



# THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT, (2012)

# CONTEXT

- In today's society, sexual oppression of children is a prevalent issue since they are not mature enough to understand the nature of acts being committed.

- There has been a substantial surge in cases involving sexual abuse of children in recent years. Sexual exploitation can have a negative impact on a child's mind and body, and could also affect their growth and development.

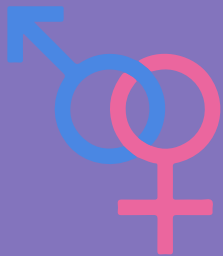
- For dealing with such issues, POSCO Act was enacted in 2012 as a gender neutral legislation. It defines child as any person below the age of 18 years. This act deals with heinous crimes of sexual abuse committed against children.

**53%**

of the children interviewed had experienced sexual abuse

**109**

Child Sexual Abuse cases were reported in a day and five cases in an hour.



Offenders commit these crimes irrespective of gender of child with almost equal number of boy (52%) & girls (47%) facing such abuse

**96%**

of cases had offender that were known to the victim.

**9%**

of the offenders were family members

**41%**

offenders were friends/online friends.

**48%**

offenders were family friends/ neighbours/ other known person

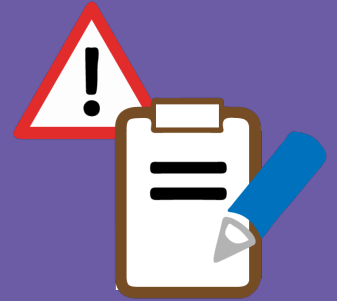
Source:- Study on Child abuse: India (2007) by Ministry of Women and Child Development (MoWCD)

National Crime Record Bureau Data, Offenders Relation to Child Victims of POCSO Act (Section 4 & 6), 2020

## STEPWISE PLAN AFTER DISCOVERING AN INCIDENT OF ABUSE

### STEP 1: REPORTING OF THE OFFENCE

Complaint can be made to the Special Juvenile Police Unit (SJPU), local police or magistrate. Explain as well as you can and be as specific as possible. Even if there is no mandatory obligation, it is advisable to let the child know that the reporting will be done.



### STEP 2: RECORDING STATEMENT

On receipt of the complaint, the offence shall be recorded in writing in simple language recorded at the residence of the child as far as practicable by a woman police officer, not below the rank of sub-inspector.





### STEP 3: ENSURING CHILD'S SAFETY

After recording the statement it is allotted an entry number, it is read over to the informant and entered in a book to be kept by the SPJU. The police officer shall ensure that the child's identity is protected from the public and media (unless specified by the special court in the interest of the child).

### STEP 4: MEDICAL EXAMINATION



In case the victim is a girl child, the medical examination shall be conducted by a woman doctor in the presence of the parent or any confidant of the child. In case the parent of the child (or other person referred to) cannot be present during the process for any reason, it should be conducted in the presence of a woman nominated by the head of the medical institution.

# KEY PROVISIONS

## INCREASED SCOPE OF REPORTING

The POSCO Act increases the scope of reporting sexual crimes against children and it also includes punishment for persons in positions of trust or of authority like public servants.

## STRINGENT PUNISHMENTS

The POCSO Act imposes strict punishments for exposing the children to, or using children for creating child sexual abuse material (CSAM).

## MANDATORY REPORTING

Under the POSCO Act, it is mandatory to report sexual crimes against children including the cases where there is an apprehension that an offence under the Act has been committed.

## ONLINE OFFENCES

POSCO Act is not just applicable in cases of physical sexual crimes, but also in ones that happen over the internet. This would include offences such as possessing, creating or exposing children to CSAM.

## SPECIAL COURTS

The Act also provides for multiple procedural changes like establishing special courts to make the tiring trial process in India much easier for children and for their families.

## CHILD WELFARE COMMITTEE

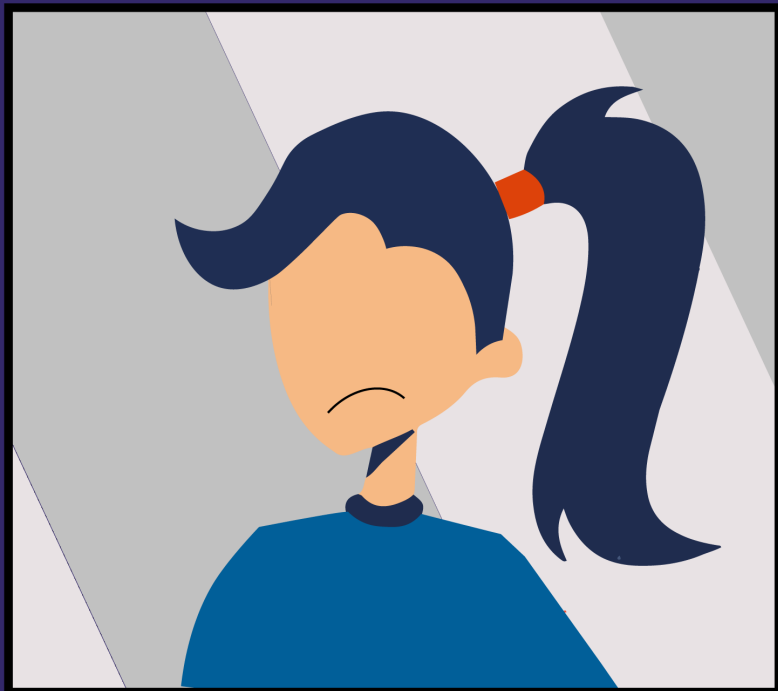
The police are required to bring the matter to the attention of the Child Welfare Committee (CWC) within 24 hours of receiving the report of sexual abuse of a child. CWC is responsible for appointing a support person for assistance of the child during the FIR investigation.

# ACTION POINTS

Researchers have criticized the POSCO Act over its definition of a 'child' which is defined as a person under the age of 18 years. It is stated that it only takes into account a person's biological age and not their mental age. For instance, victims affected by mental illness could have the mental age of 6-8 years old. So, if such an individual is raped then they have no recourse under this act.

A point of concern is that as per the legislation any sexual act with children under the age of 18 constitutes a sexual offence. As a result, adolescents engaging in a consensual sexual act are charged under this Act as well.





Another concern raised by researchers is regarding misuse of this act for extortion and blackmailing. There have been instances of this act being used by parents to 'punish' relationships that they do not approve of like inter-caste or inter-faith relationships for instance.

POSCO Act has introduced provisions for the establishment of a special court. However, many states have still not notified special courts or designated special prosecutors. Consequently, cases of offences against children are still brought to normal criminal trials, thereby denying children access to a child-friendly system and structure.