

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012



Understanding the law governing Child Sexual Abuse in India

Presentation by ASP Chambers



What scares us

- 72% parents feel CSA means rape
- 20% do not think sex is a term that can be associated with kids
- 8% parents are unaware of the term CSA
- 80% parents feel boys are not sexually abused
- 78% parents believe strangers are perpetrators
- 65% parents say they will not report officially but will discuss and handle within the family
- 5% don't know or have not thought about reporting
- 90% parents say they are unaware of the law

•Source TOI 19th Nov 2014

•More than 2500 parents interviewed in Mumbai



What scares us

- About 1 in 3 girls and 1 in 7 boys will be sexually abused during childhood
- Many of these children will never tell anyone about what happened to them, often as a result of threats or manipulation by the perpetrator



Child sexual abuse is an abuse of trust, power, and authority that may cause serious short-term and long-term problems for a child.

Child sexual abuse includes sexual acts or inappropriate behavior which includes touching and non-touching.

Some examples of touching include:

- Touching a child's genitals or private parts for sexual pleasure
- Making a child touch someone else's genitals, play sexual games or have sex
- Putting objects or body parts (like fingers, tongue or penis) inside the vagina, in the mouth or in the anus of a child for sexual pleasure



Some examples of non-touching include:

- Showing pornography to a child
- Deliberately exposing an adult's genitals to a child
- Photographing a child in sexual poses
- Encouraging a child to watch or hear sexual acts
- Inappropriately watching a child undress or use the
- bathroom



Who could be the ABUSERS?

- Peers
- Older or younger children
- Adults who misuse power or trust in order to satisfy their own needs
- Occasionally the abuser is a stranger
- More often it is someone the child, or the child's family knows or trusts



It is horrifying! What it can do to a child-

- Fear
- Helplessness / powerlessness
- Guilt and shame
- Confusion
- Betrayal and anger
- Sadness
- Flashbacks



We need to observe as much as we can and act right away

Physical signs

Behavioral deviations such as irritability, clinginess, phobia, eating and sleeping disorders, dissociating and difficulty concentrating.

Self blame Inability to concentrate Nightmares

Guilt Sleep disturbances Bed wetting

Anxiety Low self esteem Stressed Depressed Shame Feeling dirty

Anger Drug use Eating disorders Denial

Suicidal thoughts Feeling isolated Acting out sexually

Difficulty trusting others Becoming withdrawn



CSA Warning Signs

- Acting out in an inappropriate sexual way with toys or objects
- Nightmares or sleeping problems
- Becoming withdrawn or very clingy
- Becoming unusually secretive
- Unexplained personality changes, mood swings and seeming insecure
- Regressive behaviour e.g. bedwetting
- Fear of places or people



CSA Warning Signs

- Outburst of anger
- Changes in eating habits
- Using new adult words for body parts
- Self harm
- Talk of a new friend and unexplained money or gifts
- Physical signs (pain, discoloration, bleeding or discharges)
- Persistent or recurring pain during urination and bowel movements
- Wetting and soiling accidents



The Law



The Protection of Children from Sexual Offences Act, 2012

The law defines a child as anyone below the age of 18 years and does not differentiate between a boy or girl child victim.

The law has also taken a big step forward in including not only penetrative assault under the ambit of sexual abuse but also expanded the definition to include visual, verbal and physical sexual abuse as well.



EDUCATIONAL INSTITUTIONS

POCSO Act

Section 5

Aggravated Penetrative Sexual assault

Section 9

Aggravated Sexual assault

Section 19

Mandatory reporting requirements

Section 21

Punishment for Non-compliance of Mandatory reporting requirements



Punishment for Offences covered in the Act are:

Penetrative Sexual Assault (Section 3)-

Not less than seven years which may extend to imprisonment for life, and fine (Section 4)

Aggravated Penetrative Sexual Assault (Section 5)-

Not less than ten years which may lead to imprisonment for life, and fine (Section 6)

Sexual Assault (Section 7)-

Not less than three years which may extend to five years, and fine (Section 8)



Aggravated Sexual Assault (Section 9)-

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 13)-

Five years and fine and in the event of subsequent conviction, seven years and fine (Section 14 (1))



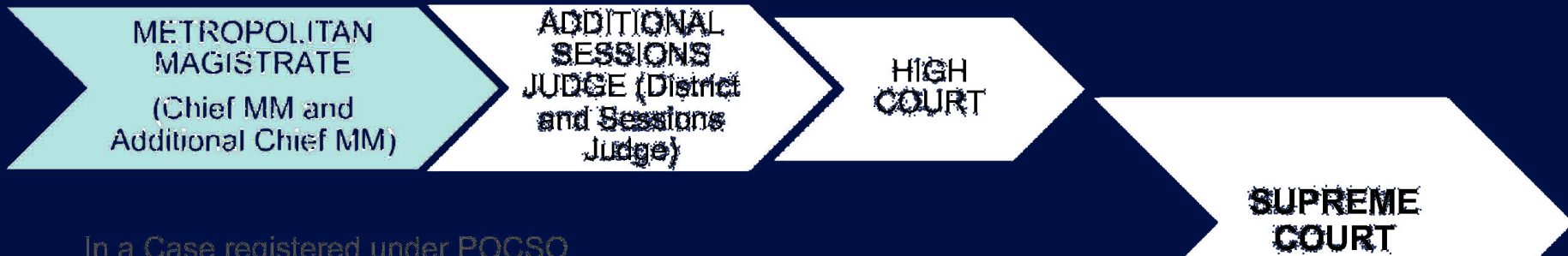
Mandatory Reporting

The Act also provides for mandatory reporting of sexual offences. This casts a legal duty upon a person who has knowledge that a child has been sexually abused to report the offence; if he/she fails to do so, he may be punished with six months' imprisonment and/ or a fine.



HEIRARCHY OF COURTS

In an Ordinary Criminal Case



In a Case registered under POCSO



Presentation by ASP Chambers



What has the POCSO Act Changed?

A child has a *right* to a legal practitioner representing her/him and in case such legal assistance cannot be afforded by the child or her/his guardian, the Legal Services Authority ought to provide a lawyer



What has the POCSO Act Changed?

Offences under the Indian Penal Code

- Prior to the Criminal Law Amendment Act, 2013 definition of rape was limited to penile vaginal sexual assault of a woman.
- Other sexual offences against women were covered u/s 354, IPC
- Post Criminal Law Amendment Act, 2013, rape's definition expanded to include:
 - Insertion;
 - Penetration and;
 - Other manipulation of the urethra, anus or vagina of a woman
- 2013 Act, includes other forms of sexual harassment such as voyeurism, stalking etc. of a woman
- Any sexual assault against any man/ transgender/ eunuch etc. is covered u/s Section 377, IPC
- Even after the 2013 Amendment, the victims of rape and other forms of sexual harassment are restricted to women and men can be victims only under Section 377

Offences under the POCSO Act

- Perpetrator and Victim **gender neutral**
- Defines penetrative sexual assault and '**non-penetrative**' sexual assault
- Classifies a range of acts as 'aggravated' penetrative and non-penetrative sexual assault- Eg:
 - (i) anyone in charge of the management of an educational institution or hospital;
 - (ii) a relative of the child through blood or adoption or marriage or guardianship;
 - (iii) any person in charge of an institution providing services to a child;
 - (iv) any person in a position of trust or authority
- Presumption of guilt on the person accused of committing or abetting a crime
- Sexual Harassment definition includes:
 - Showing a child pornography, constantly watching or stalking a child, enticing a child for pornographic purposes
 - Making a child exhibit her/his body parts or uttering words, sounds, gestures or exhibiting any object or body part to a child with sexual intent
- Using a child for pornographic purposes and storing pornographic material involving a child for commercial purposes are punishable offences.

Presentation by ASP Chandeta



Miscellaneous Provisions

- **FALSE INFORMATION** - The POCSO Act, 2012 makes it an offence to report false information, when such report is made other than in good faith. It states that any person, who makes false complaint or provides false information against any person, in respect of an offence committed under sections 3, 5, 7 and section 9, solely with the intention to humiliate, extort or threaten or defame him, shall be punished with imprisonment for a term which may extend to six months or with fine or with both. Where such information is provided against a child, the punishment may extend to one year.
- **OBLIGATION TO PROVIDE INFORMATION** - Obligation of persons of media/hotel/lodge/hospital/club/studio/ photographic facilities to provide information to Special Juvenile Police Unit or local police when they come across any material that is sexually exploitative of a child (Section 20)
- **RECORDING CHILD'S STATEMENT** - Police to be in plain clothes, at a place of the child's convenience, as far as possible with audio-video electronic means-not admissible in court
- **RECORDING BEFORE MAGISTRATE** - as far as possible with audio-video electronic means, no requirement of presence of advocate of accused, magistrate to provide a copy of documents like the FIR, charge-sheet etc. that are provided in section 207 of the CrPC.
- **MEDICAL EXAMINATION** of the Child to be done irrespective of the registration of an FIR (unlike an IPC Offence)

Preparation by ASP Chennarayana



Encouraging children to report child sexual abuse

- That child sexual abuse is never the fault of the child
- That if someone touches them in a way that makes them uncomfortable, they should always tell a trusted adult
- To **identify** trusted adults
- They should not keep a secret about someone touching them
- That a child should keep telling an adult they trust about sexual abuse until the adult does something to protect the child
- That they will be believed and still be loved if they tell
- The correct names for body parts (e.g., penis, vagina, breasts, buttocks) so children may accurately report what has happened to them



Child friendly procedures incorporated in the Act:

- Recording the statement of the child at the residence of the child or at the place of his choice, preferably by a women police officer not below the rank of the sub-inspector. Evidence has to be recorded within 30 days
- 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
- Child not to be called repeatedly to testify



- Assistance of an interpreter or translator or an expert as per the need of the child
- Assistance of special educator or any person familiar with the manner of communication of the child in case child is disabled
- 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
- In case the victim is a girl child, the medical examination shall be conducted by a woman doctor
- Frequent breaks for the child during trial
- No aggressive questioning or character assassination of the child



Some other measures taken:

- Disclosing the name of the child in the media is a punishable offence, punishable by up to 1 year.
- Possibility of establishing Special courts for the trial – which must be completed within 1 year.
- Recognition of the “intent of committing an offence” – Punishment is half.
- Relief and rehabilitation of the child, as soon as the complaint is made to the Special Juvenile Police Unit (SJPU)
- It is a mandate of the National Commission for the Protection of Child Rights & State Commissions for the Protection of Child Rights to monitor the implementation of the Act.



Thank you!

