CHILD SEXUAL ABUSE & POCSCO ACT

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WHO IS A CHILD?
• United Nations Convention on the Rights of the Child Defined Child as all Human beings below the age of 18 years.

• India Ratified UNCRC in 1992.

• The Juvenile Justice Act 2015 and POCSO defined Child as a person who has not completed 18 years.
Sexual Offences Against Children
Sexual Offences against children are committed when a person, whether young or old, male or female, involves a child in sexual activities.

Generally the person holds a position of trust and/or power vis-à-vis the child.
DOES CHILD SEXUAL ABUSE REALLY EXIST?

MORE THAN 53% OF CHILDREN IN INDIA REPORT ONE OR MORE FORM OF SEXUAL ABUSE – DWCD Report 2007

ACCORDING TO THE WORLD HEALTH ORGANIZATION (WHO) ONE IN EVERY FOUR GIRLS AND ONE IN EVERY SEVEN BOYS IN THE WORLD ARE SEXUALLY ABUSED

50% OF CHILD SEXUAL ABUSE HAPPENS AT HOME

1 child is raped every 76 minutes in India – National Crime Records Bureau 2012
It can involve:

- Forcing
- Threatening
- Tricking a child into sexual activity.
It can be:

touching, or

non-touching

and it can cover a range of sexual behaviors
The Touching Process

Safe

Confusing

Unsafe
Sexual Abuse can **ALSO** happen

- Verbal / Bullying with Sexual Intent
- No touching but **gestures** (Sexually coloured)
- Using **technology**
The problem is huge, the silence is slowly breaking and we need to equip ourselves to protect our children!!
Evolution of Laws against Child Sexual Abuse in India
March 1972
Custodial Rape of a 16 year old young tribal girl by two policemen (drunk on duty) in Gadchiroli in Maharashtra

1979
Professors in Delhi & Pune wrote an open letter to Supreme Court

1980
Government Looked at amendment in the Rape Law in India

Women raised their voice to demand justice for Mathura in New Delhi in 1980
FOR THE FIRST TIME
BURDEN OF PROOF

Victim

IF INTERCOURSE ESTABLISHED

Accused
- Philanthropist - Known as “Father” Freddy Peats
- Ran a home for children living and working on the beaches “GURUKUL”
- “There is nothing wrong in sleeping naked with boys”. He called it “BODY JOY”.
- Subsequently Peats was sentenced for committing offences of Criminal Conspiracy, kidnapping, abducting and selling minors for prostitution
- He died in 2005 – at the age of 81 in the prison
Other cases

- **Swiss Couple – 2000, Mumbai**
  Wilhelm Marti, 62 & wife Mary Lily Marti, 59

- **Anchorage – 2001 Mumbai**
  Duncan Grant & Allan Waters

- **Jaku v/s Jaku – Delhi**

- **Kavda Kalyani Case – Thane**

Duncan Grant and Allan Waters
Ran the Anchorage shelter home
THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT 2012
• Passed by the Rajya Sabha on 10th May, 2012
• Passed by the Lok Sabha on 22nd May, 2012
• Received assent form the President on June 19, 2012
• Gazetted on 20th June 2012
• Came into force from 14th November 2012 along with the rules
• It extends to Whole of India, Except Jammu and Kashmir
What’s POCSO?
Protection of Children Against Sexual Offences Act, 2012

Protection from
Sexual Assault
Sexual Harassment
Pornography

POCSO protects children (boys and girls) below 18 years from a range of sexual offences

POCSO calls for
Mandatory Reporting of all sexual offences by all citizens to the nearest police station
Child friendly procedures to reduce trauma of victims

Severe punishment
If protectors are perpetrators
FEATURES

GENDER NEUTRAL
- the offender could be male or female
- the child could be male or female

STATUTORY AGE
- has been increased from 16 years to 18 years

CALIBRATION OF OFFENCES
- Penetrative
- Non-Penetrative
- Aggravated
- Non-touch
- Verbal
- Use of child for pornographic purpose

NO DISCRETION to Court
- to reduce the term of imprisonment to a term less than the minimum term stipulated under the Act.

BURDEN OF PROOF
- on accused to prove that he / she has not committed an offence (under Sections 3, 5, 7 & 9 – presumption is that accused has committed such offence)

MANDATORY REPORTING & RECORDING

PORNOGRAPHY – OFFENCE
CHILD
Any person below the age of eighteen years
Section 2(d)

CONSENT IS IMMATERIAL IN POCSO
(even if the child is between 16 to 18)
### SECTION 3: Penetrative Sexual Assault

<table>
<thead>
<tr>
<th>Action</th>
<th>Punishment</th>
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<tbody>
<tr>
<td>Penetration of the penis or any other object into the vagina, mouth, urethra or anus of the child or Making the child to do so</td>
<td>7 years to life imprisonment + fine</td>
</tr>
<tr>
<td>Manipulating any part of child’s body to cause penetration into vagina, urethra, anus or any part of child’s body or making the child do so</td>
<td><strong>Below 12 years – hang to death (Amendment 2018)</strong></td>
</tr>
<tr>
<td>Applying the mouth to penis, vagina, anus or urethra of child or making the child do so to such person or any other person.</td>
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**• PUNISHMENT:** 7 years to life imprisonment + fine

### SECTION 7: Sexual Assault

With sexual intent touching vagina, penis, anus or breast of child or making child to do so or doing any other act with sexual intent involving physical contact *without penetration* e.g. Kissing, masturbating on the child etc.

**• PUNISHMENT:** 3 years to 5 years + fine
SECTION 13 & 14: Pornography

- Using children in any form of media by showing the sexual organs of the child
- Engaging children in real or stimulated sexual acts
- Indecent or obscene representation of a child
- Also storing child pornography for commercial purposes

**PUNISHMENT:** 5 years to 10 years + fine (Punishment depends on the act, if the person commits penetrative assault while shooting a porn film the punishment is maximum)

*Child pornography* is a crime in India. Information Technology Act, 2000 & Indian Penal Code, 1860 provides protection from child pornography. Child is the person who is below the age of 18 years. ... And for subsequent offence imprisonment which may extend to 5 years & fine which may extend to 10 lakhs rupees.
<table>
<thead>
<tr>
<th>SECTION 11: Sexual Harassment</th>
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</thead>
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<tr>
<td>• Uttering any word or making any sound or gesture</td>
</tr>
<tr>
<td>• Exhibiting a part of the body with the intention that such word or sound shall be heard or such gestures or object or part of the body shall be seen by the child</td>
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<tr>
<td>• Making a child exhibit his body or any part of his body so as it is seen by such person or any other person</td>
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<tr>
<td>• Showing objects or media in the form of porn to the child (SMS, Facebook messages)</td>
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<tr>
<td>• Enticing a child for pornography</td>
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Repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means

If the person threatens to use, in any form of media, a real or fabricated depiction through electronic film or digital or any other mode, of any part of the body of the child or involvement of child in sexual act

**PUNISHMENT:** Maximum 3 years + fine
Under POCSO The nature of offence becomes **Aggravated** based on the:

- **Person** who is committing the crime
- **Situation** in which the crime occurs
- **Impact** the crime has on the child

**Punishment for Aggravated Offences**

For **Penetrative Sexual Assault**: 10 years to life imprisonment (Below 12 years – Hang unto death)

For **Sexual Assault**: 5 to 7 years
Section 5 & 9: Aggravated Offences

- Owner or management or staff of any institution providing services to children
- A person in position of trust or authority of a child & commits the offence in an institution, home or anywhere else
- Police Officers, Armed forces or security forces
- Public servants
- Management or staff of: Hospitals, Educational Institutions, Religious Institutions, shelter homes, remand homes, observation homes etc.
- Guardians, parents, Person living in the shared household or in a domestic relationship with the parent of the child
Section 5 & 9: Aggravated Offences

**SITUATIONS**

- Gang sexual assault & Repeated sexual assault
- If the child is **below 12 years**
- Use of deadly **weapons**
- During **communal** or sectarian violence
- Knowing the child is **pregnant** or makes the child pregnant

**SITUATIONS**

- Attempt to **murder** the child
- Attempt to strip & **parade naked** in public
- If the person has been **previously convicted** under any other law that punishes sexual offence
- On a disabled child (or the assault makes the child **disabled**)
- Inflicts the child with **HIV**
Abetment of & Attempt to commit an offence:  
Section 16 & 18

The punishment for abetment of an offence under POCSO is the same as the punishment prescribed for that offence.

The punishment for attempt to commit an offence under POCSO is half of the punishment prescribed for that offence.
Mandatory reporting & Recording

Section 19
Any person who has apprehension that an offence under this act is likely to be committed or has knowledge that such offence has been committed has to report.

Section 20
Media, hotels, lodges, clubs, hospitals, studios must report objectionable material or acts
WHAT HAPPENS WHEN A CASE IS REGISTERED UNDER POCSO?

- Registration of FIR
- Police takes the statement (161 CrPc)
- Medical Examination
- Spot Investigation & Identification of the Offender
- 164 CrPc statement in front of a Magistrate
- Evidence in the Court
Mandatory Recording

The report must be made to

- Nearest Police Station or
- Special Juvenile Police Unit

Every report shall be

▪ Ascribed an entry number and recorded in writing
▪ Be read over to the informant
▪ Shall be entered in a book to be kept by the police unit
▪ If the police is convinced that the child is in need of care & protection, then they would record the reasons in writing and within 24 hours make arrangement for shelter or health facilities for the child.

▪ Every child victim need not be produced in front of the CWC. If the police is convinced that the child is in need of care and protection only then produce the child in front of the CWC

▪ Within 24 hours of registering a case the police should report the matter to the Child Welfare Committee & the Special Court
Section 19 (7) –

No person is to incur liability [civil or criminal] for providing information about commission of offence under the Act in good faith to SJPU or police.
Failure to report & record

Section 21

1. Any person **who fails to report** commission of an offence and **who fails to record** such offence – Shall be punished with imprisonment which may extend to **six months** or with fine or Both

2. Any person **being in charge of company or institution fails to report** - Shall be punished with imprisonment for a term which may extend to **one year** and with fine
False complaint

Section 22

1. Penalises any person who provides false information / registers false complaint under Sections 3, 5, 7 & 9 with intention to humiliate, defame, extort or threaten, the alleged accused is punishable with imprisonment which may extend to 6 months or fine of both.

2. NO PUNISHMENT SHALL BE IMPOSED ON CHILD

3. Penalises any person who provides false information / registers false complaint against child knowing it to be false, thereby victimizing such child in any of offences is punishable with imprisonment which may extend up to 1 year or fine or both.
Disclosure of identity of the child by Media: Section 23

- Media **should not disclose** any details of the child including name, family details, photograph, name of school, details of his neighborhood or community **except with written permission** of Special Court

- **JJ ACT Section 21** also mentions the same

- Punishable with imprisonment from **6 months to 1 year** or fine or both
Recording the statement of the child: Section 24

Where?

- At the residence
- Or at a place where the child lives
- Or any other place of his/her choice
Recording the statement of the child: **Section 24**

By?

- As far as practicable **lady police officer**
- Not below the rank of **PSI**

**NOT IN UNIFORM**

- No child should be **detained** in police station in night for any reason
Recording the statement of the child: Section 24

How?

- In simple language the way the child narrates it
- With the help of translator or interpreter if the child cannot understand the language
- In presence of parents or any other trusted adult or support person
- In case of disabled children with the help of special educators or any one who is familiar with the child’s way of communication
Support Persons: Section 39

NGOs, professionals & experts or persons having knowledge of psychology, social work, physical or mental health & child development to be associated with pre-trial & trial stage to assist the child.
Recording the statement of the child: *Section 24*

*Wherever possible* record the statement of the child with the use of *audio – video means*.

*This is not compulsory*, please ensure you use a good device to record the statement.
Recording the statement of the child: **Section 24**

- To ensure that the child gets frequent breaks while testifying.
- To ensure that the child and the accused do not come in contact with each other throughout the process of investigation.
- Police Officer to read out the statement loud to child.
- Child/Family must get a copy of the statement.
Medical Examination
Section 27

- Medical examination in accordance with Sec 164 A of CrPc
- Medical examination to be conducted by a female doctor if the victim is a girl child
- In presence of parents or trusted adults
SPECIAL COURT [SC]

• A Sessions Court in every District has been designated as SC by State Government in consultation with Chief Justice of High Court to provide speedy trial.

• Not necessary if Children’s Court or Special Court under any other law has been notified.

• SC to take cognizance of offences without accused being committed to it for trial.

• Special Public Prosecutor [having practice of at least 7 years] to be appointed.

• Ensure that identity of child is not disclosed at any time during investigation or trial: disclosure with SC’s permission if found to be in interest of child.
Child friendly Practices in courts

- Orient the child with the procedures of the court. Establish rapport and put the child at ease before the trial.
- Permit frequent breaks for the child during the trial.
- Allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence
- Child is not called repeatedly to testify in the court.
- Court shall not permit aggressive questioning or character assassination of the child
- The Special Court shall ensure that the identity of the child is not disclosed.
Child friendly Practices in courts

- Child not to see the accused at the time of testifying (Screens, one way mirrors video etc.)
- In-Camera Trials
- Provide assistance of interpreters/translators while recording evidence of the child.
- Ensure that the questions to the child will be routed through the Judge
- Encourage the child to let the court know if they have a problem: They may not understand a question or questions that are too fast, or they may need a break.
- Do not ask the child at trial to demonstrate intimate touching on his/her own body
• **Section 33(8)**: Special Court in addition to punishment, may direct payment of compensation to child for any physical or mental trauma caused or for “immediate rehabilitation”. (After FIR, 25%, after charge sheet 50%, and after judgement 25%)

• Victims are also entitled for *compensation under the victim compensation scheme* by Legal Services Authority up to Rs 1 Lakh, if SC/ST then up to Rs 3 Lakhs.
To reduce the trauma of the victim we must work in convergence...
CONVERGENCE – BEST EXAMPLE - BHAROSA

Video on Bharosa …
THANK YOU!

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