

UNDERSTANDING

THE POCSO ACT

Contents of Discussion

1. INTRODUCTION

- 1.1 Who is a child?
- 1.2 What is child abuse and its types
- 1.3 What is POCSO Act
- 1.4 Why POCSO Act
- 1.5 Features of the Act
- 1.6 Rights of a child victim

2. OFFENCES UNDER POCSO ACT

- 2.1 Abetment and Attempt
- 2.2 Other offences
- 2.3 Procedure for reporting of cases

3. PROCEDURE UNDER THE ACT

3.1 Overview

3.2 Child Welfare Committee

3.3 Support Person

3.3 Trial and Special Courts

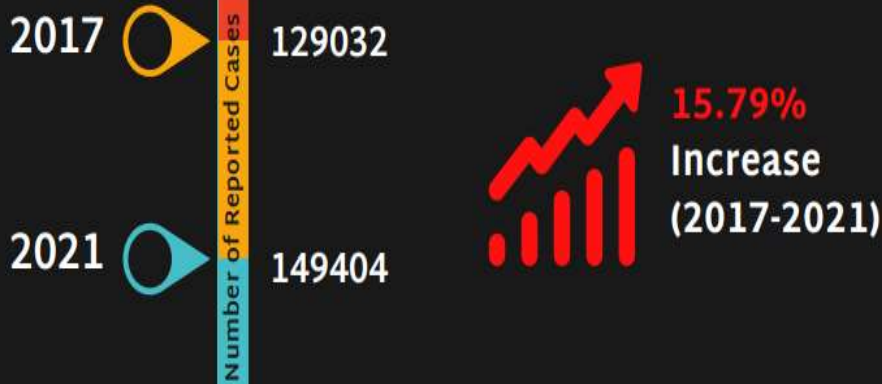
3.4 Who is a Vulnerable Witness?

4. THE WAY FORWARD

Total Crimes in India (2017-2021)

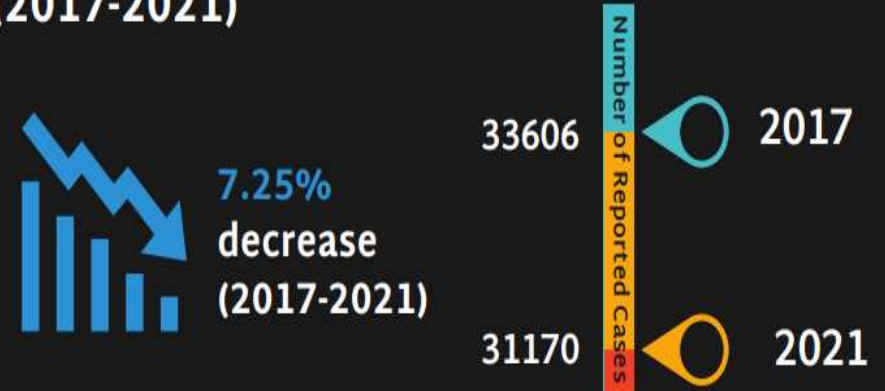


Crimes Against Children (2017-2021)



As proportion to total crimes in India, Crimes Against Children decreased from 2.58% in 2017 to 2.45% in 2021.

Crimes By Children In Conflict With the Law (2017-2021)



As proportion to the total crimes in India, Crimes by children in conflict with the law decreased from 0.67% in 2017 to 0.51% in 2021.

What Do the Numbers Tell?

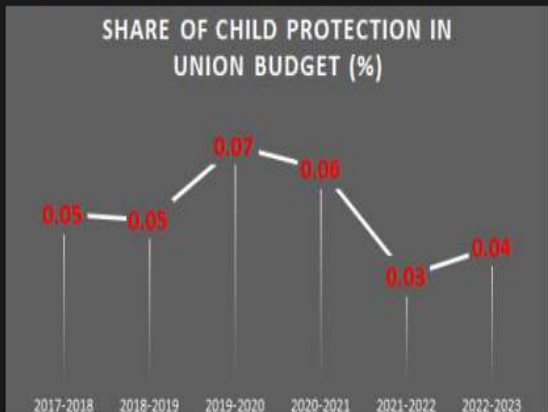
Rise in Crimes against children from 2020 to 2021

 Murder with POCSO (Sexual Offences) 17.39% ↑	 Sexual Assault & Aggravated Sexual Assault (S. 8 & S. 10 POCSO) 5.63% ↑
 Abetment of Suicide of Child (S. 305 IPC) 19.93% ↑	 Sexual Harassment (S. 12 POCSO) 25% ↑
 Foeticide (S. 315 & S. 316 IPC) 11.01% ↑	 Offences u/Juvenile Justice Act 9.22% ↑
 Missing Children Deemed As Kidnapped 35.34% ↑	 Offences u/Immoral Traffic (Prevention) Act 7.14% ↑
 Other Kidnapping & Abduction 19.44% ↑	 Child Labour 7.14% ↑
 Kidnapping for Ransom (S. 364A IPC) 19.44% ↑	 Child Marriage 33.76% ↑
 Kidnapping for Marriage (S. 366 IPC) 10.42% ↑	 Cyber Crimes 28.38% ↑
 Human Trafficking (Children Only) (S. 370 & S. 370A IPC) 22.13% ↑	
 Rape (S. 376 IPC) 14.89% ↑	
 Overall POCSO 14.09% ↑	
 Penetrative & Aggravated Penetrative Sexual Assault (S. 4 & S. 6 POCSO) 18.82% ↑	

Despite introduction of punitive laws, we witness sharp rise in crimes against children in 2021. Post COVID-19, data shows that children have become more vulnerable than ever before. **Where does the problem lie???**



















What Has Changed: A Glimpse at Rising Crimes Against Children from 2017 to 2021

	Abetment of Suicide of Child (S. 305 IPC)	39.83% ↑		Overall POCSO	65.22% ↑
	Foeticide (S. 315 & S. 316 IPC)	05.22% ↑		Sexual Assault & Aggravated Sexual Assault (S. 8 & S. 10 POCSO):	37.94% ↑
	Missing Children Deemed As Kidnapped	62.30% ↑		Sexual Harassment (S. 12 POCSO):	57.26% ↑
	Overall Kidnapping & Abduction of children (S. 363/363A/364/364A/365/366/366A/367/368/369)	24.15% ↑		Use of Children for Pornographic Purposes (S. 14 & 15 POCSO)	43.32% ↑
	Human Trafficking (Children Only) (S. 370 & S. 370A IPC)	28.79% ↑		Penetrative & Aggravated Penetrative Sexual Assault (S. 4 & S. 6 POCSO):	89.94% ↑
	Child Labour	32.68% ↑		Child Marriage	165.82% ↑
				Cyber Crimes	1268.35% ↑



The trend in crimes against children clearly shows that punitive amendments in legislations and harsher punishments do not act as a deterrent. The massive increase in cyber-crimes against children suggests that adequate investment in prevention of such crimes is the need of the hour. **Child Protection has been one of the lowest in priorities of the Government in terms of Budget allocation. Can the situation improve if we do not put in adequate financial resources for child protection?**

Pendency of Cases of Crimes Against Children at Police & Courts

	Pendency at Police Level (%)		Pendency at Court Level (%)	
	2017	2021	2017	2021
 Murder with POCSO (Sexual Offences)	38%	42% ↑	95.1%	94.6% ↓
 Abetment of Suicide of Child (S. 305 IPC)	34%	39.8% ↑	94.0%	96.8% ↑
 Foeticide (S. 315 & S. 316 IPC)	34%	38.4% ↑	92.4%	96.5% ↑
 Missing Children Deemed As Kidnapped	37.2%	35.4% ↓	92.4%	96.5% ↑
 Kidnapping & Abduction of Children	41.6%	38.7% ↓	92.5%	96.9% ↑
 Kidnapping for Begging (S. 363A IPC)	41.0%	68.4% ↑	95.7%	98.5% ↑
 Kidnapping for Marriage (S. 366 IPC)	36.3%	40.5% ↑	92.3%	97.2% ↑
 Human Trafficking (Children Only) (S. 370 & S. 370A IPC)	49.7%	48.4% ↓	91.2%	95.1% ↑
 Rape (S. 376 IPC)	21.4%	29.6% ↑	82.1%	92.1% ↑
 Overall POCSO	33.6%	26.2% ↓	90.1%	92.6% ↑
 Penetrative & Aggravated Penetrative Sexual Assault (S. 4 & S. 6 POCSO)	32.3%	24.9% ↓	90.1%	91.9% ↑
 Sexual Assault & Aggravated Sexual Assault (S. 8 & S. 10 POCSO)	34.0%	25.8% ↓	89.4%	93.2% ↑
 Sexual Harassment (S. 12 POCSO)	40.9%	35.7% ↓	88.3%	93.2% ↑
 Use of Children for Pornographic Purposes (S. 14 & 15 POCSO)	37.6%	52.0% ↑	90.8%	95.7% ↑
 Offences u/Juvenile Justice Act	31.6%	34.7% ↑	86.3%	93.6% ↑
 Offences u/Immoral Traffic (Prevention) Act	64.4%	72.4% ↑	94.1%	99.3% ↑
 Child Marriage	42.3%	41.6% ↓	90.9%	96.4% ↑
 Cyber Crimes	70.5%	67.4% ↑	96.3%	98.3% ↑

INTRODUCTION TO POCSO ACT

WHO IS A CHILD?

Any person below the age of 18 years.

WHAT IS CHILD ABUSE?

Any intentional harm or mistreatment to a child.

Includes physical, sexual, emotional and/or psychological maltreatment or neglect of a child.

Types of child abuse



What is POCSO Act?

- Protection of Children from Sexual Offences Act, 2012 - legislation aims at protecting children from all types of sexual abuse.
- The Convention on the Rights of the Child was adopted by the United Nations in **1989**. Government of India acceded to it on 11th December 1992.
- Article 15(3) of the Constitution of India empowers the state to make special provisions for the children.
- POCSO Act was enacted on 19th June 2012 and enforced on 14th November 2012.

Why POCSO Act?

- Preamble of the Act - An act to:
 1. protect children from offences of sexual assault, sexual harassment and pornography; and
 2. provide for establishment of Special Courts for trial of such offences.
- Sexual exploitation and sexual abuse of children are heinous crimes and need to be effectively addressed.
- Before POCSO Act - 354, 375 and 377 of IPC

- Drawbacks of aforesaid provisions:
 1. Does not protect male victims
 2. “Modesty” not defined. Weak penalty and compoundable offence.
 3. “unnatural offences” not defined.

- A legislative reform with a specific child protection act in mind was needed.

- Amendment of 2019 - stringent punishment including the death penalty - to deter & prevent.

Features of the Act

- Gender-neutral provisions
- Confidentiality of the victim's identity (S. 23)
- Mandatory reporting of child abuse cases
- Child-friendly investigation and trial
Sections 24, 25, 26 and 33 of the Act lay down the procedure of investigation and trial which has been formulated keeping in mind the needs of a child.

- i. Copy for Charge sheet - S. 25(2)
- ii. Interim Compensation - S. 33 (8) of the Act & R. 9 of POCSO Rules
- iii. Statement to be recorded at place of residence/of choice and generally by a woman police officer, not be wearing a uniform. (S. 24)
- iv. Officer should ensure that the child does not come in contact with the accused. (S. 24)
- v. A child is not to be detained in the police station at night. (S. 24)
- vi. Statement to be recorded in the presence of a person in whom the child has trust. (S. 26)
- vii. Statement of the child is to be recorded via audio-video electronic means. (S. 26)
- viii. Medical examination shall be conducted by a woman doctor in case victim is a girl child in present of person in whom child reposes trust. (S. 27)
- ix. Assistance of the translators or interpreters or special educator may be taken wherever necessary, for e.g. in the case of a child having mental/physical disability. (S. 26)
- x. Frequent breaks are to be allowed during the trial. (S. 33)
- xi. Ensure that the child is not called to repeatedly testify in the trial court. (S. 33)
- xii. Aggressive questioning or character assassination of the child is not permitted. (S. 33)
- xiii. Identity of the child is not disclosed during course of investigation and trial. (S. 24, S. 33)

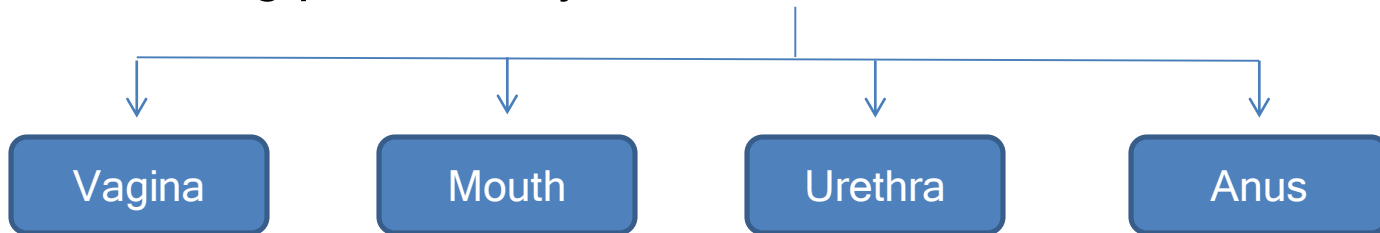
Offences under POCSO Act

Classification and Type of Offences under the POCSO Act



Penetrative Sexual Assault (S. 3, 4)

a) Penetrating penis to any extent into



b) Inserting to any extent any object or any part of body not being penis

c) Manipulating any part of child's body so as to cause penetration into the vagina, urethra, anus or any part of body

d) Applying his mouth to penis, vagina, anus, urethra of child

of a child or makes the child to do so with him/other person.

Punishment: 10 years to life imprisonment and fine

Sexual Assault (S. 7, 8)

With sexual intent:

- Touches vagina/penis/anus/breast of the child; or
- Makes the child touch aforementioned of such person or any other person; or
- Does any other act which involves physical contact without penetration

Punishment: 3 years to 5 years and fine.

What makes an offence “Aggravated”?

1. Status of Accused
2. Manner of committing offence
3. Impact of offence on child
4. Status of child victim

Elements of Aggravation- (1) Status of Accused

- Accused is a police officer, member of Armed Forces or Security Forces or a Public Servant.
- Accused is on the management or staff of a jail, remand home, protection home, observation home, any other place of custody or care and protection, hospital, educational or religious institution and victim is in such place.
- Accused is relative of child through blood or adoption or marriage or guardianship or foster care or is having domestic relationship with a parent of the child or who is living in the same or shared household with the child.
- Accused is in ownership or on management or staff any institution providing services to the child and child is in such institution
- Accused is a person in position of trust or authority of the child in an institution or home of the child or elsewhere
- Accused has been previously convicted of any POCSO Offence or any sexual offence under any law in force

Elements of Aggravation-

(2) Manner of Committing Offence

- Offence is committed by a gang
- Offence is committed using deadly weapons, fire, heated substance or corrosive substance
- Offence has been committed by taking advantage of physical or mental disability of the child
- Offence has been committed more than once or repeatedly
- Accused commits the offence and attempts to murder the child.
- Accused has committed offence in course of a communal or sectarian violence
- Accused commits the offence and makes the child to strip or parade naked in public

Elements of Aggravation –

(3) Impact of Offence on Child

- Offence is committed causing grievous hurt or causing bodily harm or injury or injury to the sexual organ of child
- Offence has physically incapacitated the child or has caused mental illness or impairment of any kind which renders the child unable to perform regular tasks, temporarily or permanently
- Offence has inflicted HIV or any other life threatening disease or infection which either temporarily or permanently impairs the child by rendering him physically incapacitated or mentally ill to perform regular tasks

Elements of Aggravation

– (4) Status of Victim Child

- Victim Child is below 12 years of age
- Accused commits an offence knowing that the child is pregnant

Aggravated Penetrative Sexual Assault (S. 5, 6)

Punishment: Rigorous imprisonment for 20 years to life imprisonment (remainder of natural life) and fine;

Or with death

Aggravated Sexual Assault (S. 9, 10)

Clause (v) to section 9 was inserted in 2019 - “(v) whoever persuades, induces, entices or coerces a child to get administered/administers/direct anyone to administer any drug or hormone or chemical substance to a child **with the intent that such child attains early sexual maturity.**

Punishment: 5 years to 7 years and fine.

Sexual Harassment (11,12)

When a person with sexual intent -

(i) utters any word

- *makes any sound,*
- *makes any gesture*
- ***exhibits any object or part of body with the intention that such word or sound shall be heard,***
- ***such gesture or object or part of body shall be seen by the child***

(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;

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

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

(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

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

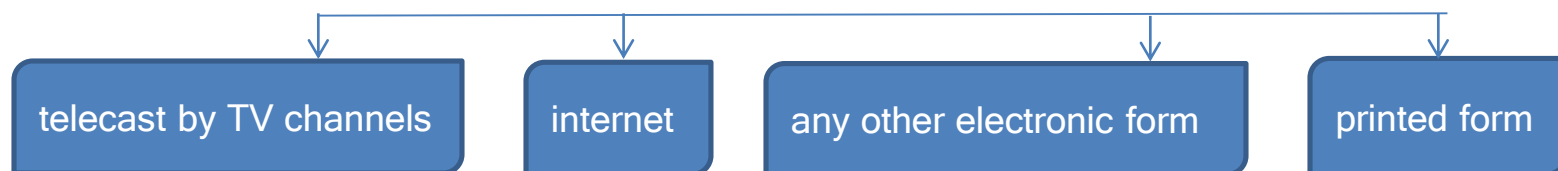
Explanation.—Any question which involves “sexual intent” shall be a question of fact.

Punishment: Imprisonment up to 3 years and fine.

Use of child for pornographic purposes (S. 13)

Whoever,

uses a child in any form of media, including Programme or advertisement



Whether or not such programme/advertisement is intended for personal use or for distribution,

for the purposes of sexual gratification, which includes:

1. Representation of sexual organs of child
2. Usage of child engaged in real or stimulated acts (irrespective of penetration)
3. Indecent or obscene representation of a child

Shall be guilty of this offence.

“Using a child” includes involving a child through any medium like print, electronic, computer or any other technology.

Punishment (S.14)

First time offender: Imprisonment for **minimum** 5 years and fine

Second/subsequent conviction: Imprisonment for **minimum** 7 years and fine.

Whoever while using a child for pornographic purposes, commits PSA/APSA/SA/ASA, by directly participating in such pornographic acts, shall be punished for offences therein **in addition to** punishment provided herein.

Storage of pornographic material (S.15)

Any person, who stores/possesses pornographic material involving a child,

a) fails to delete/destroy/report the same to authority, with an intention to share or transmit child pornography, shall be liable to:

First time offender: Rs. 5000/-; and subsequent offender: Rs. 10,000/-

b) for transmitting or propagating or displaying or distributing in any manner *except for the purpose of reporting or for use as evidence in court*, shall be punished with imprisonment up to three years and/or fine.

c) For commercial purpose:

First conviction: 3 years to 5 years and/or fine

Subsequent conviction: 5 years to 7 years + fine

Abetment (S. 16,17)

A person who - instigates

- engages in any conspiracy
- intentionally aids

Punishment: If the act abetted is committed in consequence of abatement, whoever abets shall be punishment with punishment provided for that offence.

Attempt (S. 18)

One-half of longest term of imprisonment provided for that offence and/or fine.

Other Offences

Section 21 - Failure to report or record a case

- imprisonment up to 6 months and/or both.

Section 22 - False complaint or information

- in respect of offence committed u/s 3, 5, 7 and 9
 - with intent to humiliate, threaten, extort or defame
 - imprisonment up to 6 months and/or both
 - If a false complaint is made against a child - imprisonment up to 1 year and/or with fine.
-
- Both these provisions does not apply to a child.

Section 23 - No report in any media shall disclose the **identity** of a child including his name, address, photograph, family details, school, neighbourhood or any particulars

Punishment: 6 months to 1 year and/or fine

Procedure For Reporting Of Cases

Every report shall be —

- ascribed an entry number
- recorded in writing
- be read over to the informant;
- shall be entered in a book to be kept by the Police Unit.

If reported by a child, be recorded in a language understood by child. A help of a translator or an interpreter.

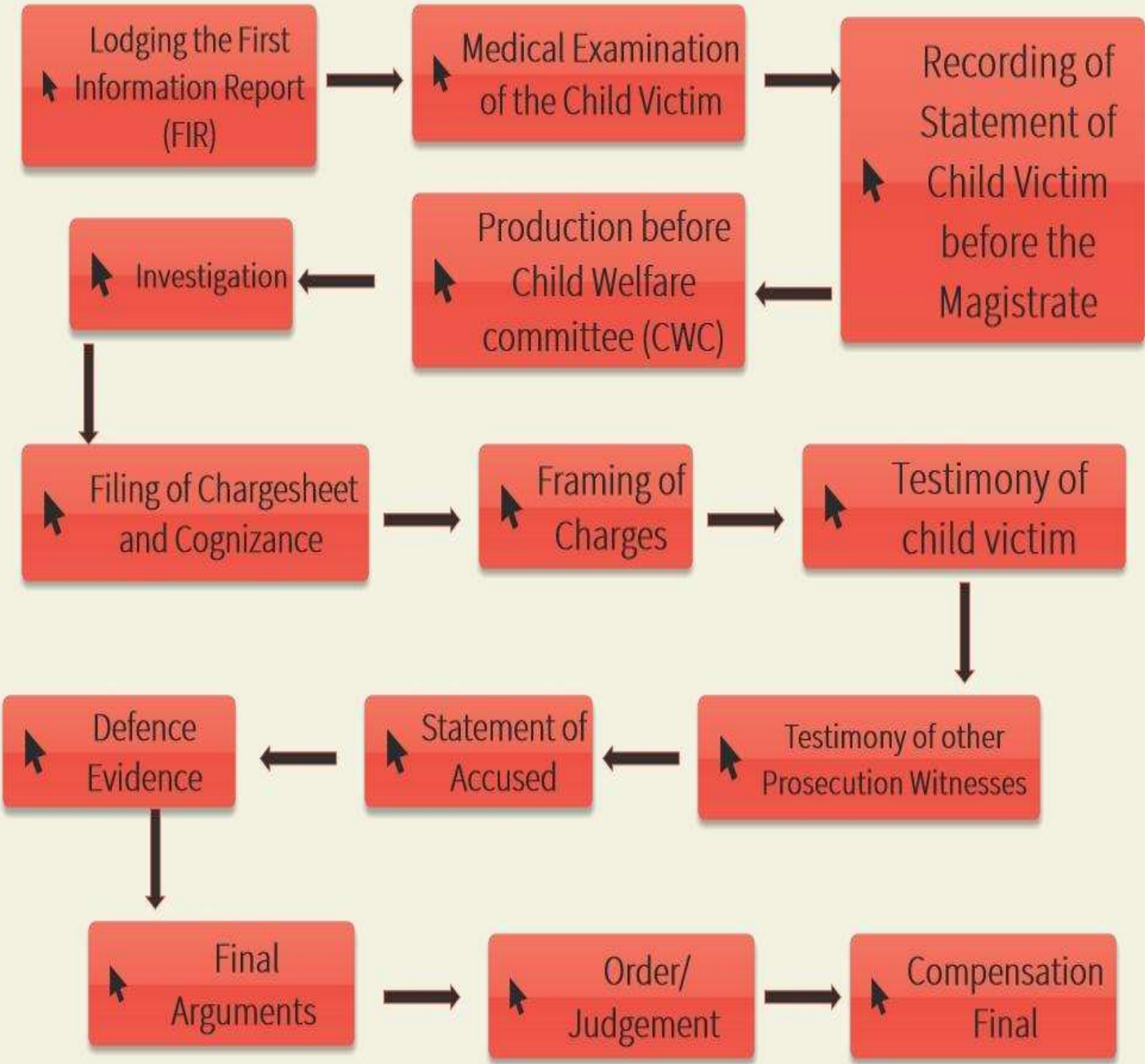
If the child is a CNCP - refer to SJPU (within twenty-four hours), report the matter to the CWC

No person shall incur any liability, whether civil or criminal, for giving the information in good faith.

- Any personnel of the media or hotel or lodge or hospital or club or studio or photographic facilities, on coming across any sexually exploitative material of the child, shall provide such information to the SJPU.
- Any person, who fails to report - shall be punished with imprisonment may extend to six months or with fine or with both.
- Any person, being in-charge of any company or an institution who fails to report the commission of an offence in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.

Witness Protection

Compensation : Interim



Bail

Child Welfare Committee (CWC)

- CWC is an autonomous body declared as a competent authority to deal with CNCP.
- Committee consists of a Chairperson, and 4 other members (at least one of whom shall be a woman and another an expert on the matters concerning children)
- Qualification of member - has a degree or has been actively involved in child psychology/psychiatry/law/social work/sociology/education/ human health/human development/special education for differently abled children.
- There should be a meeting of the Committee at least 20 days in a month.

Functions and responsibilities of CWC:

1. Cognizance of children that are produced before it.
2. Conducting inquiry on issues relating to the safety & well being of the children
3. To direct the Child Welfare Officers, District Child Protection Unit and NGOs for social investigation and also to submit a report before the Committee.
4. To conduct an inquiry for the declaration of fit persons for the care of CNCP
5. To declare children legally free for adoption after due inquiry who are orphans, abandoned and surrendered.
6. To direct placing of a child in a foster care facility
7. To ensure care, protection, restoration and appropriate rehabilitation by formulating child's individual care plan
8. To select a registered institution for the placement of every child requiring support
9. To make efforts for restoration of the lost or abandoned children to their families
10. To take action against the rehabilitation of children who are abused sexually and are reported as CNCP
11. To access appropriate legal services for the children

Support Person

POCSO Rules, 2020 define a 'support person' as "*someone assigned by a CWC to render assistance to a child during the process of investigation and trial, or any other person assisting a child pre-trial or during the process of a trial pertaining to the offenses under the POCSO Act, 2012.*"

In recent case of *Bachpan Bachao Andolan v. Union of India*, WRIT PETITION (CIVIL) NO. 427 OF 2022 (decided on 18.08.23), the Hon'ble SC passed an order relating to the appointment of support persons under the POCSO Act and their qualifications.

"A support person is to provide information, emotional and psychological support, and practical assistance which are often crucial to the recovery of the child. This can go a long way in helping them cope with the aftermath of the crime and with the strain of any criminal proceedings - in many ways a support person, acts as guardian ad litem for the child", the Court observed.

The court observed that a support person is responsible for accompanying the child during recording of statement, medical examination, depositions, and to assist in all other interactions at the investigation, pre-trial, and trial stage. However, the mandate for a "support person" as envisaged under the POCSO Rules, remains unfulfilled. A report submitted in the case *Alarming Rise in the Number of Reported Child Rape Incidents, In re* in 2019 showed that support person has been appointed only in 4% of POCSO cases.

Trial and Special Courts

➤ Age determination (S. 94 of JJ Act)

Age Proof –

- Collection of Documents as per Section 94 of JJ Act
 - 1st - Matriculation / Date of birth certificate from school
 - 2nd - Birth certificate from Corporation/Panchayat
- Medical examination only when 1st or 2nd option not available, within 15 days from the order of court.

Age determination should get priority because POCSO is attracted only when the victim is a minor.

It should be conducted properly with due diligence.

- Sections 33 to 38
- Special Courts established u/s 28 of the Act.
- SPP shall be appointed for every Special Court
- Period for recording of evidence of child and disposal of case (S. 35)
- Presumption of guilt (S. 29)
- Child not to see accused at the time of testifying (S. 36)
- Trials to be conducted *in camera* - Vulnerable Witness Deposition Centre/Room (VWDC/VWDR)
- The court room and the children's room will be connected by live video-link and video-conferencing facilities.
- In the course of recording evidence, all questions by SPP or the counsel for the accused must be communicated to the Special Court which must then put the questions to the child.

Who is a Vulnerable Witness?

- As per Clause 3 of VWDC (Vulnerable Witness Deposition Centre) Scheme (formulated by the Delhi High Court), definition of “Vulnerable Witness” shall not be limited only to child and would be expanded to include the following:
 - a. Age neutral victims of sexual assault
 - b. Gender neutral victims of sexual assault
 - c. Witnesses suffering from mental illness
 - d. Any witness deemed to have threat perception under the Witness Protection Scheme of the Union Government
 - e. Any speech or hearing impaired individual or a person suffering from any other disability
 - f. Any other witnesses deemed to be vulnerable by the Court concerned.

- Assistance of an interpreter, expert or special educator
- Permit frequent breaks during the trial
- Create a child-friendly atmosphere
- No aggressive questioning or character assassination
- Ensure identity of child is not disclosed
- Order interim compensation to meet immediate needs of child for relief and rehabilitation at any stage after registration of FIR - Rule 9
- Such interim compensation paid to the child shall be adjusted against the final compensation, if any.
- Compensation can be awarded if the child has suffered loss or injury and where the accused is convicted, discharged, acquitted, or is not traceable or identifiable - Rule 9(2)
- A child is entitled to avail of the services of a private lawyer or a legal-aid lawyer through the State Legal Services Authority (S. 40)
- Role of lawyer in the trial is subject to section 301(2) Cr.P.C. -
 - (i) to act under the instructions of the Special Public Prosecutor; and
 - (ii) after the evidence of all the witnesses is recorded, to submit written arguments to the Special Court with its permission.

Discussion & Conclusion

- Shortcomings of POCSO Act - Pendency of cases, silent on consensual cases etc.
- On 27-9-2023, the Law Commission of India publishes its 283th Report on the subject “Age of Consent under POCSO Act”.
- It ruled out reducing the age of consent to 16 years or giving limited exception in cases involving a child above the age of 16 years. Instead, the Commission suggested granting judicial discretion to Courts to impose less than minimum sentence where the age of the child is 16 years or above and the age difference between the persons is not more than 3 years.

What Can You Do?

- The first step towards dealing with the problem of child sexual abuse is recognition and acceptance that boys and girls are abused and need assistance and support.
- Create awareness about the problem. This will help in prevention as well as encourage victims to come forward.
- Create forums where children can be given information and support within the village with the help of the schoolteacher, the anganwadi worker and the ANM.
- Listen to the child.
- Maintain confidentiality of the child.
- Ensure that a complaint and FIR is filed in the nearest police station.

Village Level Child Protection Committee (VLCPC)

- Who can be a part of the VLCPC:
 - Gram Pradhan
 - Anganwadi Worker
 - Auxiliary Nursing Midwife (ANMs)
 - SMC Members
 - Members from CBO/NGO/SHGs
 - Panchayat Secretary



"There can be no keener revelation of a society's soul than the way in which it treats its children"

Nelson Rolihlahla Mandela

Thank you