc, before each House of Parhament. whiie il is tn session. for a total perotd ofthtny days which may he comprised in one session or in two or more successtve sessions. and if. before the oi the session Immediately the sessvon or the successßv• sessions both Houses agree making any modification tn the r-ule ot both Houses agree that the rule should not be made. the rule shali thereafter have effect onn T, such modified form or be of no as the be. GO. however, thß! such or the validity anything pres done under that 46. (/ i (fanv difficulty arises in the ofth:s .Act. the Centrai hy order puhished the such not the provisions ef this Act to ne tor Provided that no order shall be made under sectjoo 'hve tne t" o vears tiorn [he commencement o:• this Ac:.. (2) Every order made under this seet101! iei¶l, as as may after ft made. bc i Parl tament,, GAZETTE ISee Act, (h) lhe Army Act. 1950 (46 of 1950), i Rifles Ace 2006 (47 of 17he •nome Guard f. (e) 'I he Border Security horce Act. ! 968 of 'I he Central industrial Security Porce Act. 1968 of Centra: Reserve Police Force Act. ih) Coa.S1 GuardAct, 1978 (300f 1978); (i) Delhi Special Police Establishment Aet, 1946 (2.f of 'the Indo•Tibetan Border Police Force Act, 1992 (3S of 1992). (k) Act, (62 Nationa' Invesogatton AgencyAct. 2008 (34 of 2008), (m) The National Security Guard Act. 1986 (47 of 1 'Ime Railway Protection Force Act, 1 9-s,• (2; of 19,,S7). (o) lhe Sashastra Seema Bal Act. 2007 Oof 2007)•. The Specyai Protectgort Group Act. 1988 of ; 088 (q) Ie:ritona! 1948 ! 048), (r) State pohce 'orces Including armed constabulary) State to aid the civil powers of' the State and empowered to employ force untarnai disturbances or otherwise Including armed torces as defined in clause of the Armed Forces (Specia Powers)Act. 19-fS of 1958). V K. BHASIN, Secretary to the Govt ot Indi"