

# Protection of Children from Child Sexual Offences Act, 2012



**D.DURGA PRASAD**

# 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.***

# 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

# 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**

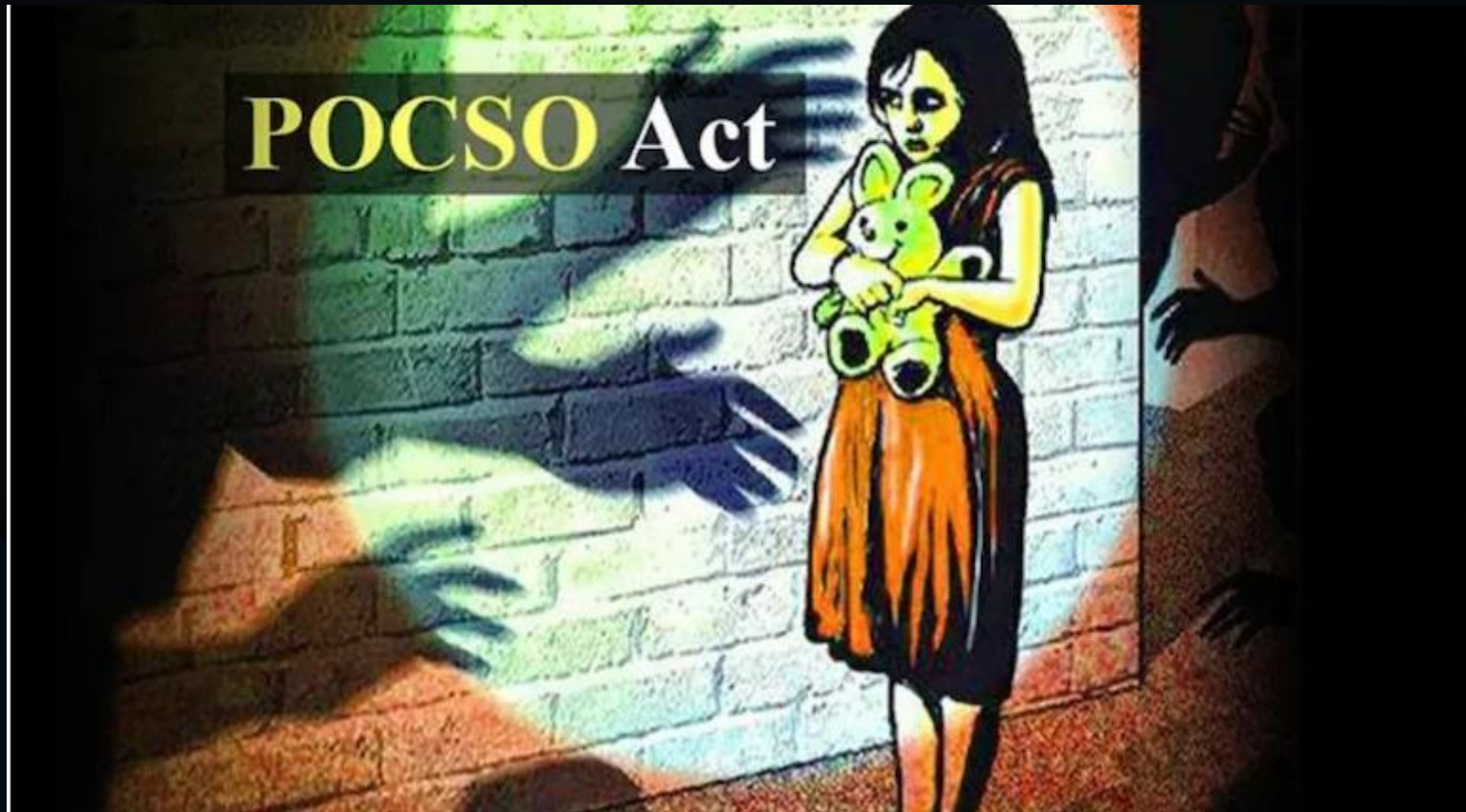
- > Use of child for pornographic purposes resulting in penetrative sexual assault : Not less than 10 years (in case of child below 16 years, not less than 20 years)**
- > Use of child for pornographic purposes resulting in aggravated penetrative sexual assault : Not less than 20 years and fine**
- > 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.**



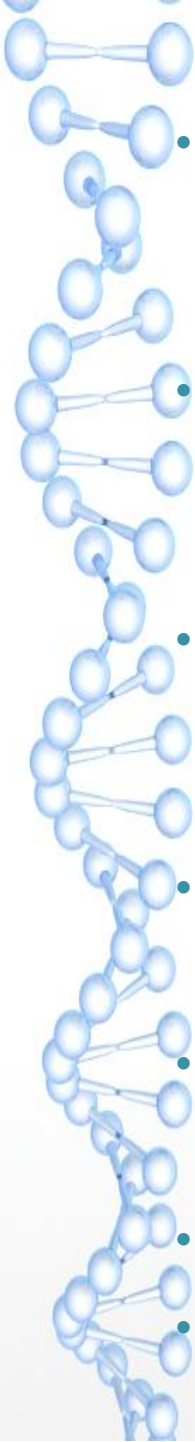
WHAT IT HAS ? ? ?



- **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.

# 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)].



# **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**



## 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](http://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 - 1<sup>st</sup> Additional District & Sessions Judges**
  - ✓ In the Commissionerates - 1<sup>st</sup> MSJ in Hyd**
-

## **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 1<sup>st</sup> Addl. Dist. & Sessions Judge in all Districts and before 1<sup>st</sup> 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.**

## **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.**
-

**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.**
-



**Qn. What about other IPC provisions like abduction, wrongful confinement, threat, etc.**

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

✓ **But, charge sheet should be filed before 1<sup>st</sup> Addl. Dist. & Sessions Judge in all Districts and before 1<sup>st</sup> MSJ, Hyd, VJA & VSP.**

---