

Protection of Children from Child Sexual Offences Act, 2012



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OUR JOURNEY STARTS



History

Class 12



HISTORICAL BACKGROUND OF POCSO

Article 15 of the Constitution of India (Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth) allows for positive discrimination.

**Article 15 (3) of the Constitution of India states,
"Nothing in this article shall prevent the State from making any special provision
for women and children."**

Article 39 (Certain principles of policy to be followed by the State)
directs State policy towards securing that
**children are given opportunities and facilities to develop in a healthy manner and in
conditions of freedom and dignity and that childhood and youth are protected
against exploitation and against moral and material abandonment"**[Art. 39(f)]

***The POCSO Act, 2012 is a step forward in providing
special procedures for children who are survivors of sexual violence.***

LETS GO BACK

➤ Convention on the rights of the child of UN 1992

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) the exploitative use of children in prostitution or other unlawful sexual practices;
- (c) the exploitative use of children in pornographic performances and materials;

But Sexual exploitation and sexual abuse of children are heinous crimes and need to be effectively addressed.

- ➤ Many ACTS like Juvenile Justice act, IPC etc

For the first time In India a law was passed to address the issue of sexual offences against children and there was no distinction between an adult and child victims.

The offences have been clearly defined for the first time in law such as the offences of sexual assault, sexual harassment and pornography.

INTRODUCTION TO POCSO

- ✓ The Protection of Children from Sexual Offences Act 2012 published in official Gazette for general information on 20.06.2012.
- ✓ Brought into force from 14.11.2012 by way of a separate notification in terms of Section 1(3)
- ✓ The Protection of Children from Sexual Offences Rules 2012 also notified and brought into force on 14.11.2012
- ✓ Popularly referred as POCSO Act & POCSO Rules
- ✓ Does not repeal any corresponding penal provision in Indian Penal Code(IPC)
- ✓ Contains a total of 46 Sections & 7 Rules
- ✓ POCSO Act has been amended once in 2013 [Criminal Law (Amendment) Act, 2013 added Section 42A]

A Statistic for a New Era

shedding light on child sexual abuse prevalence

1 in 10 children

will be sexually abused before they turn 18



That's **400,000** children each year

PEDOPHILIA.
YOU MIGHT NOT
SEE IT, BUT IT COULD
BE HAPPENING.

70% OF CHILD ABUSE
CASES TAKE PLACE
IN THEIR OWN HOME.
TO REPORT CALL: 11 3115 6119
CHILDREN AND ADOLESCENTS REFERENCE CENTER.



This is a simulation of how the ad is with the lights off: The glowing ink printed on the ad shines in the dark, showing this message.



SHE'S 64^{now} HER FATHER MOLESTED HER When she was 7 YESTERDAY^{to her, it still feels like}

The impact of child sexual abuse is often slow to develop, but acute and prolonged when it does occur. A victim may experience its worst effects long after entering adulthood. Without timely, professional help, most victims will carry this weight to their graves. But you can stop this from happening. If you think you know of a child being abused, please call 12345678 or email email@email.com. You could save a life.

Logo goes here

**PEDOPHILIA.
YOU MIGHT NOT
SEE IT, BUT IT COULD
BE HAPPENING.**

10% OF CHILD ABUSE
CRIMES TAKE PLACE
IN THEIR OWN HOMES.
TO REPORT CALL: 311-2115-8119
CHILDREN AND ADOLESCENTS REFERENCE CENTER



This is a simulation of how the ad is with the lights off. The glowing ink printed on the ad shines in the dark, showing this message.

WHAT IS CHILD SEXUAL ABUSE

- > Physical - Emotional ill treatment,
- > sexual abuse - neglect or negligent
- > Commercial or other exploitation,
- > potential harm to the child's health, survival, development or dignity in the context of a relationship of responsibility,
- > trust or power



WHO can be ACCUSED ???

**Men and Women can be accused
of
child sexual abuse**

SALIENT FEATURES -1

- **Best interest of the child".**
- **Offences mentioned in this Act are gender neutral vis-à-vis the perpetrator as well as the victim.**
- **Covers sexual offences against children that are not adequately addressed by the existing laws.**
- **Covers offences neither specifically provided for nor are they adequately penalized.**

SALIENT FEATURES -2

- **Makes Special Juvenile Police Unit (SJPU) defined in the JJAct-2015 responsible for action.**
- **Provides for Special Courts & Child Friendly Procedures**
- **Provisions under the Act for avoiding the victimization of the child.**
- **Even abetment of or an attempt to commit these offences is also punishable under the Act. (Sec:16, 29)**
- **It recognizes that the intent to commit an offence, even when unsuccessful needs to be penalized.**

TYPES OF ASSUALT

- **Defines sexual offences against children explicitly and them into five categories such as**
 - penetrative sexual assault**
 - aggravated penetrative sexual assault,**
 - sexual assault**
 - aggravated sexual assault,**
 - sexual harassment, and**
 - using a child for pornographic purposes**
- **Recognizes CWC as a competent authority for rehabilitation and to protect children.**

WHEN U CAN CALL AGGRAVATED

- > Committed by a person in position of trust or authority vide POLICE, Armed forces/ security forces , Public servant , Staff of Correctional/ Care Institution, Staff of Hospital , Staff of Educational Institution
- > Gang assault & Taking advantage of physical vulnerability
- > When offence causes grievous hurt
- > When offence causes physical or mental disability
- > When offence is committed more than once
- > Using deadly weapons, fire, heated substance or corrosive substance
- > Harm/injury to sexual organ of child
- > Causes child to become mentally ill/ pregnant/HIV +ve

PUNISHING AREA

> Penetrative Sexual Assault

(Section 3) on a child - Not less than ten years which may extend to imprisonment for life, and fine

(Section 4). Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine.

PUNISHING AREA

> Aggravated Penetrative Sexual Assault (Section 5) — Not less than twenty years which may extend to imprisonment for life, and fine

(Section 6)

Sexual Assault (Section 7) i.e. sexual contact without penetration — Not less than three years which may extend to five years, and fine (Section 8)

Aggravated Sexual Assault (Section 9) by a person in authority — Not less than five years which may extend to seven years, and fine (Section 10)

Sexual Harassment of the Child (Section 11) — Three years and fine (Section 12)

Use of Child for Pornographic Purposes (Section 14) — Not less than Five years and fine and in the event of subsequent conviction, seven years and fine Section 14 (1)

PUNISHING AREA

- > Use of child for pornographic purposes resulting in penetrative sexual assault : Not less than 10 years (in case of child below 16 years, not less than 20 years)
- > Use of child for pornographic purposes resulting in aggravated penetrative sexual assault :
Not less than 20 years and fine
- > Use of child for pornographic purposes resulting in sexual assault : Not less than three years which may extend upto five years
- > Use of child for pornographic purposes resulting in aggravated sexual assault : Not less than five years which may extend to seven years

PUNISHING AREA

- > Any person, who stores or possesses pornographic material in any form involving a child, but fails to delete or destroy or report the same to the designated authority, as may be prescribed, with an intention to share or transmit child pornography - Fine of not less than Rs 5,000; in the event of second or subsequent offence, fine not less than Rs 10,000.
- > Any person, who stores or possesses pornographic material in any form involving a child for transmitting or propagating or displaying or distributing : Upto three years of imprisonment, or with fine, or both.
- > Any person, who stores or possesses pornographic material in any form involving a child for commercial purpose shall be punished on the first conviction : Not less than three years of imprisonment which may extend to five years; or with fine or with both. Second or subsequent conviction: not less than five years and upto seven years and also fine.

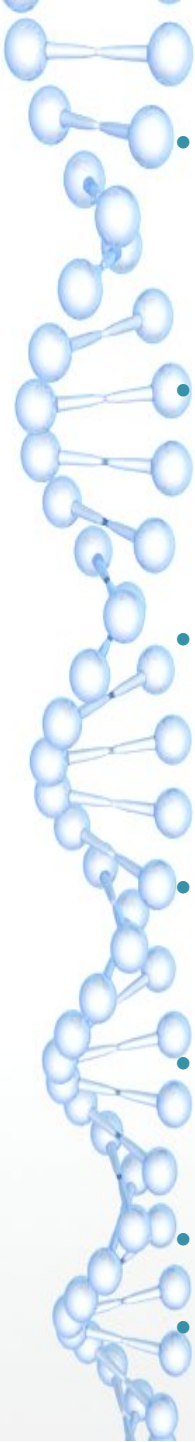


WHAT IT HAS ? ? ?



- Burden of proof is on the accused to prove innocence
- Key weightage is given to the statement of the child
- This Act supersedes all other Acts when there is point of contention
- All offences under this Act to be tried only by Special Court and no lenience to be provided as under other Acts
- Allows Use of video recording of statement of the abused child

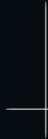
- > For reporting, Recording of evidence, Investigation and trial of offences such (Sec 24,25)
- > Recording the statement of the child at the Residence of the child or at the place of his choice, preferably by a woman police officer not below the rank of sub-inspector
- > No child to be detained in the police station in the night for any reason.
- > Police officer to not be in uniform while recording the statement of the child
- > The statement of the child to be recorded as spoken by the child
- > Assistance of an interpreter or translator or an expert as per the need of the child

- 
- **Medical examination of the child to be conducted in the presence of the parent of the child or any other person in whom the child has trust or confidence.**
 - **Assistance of special educator or any person familiar with the manner of communication of the child in case child is disabled**
 - **In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.**
 - **Frequent breaks for the child during the trial process.**
 - **Child not to be called repeatedly to testify**
 - **No aggressive questioning or character assassination of the child**
 - **In-camera trial of cases**

- > The attempt to commit an offence under the Act has been made liable for punishment
- > The media has been barred from disclosing the identity of the child without the permission of the Special Court. The punishment for breaching this provision by media may be from six months to one year (Section 23).
- > For speedy trial, the Act provides for the evidence of the child to be recorded within a period of 30 days. Also, the Special Court is to complete the trial within a period of one year, as far as possible (Section 35).
- > To provide for relief and rehabilitation of the child, as soon as the complaint is made to the Special Juvenile Police Unit (SJPU) or local police, these will make immediate arrangements to give the child, care and protection such as admitting the child into shelter home or to the nearest hospital within twenty-four hours of the report.

- > The SJPU or the local police are also required to report the matter to the Child Welfare Committee within 24 hours of recording the complaint, for long term rehabilitation of the child.
- > The Act casts a duty on the Central and State Governments to spread awareness through media including the television, radio and the print media at regular intervals to make the general public, children as well as their parents and guardians aware of the provisions of this Act.
- > Where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376C, 376D, 376E or section 509 of the Indian Penal Code (45 of 1860), 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 under this Act or under the Indian Penal Code as provides for punishment which is greater in degree."

- > The Provisions of this Act is in addition to and not in derogation of any other provisions of any other Law. In case of any consistency the provisions of this act will have an overriding effect on any other provisions.

 - > The POCSO Act is only applicable to child survivors and adult offenders. In case two children have sexual relations with each other, or in case a child perpetrates a sexual offence on an adult, the Juvenile Justice (Care and Protection of Children) Act, 2000, will apply.
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IN NUTSHELL

1. Gender-neutral law : VICTIM AND PERPETRATORS

2. Not reporting abuse is an offence

3. No time limit for reporting abuse

4. Maintaining confidentiality of the victim's identity

Section 23 of the POCSO Act

5. Any institution housing children, or coming in regular contact with them, is required to conduct a periodic police verification and background check of every employee who might interact with a child.

IN NUTSHELL

1. Adopt a child protection policy based on the principle of zero tolerance to violence against children.
2. These policies streamline procedures for dealing with child abuse incidents and mitigate arbitrary actions when such incidents surface. This, in turn, prevents reputational damage and enhances an organisation's credibility.
3. Most significantly, a robust child protection policy will inspire confidence that an organisation will deal with child abuse concerns fairly and in accordance with the due process of law.

**STAKE
HOLDERS ?**

Special Juvenile Police Unit

Child Welfare Committee

Interpreter/Translator

Support Person Key Stake Holders District Child Protection Unit

Special Public Prosecutor

Medical Officer/
Forensic

Special Court



ROLE OF POLICE

Some Symptoms of Sexual Abuse



Child has frequent unexplained injuries especially in private body parts



The child walks and sits with difficulty



Fatigue and sleeping difficulties



Poor attendance of child in school



Unexpected behavioural changes in a child such as social withdrawal or unjustified/inappropriate aggression



Regressive behaviour such as bed wetting and thumb sucking



Sudden dislike/withdrawal from certain specific people or places he/she was comfortable with earlier



Sudden accumulation of money or gifts



The child starts paying too much or too little attention to his/her appearance

Important:

Listen to
children
reporting sexual
abuse

Believe the
child

Tell the child
that he/she is
brave

Tell the child
it is not his/
her fault that
he/she has
been abused

Age Verification

I.O. should immediately obtain date of birth certificate from one of the sources:

- ✓ **School Date of Birth**
- ✓ **Transfer Certificate**
- ✓ **Aadhar/Ration/Voter I.D. Card**
- ✓ **As entered in Hospital Records**
- ✓ **Village/Municipal Records**
- **Ossification test when no other record is available.**
- **I.O. to mention age details in C.D.**

HOW TO REPORT

As per Sec 19(1-5). information should be given to,—

- (a) the Special Juvenile Police Unit (SJPU) or
- (b) the local police.

The report of offence shall be:

(a) Given an entry number and recorded in writing

(b) be read over to the informant

(c) shall be entered in a book to be kept by the Police Unit.

- In case contents are being recorded in the language not understood by the child or a translator or an interpreter, should be provided if he fails to understand the same.
- Where the SJPU/local police is satisfied that the child against whom an offence has been committed and needs care & protection, then, after recording the reasons in writing, make immediate arrangement to give him such care and protection (including admitting the child into shelter home or to the nearest hospital) within 24hrs.

REPORT-2



- In case any personnel of the media or hotel, lodge, hospital, club or a studio or photographic facilities comes across any child pornography (through any medium), he shall provide such information to the Special Juvenile Police Unit or the local police (section 20).

False complaints with the intention to humiliate, extort, or threaten or defame someone are punishable under the Act. However, a person who provides information about the occurrence of a sexual offence in good faith will not incur any liability [section 19 (7)].



WHAT IS THE INFORMATION TO BE PROVIDED TO THE CHILD

- > Inform the child and his or her parent/ guardian /support person,or other person whom the child trusts**
- > Availability of support services including counselling. If required, they must also assist in connecting the child and his or her family to persons providing support services.or suspected offender.**
- > Rendering of a verdict after trial**
- > Sentence imposed on the offender.**

WHO MONITORS

- **The National Commission for the Protection of Child Rights (NCPCR) and the State Commissions for the Protection of Child Rights (SCPCR).**
- **The Commissions can also call for a report on any specific case of child sexual abuse falling within the jurisdiction of a CWC. Post-inquiry, they can recommend to the government to initiate proceedings for prosecution, recommend interim relief, or make any other recommendations to effectively redress the matter.**
- **They can also approach the High Court or Supreme Court for orders, directions, or writs.**

OFFENCES UNDER POCSO – COGNIZABLE & NON-BAILABLE

The POSCO Act is a special law and it has not specified which offences are cognizable and, therefore, to determine which of the POCSO Act offences ARE cognizable and non-bailable, reliance must be placed exclusively on

Code of Criminal Procedure Part II (Classification of Offences against Other Laws), First Schedule of the Code of Criminal Procedure, 1973.

Whenever the punishment is less than 3 years of imprisonment, the offence would be non-cognizable and bailable.

Any higher term of imprisonment beginning from 3 years and above would make such offence cognizable and non-bailable.

Hence all sections are cognizable, with the exception of section 21 and section 22 which are non cognizable and bailable offences.

CONFIDENTIALITY OF CHILD UNDER POCSO

- **Right to Privacy and Confidentiality** – The name of the child, the family, educational institution wherein s/he is enrolled, and other information capable of identifying her/him shall be kept confidential [**Article 3 of the CRC, Preamble to the POCSO Act, Shankar Kisanrao Khade vs. State of Maharashtra 2013 (6) SCALE 277**]
- **Section 23** – *Media shall not make any report or present comments on any child without having complete and authentic information which may lower reputation or infringe the Child's privacy. Punishable with imprisonment of not less than six months which may extend to one year or fine or both.*
- *Baby Falak Case W.P.(C) No. 787/2012 – Delhi High Court orders dt. 08.08.12 & 05.12.12 –*
Guidelines for Media Reporting on Children

TO BE DONE

> Recording of Statement (Sec. 24)

> Medical Examination (Sec. 27)

> Recording of Evidence (Sec. 33 & 36) In camera

> Time-bound Trial (Sec. 35): Evidence of the child should be recorded within 30 days.
Entire trial- 1 year.

> Assistance to Child (Sec. 40): Child may be assisted by legal counsel, support person, or child welfare officer.

POCSO or INDIAN PENAL CODE ??

Offence Description	Punishment under IPC	Whether Punishable under IPC or POCSO?
Section 166 A Public servant disobeying directions under law	Six months rigorous imprisonment which may extend to two years , and shall also be liable to fine	IPC is applicable. Failure to record an offence u/s 19 (2) of POCSO shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

POCSO or INDIAN PENAL CODE ??

Offence Description	Punishment under IPC	Whether Punishable under IPC or POCSO?
Section 354 A Sexual Harassment consists of; Any of the following offending acts of a man (i) physical contact and advances including unwelcome and explicit sexual overtures; (ii) a demand or request for sexual favours; (iii) showing pornography against the will of the woman; (iv) making sexually coloured remarks.	Rigorous imprisonment which may extend to three years or with fine, or with both for clause (i) to clause (iii). Imprisonment of either description which may extend to one year or with fine or both for clause (iv)	POCSO is applicable as the definition of sexual harassment is wide under POCSO. POCSO carries the greater punishment for uttering any words or sounds with sexual intent under section 11(i). Showing pornography against the will of the woman carries the greater punishment under IPC. Under section 11(iii) of POCSO showing pornography to a child with or without its consent is an offence. Physical contact is covered under —sexual assault (s.7) of POCSO, which carries the greater punishment of not less than three years which may extend to five years.

POCSO or INDIAN PENAL CODE ??

Offence Description	Punishment under IPC	Whether Punishable under IPC or POCSO?
Section 354B Assault or use of criminal force to woman with intent to disrobe is an offence.	Not less than three years imprisonment which may extend to seven years and shall also be liable to fine?	POCSO is applicable. POCSO Act, section 9 (u) makes it an offence to commit sexual assault on a child and to make it strip or parade naked in public and punishes it with imprisonment not less than 5 years but which may extend up to 7 years and fine. When such offence is accompanied by penetrative sexual assault as defined under section 5 (u) of the POCSO Act, the same is punishable under section 6 of the POCSO Act with RI for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.

POCSO or INDIAN PENAL CODE ??

Offence Description	Punishment under IPC	Whether Punishable under IPC or POCSO?
Section 354C Voyeurism – is an offence by a man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed.	First conviction – One year imprisonment which may extend to three years and fine Subsequent conviction – Three years imprisonment which may extend to seven years and shall also be liable to fine	IPC is applicable. No such offence exists under POCSO.

POCSO or INDIAN PENAL CODE ??

Offence Description	Punishment under IPC	Whether Punishable under IPC or POCSO?
Section 354 D Stalking is an offence by a man who (i) follows a woman and contacts or attempts to contact her to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or (ii) monitors the use by a woman of the internet, email, or any other form of electronic communication.	First conviction – Imprisonment which may extend to three years and shall also be liable to fine Subsequent conviction – Imprisonment which may extend to five years and shall also be liable to fine	IPC carries the greater punishment for subsequent offence. Under section 11 (iv) of POCSO repeated or constant following, watching, contacting a child with sexual intent is punishable with three years imprisonment and fine.

POCSO or INDIAN PENAL CODE ??

Offence Description	Punishment under IPC	Whether Punishable under IPC or POCSO?
Section 370 Trafficking of Persons is an offence committed by a person who for the purpose of exploitation (a) recruits (b) transports (c) harbours (d) transfers or (e) receives a person/s 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. Exploitation includes sexual exploitation.	Section 370 (4), 370 (5), 370 (6) deal with trafficking of minors. The offence is punishable with rigorous imprisonment for not less than ten years but which may extend to life and shall also be liable to fine	IPC is applicable. No such offence exists under POCSO.

POCSO or INDIAN PENAL CODE ??

Offence Description	Punishment under IPC	Whether Punishable under IPC or POCSO?
Section 370 A Exploitation of a trafficked person is an offence by anyone – who knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation.	Rigorous imprisonment for not less than 5 years which may extend to seven years and shall also be liable to fine	IPC is applicable. No such offence exists under POCSO.

POCSO or INDIAN PENAL CODE ??

Offence Description	Punishment under IPC	Whether Punishable under IPC or POCSO?
Section 375 RAPE	Section 376 Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous 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. (2) Whoever. ... shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine	Under section 5 (m) of POCSO whoever commits penetrative sexual assault on a child below 12 years shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to life and shall also be liable to fine. Under section 376 (i) of the IPC rape of a woman under 16 years of age is punishable for a term which shall not be less than ten years but which may extend to life and shall also be liable to fine. Hence, rape of a girl aged 12 years to 16 years carries greater punishment under IPC. Exception 2 of section 375 IPC is inconsistent with POCSO. Hence POCSO has overriding effect and marital rape of a minor is an offence under POCSO.

Existing Provisions under IPC	Applicability	Present provision under POCSO Act	Applicability
Sec.376 – Rape	Women are Victims	Sec.3 – Penetrative sexual assault r/w. sec.4 of POCSO Act	Gender neutral – either male or female below 18yrs
Sec.376-D – Gang Rape	Women are the victims	Sec.5(g) r/w 6 – Gang rape of child	-do-
No such provision in provision in IPC Aggravated form of Sec.354 IPC.	Women are the victims	Sexual assault – Sec. 7 r/w. 8 of POCSO Act. Severe form than 354 IPC	-do-
No such provision	Women are the victims	Sec.28 – Trial by Spl. Court and Spl. PP (Sec.32)	-do-
Sec.327 CrPC – Trial to be In-camera	Women are the victims	Sec.37 – Trial to be conducted In-camera	-do-
Sec.309 (1) CrPC – trial to be completed in two months from date of exam of witnesses	Women are the victims	Sec.35-Spl. Court to complete recording child’s evidence in 30 days and total trial within one year	-do-

Criminal Law (Amendment) Act, 2013

Sec. 326-A – Voluntary causing grievous hurt by use of Acid	Punishment – Not less than 10 yrs upto life -	Sessions court
Sec. 326-B – Voluntarily throwing or attempting to throw acid	Punishment – may extend to 7 yrs and with fine	Sessions court-Non-Bailable
Sec. 354-Assault or use of criminal force to woman with intent to outrage her modesty	Punishment – for one year which may extend to 5 yrs and with fine.	Asst. Sessions Non-Bailable
Sec.354-A – Sexual harassment at work place	Punishment – for 3 years with fine or with both.	Any Magistrate Bailable
Sec.354-B – Use of Criminal force to disrobe woman.	Punishment – not less than 3 years and upto 7 yrs.	Any Magistrate Non-Bailable

Criminal Law (Amendment) Act, 2013

Sec.354-C – Voyeurism	Punishment – not less than 1 year and upto 3 yrs.	Any Magistrate Bailable
Sec. 354-D – Stalking	Punishment – Upto 3 yrs	Any Magistrate Bailable
Sec. 370- Trafficking of person	Not less than 7 yrs, upto 10 yrs.	Non-Bailable - Sessions Court
Sec. 370- Trafficking of more than one persons	Not less than 10 yrs, upto life	Non-Bailable - Sessions Court
Sec.376 – Rape	not less than 7 years, upto life	Non-Bailable - Sessions Court

Criminal Law (Amendment) Act, 2013

Sec.376-A – Causing death during rape or woman to be in vegetative state	not less than 20 year, may extend to life imprisonment till remainder of that person's life or with death	Non-Bailable - Sessions Court
Sec. 376-B – Rape by husband on his wife during separation (only on complaint of victim)	Punishment – Not less than 2 yrs. upto 7 yrs.	Bailable- Sessions court
Sec. 376-C – Rape by a person in authority or a public servant etc.	Not less than 5 yrs, upto 10 yrs.	Non-Bailable - Sessions Court
Sec. 376-D - Gang Rape	Not less than 20 yrs, upto remainder of natural life	Non-Bailable - Sessions Court
Sec.376–E -Repeat offenders	For the remainder of the life or with death	Non-Bailable - Sessions Court

LATEST



What are the salient features of POCSO Rules, 2020?

- > Mandatory police verification of staff in schools and care homes, procedures to report sexual abuse material (pornography), imparting age-appropriate child rights education among others.
 - > Fast Track Special Courts
 - > The victims also get aid from the government under various compensation schemes.
 - > sensitization *workshops and refresher courses*
 - > *Counseling and therapy*
-

Suraksha... POCSO e-box... a click away



A child-friendly e-initiative of NCPCR at www.ncpcr.gov.in to report crimes committed against children

HELPLINE NO: 9868235077

E-BOX

- > POCSO e-Box is an initiative of the National Commission for Protection of Child Rights (NCPCR), for direct online complaint filing of child sexual abuse.**
 - > The POCSO e-Box is incorporated in the page of the National Commission for Protection of Child Rights (NCPCR) portal.**
 - > E-Box is simple to operate and will help to maintain the confidentiality of the complainant.**
 - > The user can register a complaint by selecting the category of harassment.**
 - > All the complaints filed - to the respective Nodal Officer.**
-

SPECIAL COURT PROCEDURE

(Sec.25 of POCSO Act, 2012)

**Video recording of the child u/s. 164 Cr.P.C as spoken
by the Child and Medical Exam of child u/s. 164.A CrPC.**

**✓ Advocate of the accused cannot be permitted by Court
during recording of S.164 Statement.**

**✓ Magistrate to provide copy of charge sheet to the
child or his / her parents.**

presumptions' drawn by Spl. Court (Sec.29 POCSO Act)

The Spl. Court shall presume that such person who is prosecuted for committing or abetting or attempting to commit any offence U/s. 3, 5, 7 & 9 of POCSO Act; has committed such offence unless contrary is proved.

Burden of proof is on the accused.

Special Court u/s Protection of Children from Sexual Offences Act, 2012

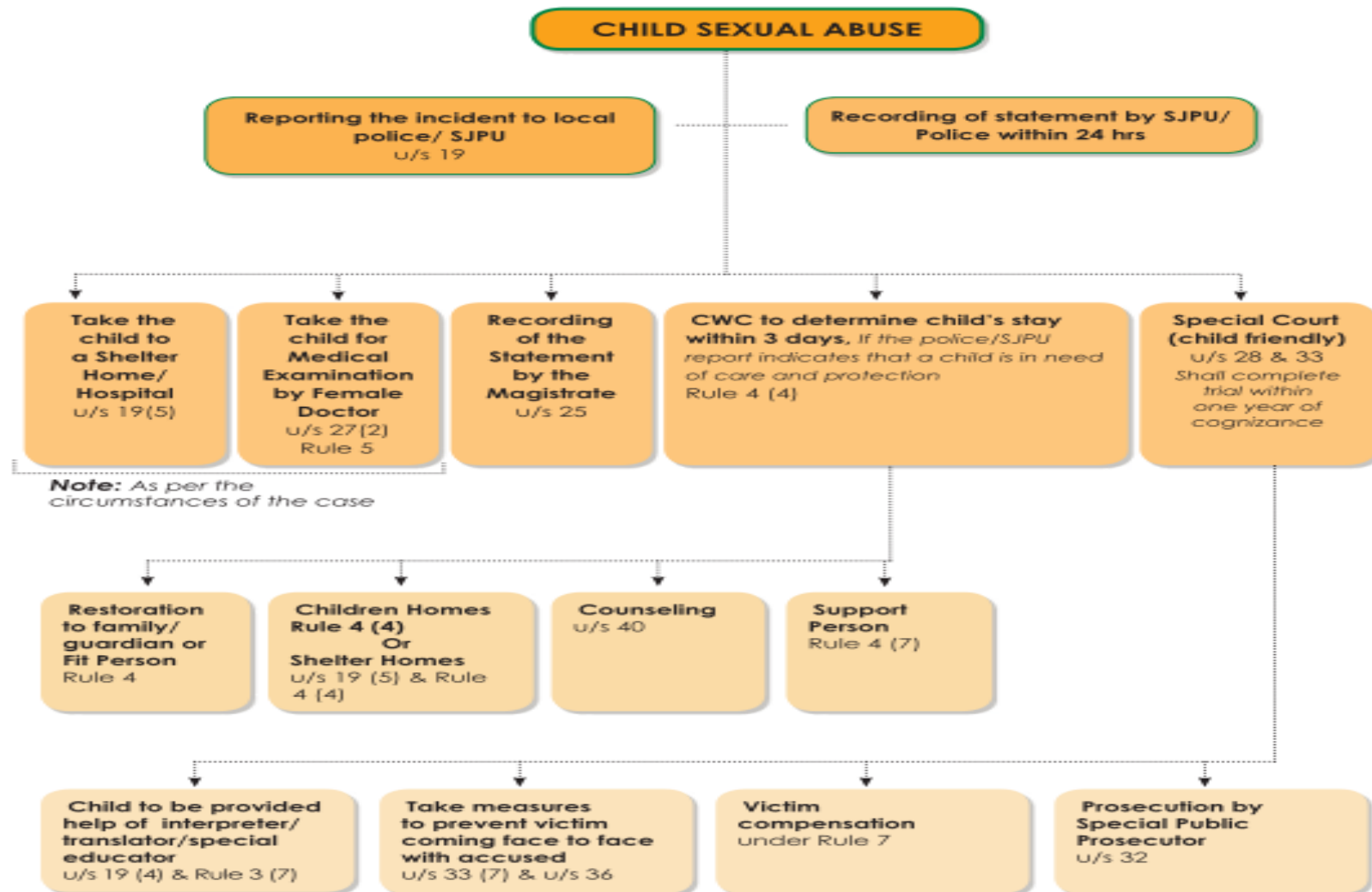
(Govt. of A.P. Notification vide G.O. Rt.No.630 Law (LA&J-Home Courts-C) Dept.dt.23.3.2013)

- ✓ In the Districts - 1st Additional District & Sessions Judges**
 - ✓ In the Commissionerates - 1st MSJ in Hyd**
-

Procedures & Powers of Spl. Court

- ✓ **Taking cognizance directly without accused being committed to it for trial—upon a Police report.**
 - ✓ **Questions to the victim to be put through the Court during trial.**
 - ✓ **Court may permit frequent breaks for the child during trial.**
 - ✓ **Court to create child—friendly atmosphere.**
 - ✓ **Court not to call child repeatedly—to complete evidence of child in 30 days.(sec.35(1) POCSO Act, 2012.**
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Flow Chart of Processes Under POCSO Act





Who should be the Investigating Officer?

- ✓ **Inspector of Police to be I.O. for the investigation of sections 3 to 6 of POCSO Act, i.e. penetrative sexual assault (Rape) and Aggravated Penetrative sexual assault and Gang rape.**
- ✓ **In Gang rape cases of children Sec.5(g) SDPO/ACP have to investigate personally.**

After the enactment of POCSO Act, is it necessary for SHOs to register case of rape (Penetrative Sexual Assault) of children and gang rape under this Act only

Yes.

It is necessary & mandatory. SHOs should register cases u/sec.3 r/w 4 for rape (PSA) and Sec.5 (g) r/w Sec.6 in case of gang rape.

- ✓ All offences from Secs.3 to 18 of POCSO Act to be registered, when victim is a child.**

Other IPC provisions like abduction, wrongful confinement, threat, etc.

Concerned IPC sections need to be added along with POCSO Act.

- ✓ But, charge sheet should be filed before 1st Addl. Dist. & Sessions Judge in all Districts and before 1st MSJ, Hyd.

Are there specific provisions if the offence is committed by a Police officer/ Public servant?

Yes.

There are specific provisions.

The object is that a law-enforcer can not be a law-breaker.

The minimum sentence is not less than 10 years but may extend to life.

Is there a severe provision other than Sec.354 IPC (Outraging modesty of woman) in this Act?

Ans: Yes.

- ✓ **Sec.7 (Sexual Assault) punishable u/Sec. 8 of the Act with imprisonment of not less than 3 years.**
 - ✓ **The offence is gender neutral.**
 - ✓ **If such offence is committed by a Police officer or a Public servant, the punishment is not less than 5 years u/sec. 10 of this Act.**
-

Qn. In case of rescue of minor girls/boys from brothels, is POCSO Act applicable?

Ans: Yes, all the POCSO Act Sections are applicable in addition to ITP Act and other IPC Sections like 366.A, 370, 372, 373.

Is the SHO punishable if he/she doesn't register the matter as mandated u/sec.19(2) of the Act?

Yes. He/she is punishable u/sec.21 with imprisonment up to 6 months or with fine or with both. For non-registration of FIR u/s. 326-A, 326. B, 354, 354. B, 370 (Traffic- king of persons), 376, 376.A, 376.B, 376.C, 376.D, 376E and 509 IPC.

The SHO is punishable u/s. 166-A IPC (Public Servant disobeying directions under law) punishable with imprisonment not less than 6 months, but which may extend to 2 Yrs.

When should the SHO take video-graphic evidence in general?

In important cases, all Sec.161 CrPC Statements can be recorded through video-graphy. i.e in cases of acid attacks, assault or use of criminal force on woman with intent to outrage modesty and in Secs. 354 A to D and in Secs. 376, 376.A-E , 509 IPC.

Sec. 164 CrPC Statement should also be recorded as per Sec.154 (1) (c) of CrPC. It should be video-graphed by the Court.

Is it necessary for obtaining Govt. permission u/s.197 CrPC for prosecuting errant Police officers/ public servants for non-registration of cases.

No.

Not necessary. No sanction shall be required in case of a Public Servant accused of u/s. 166-A, 166-B, 354, 354-A to D, 370, 375, 376, 376-A, 376-C, 376-D or Sec.509 IPC.

Qn. Is the court obliged to conduct in-camera trial?

Ans: Yes. U/Sec.327 CrPC and U/Sec.37 of POCSO Act.

In-camera means: The victim, the support person, the I.O., the Judge, the Prosecutor, Defense Counsel and the accused will be present.

Compensation

G.O.Ms.No.28 of Woman & Child Dept., 2011

- ✓ **Director, WCD, Hyderabad is the sanctioning Authority.**
 - ✓ **I.O. should process the file through PD ICDS of the District concerned.**
 - ✓ **In matters of urgency Collector may also sanction.**
-

**Is there any obligation for the media to report offence under
POCSO Act to Police on coming to know of it?**

Yes.

It is.

If not, it is an offence u/sec.21 of this Act.

Qn. What are the changes in recording First Information Report (Sec.154 CrPC)

- ✓ I.O. to take up video recording of FIR in the presence of Woman Police Officer or Woman Officer (like any woman officer of other dept. in the Police Station area) while registering cases of Sec.326.A, 354. 354.A to D, 376, 376.A to E and 509 IPC**
- ✓ Subsequently, getting statement of the victim recorded u/s. 164 (5.A) CrPC is mandatory.**

Qn. Does the victim in general, have a right to prefer an appeal against any court order of acquittal or of lesser punishment or of imposing inadequate compensation ?

Ans: Yes. u/Sec. 372 CrPC all the victims have a right to prefer appeal.

Qn. In a case of anticipatory bail, is the accused required to appear before final hearing of the Court?

Ans: Yes. u/Sec.438, cl.4 CrPC the accused / applicant of anticipatory bail should be present personally, if the application is made by the Public Prosecutor.

✓ I.O. should request P.P. insisting presence of accused.

Speedy Trial U/s. 309 CrPC

- ✓ **In cases of trial under Sec.376 IPC, trial should be completed within two months from date of commencement of examination of witnesses.**
- ✓ **Sec. 309 (2): When witnesses and accused are present, no adjournment to be granted by court.**
- ✓ **IO to file memo for exam of witnesses**
(Investigation of rape of a child to be completed in 3 months from date of FIR)

Execution of warrants against offenders outside the State

- ✓ U/s. 73 CrPC, IO may request the court to issue warrant to the concerned SsP of the Districts for execution of warrants.**
 - ✓ Search Warrant may be obtained u/s. 93 while going out of the state.**
-

Protection of Children from Sexual Offence Act, 2012 (POCSO Act)

**Child-friendly, Gender-neutral
Special Act with a basket of
positive attributes.**

Qn. What is the object of the Protection of Children from Sexual Offences Act, 2012?

Ans: To protect children (persons below 18 yrs.) from offences (gender neutral) of Sexual Assault, Sexual harassment and Pornography.

- ✓ Offences to be tried by a Special Court (1st ADJ in Dists, 1st MSJ in Hyd, VJA & VSP Cities in A.P.).**
 - ✓ To complete trial within one year from date of commencement of trial, and**
 - ✓ To provide for in-camera, child-friendly environment in court with video-electronic recording of FIR, 161, 164 statements and Speedy Trial.**
-

Qn. Is the presence of a Woman Police Officer or woman officer, a must when FIR is registered u/secs. 326A, B; 354, 354 A to D; 376, 376A to E and 509 IPC?

- ✓ Yes. The SHO should take the help of either a woman Police Officer or any woman officer, he should videograph the FIR.**
 - ✓ Express FIR to be sent to Court followed by the compact disc at the earliest.**
-

**Qn. What is the procedure to be followed by the I.O. in
recording of statement of Child
(Sec.24 POCSO Act)**

**Ans: To be recorded at the residence of the
Child or at a place of his / her choice.**

- ✓ Police Officer to be in mufti.**
 - ✓ No interface with the accused.**
 - ✓ No detention in the PS in the night.**
 - ✓ Protection of identity of the child from public / media.**
-

Procedures & Powers of Spl. Court

- ✓ **Taking cognizance directly without accused being committed to it for trial—upon a Police report.**
 - ✓ **Questions to the victim to be put through the Court during trial.**
 - ✓ **Court may permit frequent breaks for the child during trial.**
 - ✓ **Court to create child—friendly atmosphere.**
 - ✓ **Court not to call child repeatedly—to complete evidence of child in 30 days.(sec.35(1) POCSO Act, 2012.**
-

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CHALLENGES

Medical examination: The POCSO Act, Section 27(2) mandates that in case of a female child/adolescent victim, the medical examination should be done by a female doctor. However, the law mandates the available medical officer to provide emergency medical care. On the other hand, the Criminal Law amendment Act, Section 166A of Indian Penal Code mandates the Government medical officer on duty to examine the rape victim without fail.

Treatment cost: Free medical care to the survivors. If there are no proper facilities or costly procedure is required, the State should take responsibility of reimbursing the cost,

CHALLENGES

(a) Consent: If the child/adolescent refuses to undergo medical examination but the family member or investigating officer is insisting for the medical examination, the POCSO Act is silent and does not give clear direction.

. However, it would be prudent to take informed consent from parent when the survivor is a child (below 12 yr) and consent from both parent and the victim, if the survivor is an adolescent (age group from 12 -18 yr).

CHALLENGES

Consented sexual intimacy: Sexual contact between two adolescents or between an adolescent and an adult are considered illegal under the POCSO Act 2012, because no exception has been granted in the Act under which an act of sexual encounter with a person under 18 is an offence irrespective of consent or the gender or marriage or age of the victim/the accused.

CHALLENGES

Training: There is an urgent need to train the medical, teachers, judicial, advocates and law enforcing agencies in the POCSO Act, 2012.

The role of mental health professional is crucial in interviewing the child in the court of law.

Reporting: It is well known that the cases of child sexual abuse are usually not reported. Further, knowing and reporting child sexual offence is highly difficult and highly personal decision for many family members and also for survivors.

CHALLENGES

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Adopt supportive behaviour towards child victims



Listen to the case with patience when the child complains about a person or an incident or a physical discomfort



Raise your concern with people close to the child



Call CHILDLINE at 1098



Ensure the child has undergone medical examination immediately after reporting the incident



Report incident of abuse at the nearest Police Station



Be sensitive while discussing the incident or its details with the child

✗ Do Not

Do not adopt unsupportive behaviour towards child victims



Blaming the child



Ignoring when the child complains about a person or an incident or a physical discomfort



Reacting in extremes when the incident is reported



Sending the child back to the person/ place where the abuse happened



Asking the child not to seek help from others



Disclosing the child's identity to other people or to the media



Not providing medical attention to the child



Not taking action even when one is aware of the abuse being taking place



Not reporting the incident at the Police Station

CONVICTION RATE – Y its LOW

Is it lack of proper investigation where admissible evidence is not let in?

Is it that we are not taking care of victims before and during trial?

Is it that we are not consulting PPs/APPs before finalizing charge sheet and before trial?

Is it that we are not ensuring presence of all accused and not ensuring speedy trial?



HUMAN TOUCH

**“NOTHING IS SO HEALING AS THE HUMAN
TOUCH.”**

BOBBY FISCHER

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Retake

JOURNEY ENDS





ANY QUERIES

