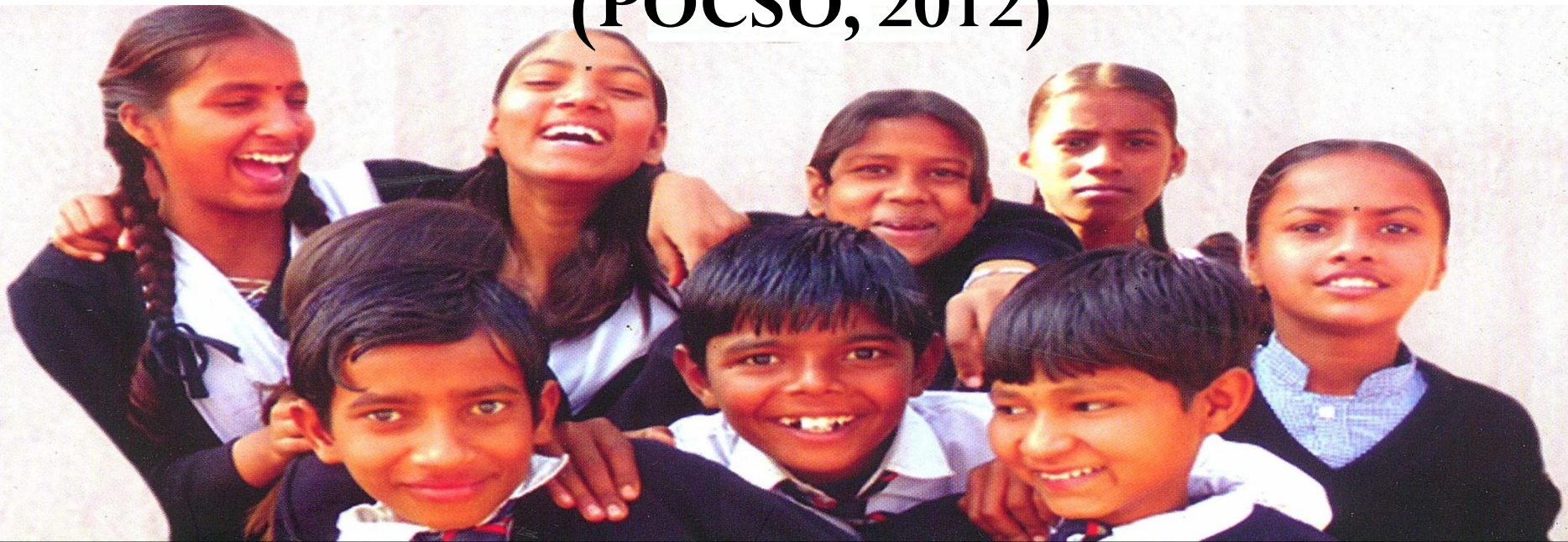


Integrated Child Protection Scheme (ICPS), A.P.

**The Protection of Children from
Sexual Offences Act, 2012
(POCSO, 2012)**



Need for POCSO Act, 2012:

- Existing laws (IPC, IT Act, 2000 and JJ Act, 2000) not enough to address sexual offences
- No specific provisions or laws for dealing with sexual abuse of male children.

Process of formulation of the Act:

- Process initiated in 2008
- Extensive consultation held with Ministries, State Governments, civil society, and experts
- Passed by Rajya Sabha on 10th May, 2012
- Passed by Lok Sabha on 22nd May, 2012
- Received present's assent on 19th June, 2012
- Came into effect on 14th November, 2012

Purpose of the Act:

- Provide protection to all children from the offences of sexual assault, sexual harassment and pornography
- Child defined as any person below the age of 18 years

Offences covered under the Act:

- Penetrative Sexual Assault (Section 3)
- Aggravated Penetrative Sexual Assault (Section 5)
- Sexual Assault (Section 7)
- Aggravated Sexual Assault (Section 9)
- Sexual Harassment of the Child (Section 11)
- Use of Child for Pornographic Purposes (Section 13)

Penetrative Sexual Assault (Section 3)

3. A person is said to commit "penetrative sexual assault" if—

- 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

- (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or

- he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

- he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

Sexual Assault (Section 7)

Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault

Sexual Harassment of the Child (Section 11)

11. A person is said to commit sexual harassment upon a child when such person with sexual intent,—

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

(ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or

(v) 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 the involvement of the child in a sexual act; or

(vi) entices a child for pornographic purposes or gives gratification there for.

Explanation.—Any question which involves "sexual intent" shall be a question of fact.

Use of Child for Pornographic Purposes (Section 13)

13. Whoever, uses a child in any form of media (including programme or advertisement telecast by television channels or internet or any other electronic form or printed form, whether or not such programme or advertisement is intended for personal use or for distribution), for the purposes of sexual gratification, which includes—

- representation of the sexual organs of a child;
- usage of a child engaged in real or simulated sexual acts (with or without penetration);
- the indecent or obscene representation of a child,

shall be guilty of the offence of using a child for pornographic purposes.

Explanation:—For the purposes of this section, the expression "use a child" shall include involving a child through any medium like print, electronic, computer or any other technology for preparation, production, offering, transmitting, publishing, facilitation and distribution of the pornographic material.

Offences Covered under the Act:

- **Offence is “aggravated” when:**
 - Committed by a person in position of trust or authority such as police/ army/ security personnel, public servants or family members
 - Committed by persons in management or staff of educational, medical or religious Institution
 - Committed by persons in management or staff of jail, remand home, protection home, observation home, or any other place of custody or care and protection

Offences Covered under the Act:

- Offence is “aggravated” when:
 - Gang assault
 - When offence causes grievous hurt
 - When offence causes physical or mental disability
 - When offence is committed taking advantage of child’s mental or physical disability
 - When offence is committed more than once

Offences Covered under the Act:

- **Offence is “aggravated” when:**
 - When child is below 12 years of age
 - When offender is a relative of the child
 - When attempt is also made to murder the child
 - When offence is committed and child is made to strip and/ or paraded naked in public

Offences Covered under the Act:

- **Offence is “aggravated” when:**
 - When committed by a person who has been previously convicted of having committed such an offence, either under this law or any other law
 - When offence is committed in course of communal or sectarian violence

Punishments under the Act:

Offence		Punishment	Section in the Act
Penetrative Assault	Sexual	7 years to imprisonment for life	Section 4
Aggravated Sexual Assault		10 years to imprisonment for life	Section 6
Sexual Assault		3 years to 5 years	Section 8
Aggravated Assault	Sexual	5 years to 7 years	Section 10
Sexual Harassment of the Child		3 years	Section 12

Punishments under the Act:

Offence	Punishment	Section in the Act
Use of Child for Pornographic purposes	5 years and in case of subsequent conviction, 7 years	Section 14 (2)
If along with pornographic acts offence also committed under	Section 3: 10 years to life imprisonment Section 5: Life imprisonment Section 7: 6 years to 8 years Section 9: 8 years to 10 years	Section 14 (2) Section 14 (3) Section 14 (4) Section 14 (5)

Punishments under the Act:

- Punishment for storing pornographic material involving a child, for commercial purposes – 3 years (Section 15)
- Burden of proof shifted on accused in case of serious offences (Section 3, 5, 7 and 9)

Abetment and Attempt:

- Abetment treated with same gravity as commission of that offence (Section 16)
- Trafficking of children for sexual purposes covered under abetment (Section 16 Explanation III)
- Attempt to commit an offence penalized, for upto half the punishment prescribed for that offence (Section 18)

Procedure for Reporting of Cases:

- Reporting of offence to the SJPU or the local police (Section 19)
- In case, child is in need of care and protection, SJPU/ local police to provide such care within 24 hours of the report (Section 19(5))
- SJPU/ local police to report the matter to CWC and Special Court within 24 hours (Section 19(6))

Procedure for Reporting of Cases:

- Obligation of media, studio and photographic facilities report cases to SJPU/ local police (Section 20)
- Failure to report commission of offence punishable with imprisonment of six months or with fine or both (Section 21(1))
- Failure to record an offence also punishable with imprisonment of six months or with fine or both (Section 21(1))

Procedure for Reporting of Cases:

- Failure to report by a person, who is in charge of any company or an institution, in respect of offence committed by subordinate under his control, also punishable with imprisonment of one year and fine (Section 21(2))
- Failure to report not punishable in case of a child (Section 21(3))

Procedure for Reporting of Cases:

- False complaint against any person with malicious intent punishable with imprisonment of 6 months or with fine or both (Section 22(1))
- False complaint against child, punishable with imprisonment of one year or with fine or with both (Section 22(3))
- No civil or criminal liability for giving information in good faith (Section 19(7))

Procedure for Reporting of Cases:

- Media not to disclose the identity of the child, except when permitted by the Special Court (Section 23)
- Identity includes: name, address, photograph, family details, school, neighborhood or any other particulars which may lead to disclosure of identity of the child
- Punishment in case of contravention is imprisonment for not less than 6 months which may extend to one year

Procedures for Recording Statement of Child:

- **Child friendly procedures (Section 24):**
 - Recording at the residence of child
 - Recording by officer not below the rank of sub-inspector
 - Police officer not to be in uniform
 - Child not come in contact with the accused
 - Child not to be a detained in police station in night

Procedures for Recording Statement of Child:

- Recording of the statement of child in the presence of parents or any other person in whom the child has trust and confidence
- Assistance of translator/ interpreter/ special educator as the case may be (Section 26(2))
- Wherever possible recording also by audio-video electronic means

Procedures for Recording Statement of Child:

- **Recording of statement by Magistrate (Section 25):**
 - As per Section 164 of CrPC
 - Sub-Section (I) of Section 164 shall not apply
 - As spoken by child

Medical examination (Section 27):

- As per section 164A of CrPC
- In case of girl child, medical examination by lady doctor
- Medical examination in the presence of parents
- In case parent of the child cannot be present, medical examination to be conducted in the presence of a woman nominated by the head of the medical institution

Section-164 A of Cr.P.C.- Medical examination of the victim of rape.

- The registered medical practitioner, to whom such woman is sent shall, without delay, examine her and prepare a report of his examination giving the following particulars, namely:-
- (I) the name and address of the woman and of the person by whom she was brought;
- (II) the age of the woman;
- (III) the description of material taken from the person of the woman for DNA profiling;
- (IV) marks of injury, if any, on the person of the woman;
- (V) general mental condition of the woman; and
- (VI) other material particulars in reasonable detail..

Section-164 A of Cr.P.C

contd....

- The report shall state precisely the reasons for each conclusion arrived at.
- The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.
- The exact time of commencement and completion of the examination shall also be noted in the report.
- The registered medical practitioner shall, without delay forward the report to the investigation officer who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section

Special Courts:

- A Court of Session in each District to be designated as Special Court for speedy trial (Section 28)
- State Government to appoint a Special Public Prosecutor for every Special Court (Section 32)

Procedures and powers of Special Courts (Section 33):

- May take cognizance of any offence, without the accuse being committed to it for trial upon receiving a complaint of facts
- Cross examination or re-examination of the child through Special Court

Procedures and powers of Special Courts (Section 33):

- Frequent breaks for child during trial
- Presence of parents/ guardian/ friend/ relative of child
- Child not to be called repeatedly to testify
- No aggressive questioning or character assassination of child

Procedures and powers of Special Courts (Section 33):

- Identity of the child not to be disclosed
- “In-camera” trial of cases
- Child not to see the accused at the time of
testifying

Procedures and powers of Special Courts (Section 33):

- Special Court may take assistance of interpreter/ translator/ special educator
- If offence is committed a child, such child to be dealt under the Juvenile Justice Act, 2000 (Section 34)

Sec.34 JJAct. Children's homes

- (1) The State Government may establish and maintain either by itself or in association with voluntary organisations, children's homes, in every district or group of districts, as the case may be, for the reception of child in need of care and protection during the pendency of any inquiry and subsequently for their care, treatment, education, training, development and rehabilitation.
- (2) The State Government may, by rules made under this Act, provide for the management of children's homes including the standards and the nature of services to be provided by them, and the circumstances under which, and the manner in which, the certification of a children's home or recognition to a voluntary organisation may be granted or withdrawn.

Procedures and powers of Special Courts :

- Evidence to be recorded within 30 days of the Special Court taking cognizance of the offence (Section 35)
- Completion of trial by Special Court within a year from the date of taking cognizance of offence (Section 35)

Compensation and Legal Aid:

- Provision for compensation for immediate relief and long-term rehabilitation of child (Section 33 (8))
- Provision for free legal aid (Section 40)

Monitoring & Awareness (Section 43 and 44:

- National Commission for Protection of Child Rights (NCPCR) designated as Monitoring Authority of the Act
- Onus on Centre and States to spread awareness on the provisions of the Act
- Onus on Centre and States to provide training to their officers and other concerned persons

Thank you