



CREATING SAFE SPACES

POCSO Act 2012 & Amendment 2019
Other Laws related to sexual offences
against children

Establish class values



- We will be talking about sexuality, gender, pleasure, abuse and safety in these sessions. What will make this class a safe space for everyone to share, express their views and discuss freely?
- How do we want others to behave?
- How will we behave?

Legal Framework in India



- Women [**Indian Penal Code, 1860**]
- Trafficking of minors for sex work [**Immoral Traffic Prevention Act, 1956**]
- Women belonging to Scheduled Castes and Scheduled Tribes [**Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act, 1989**]
- Electronic transmission of material depicting children in sexual explicit acts [**Information Technology Act, 2000**]
- Children, i.e., persons below 18 years [**Protection of Children from Sexual Offences Act, 2012**]
- Women and children with disabilities [**Rights of Persons with Disabilities Act, 2016**]



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POCSO Act and Procedures

Why was POCSO Act enacted?



- **Increasing incidence** of child sexual abuse and **low rate of conviction** in rape cases.
- **IPC failed to adequately address** sexual assault, sexual harassment, pornography, as well as sexual violence against boys.
- Interests of a child victim and witness needed to be protected through **child friendly procedures** and a Special Court.
- Obligations under the **United Nations Convention on Rights of the Child, 1989** needed to be complied with.

Key Features of POCSO Act & Rules



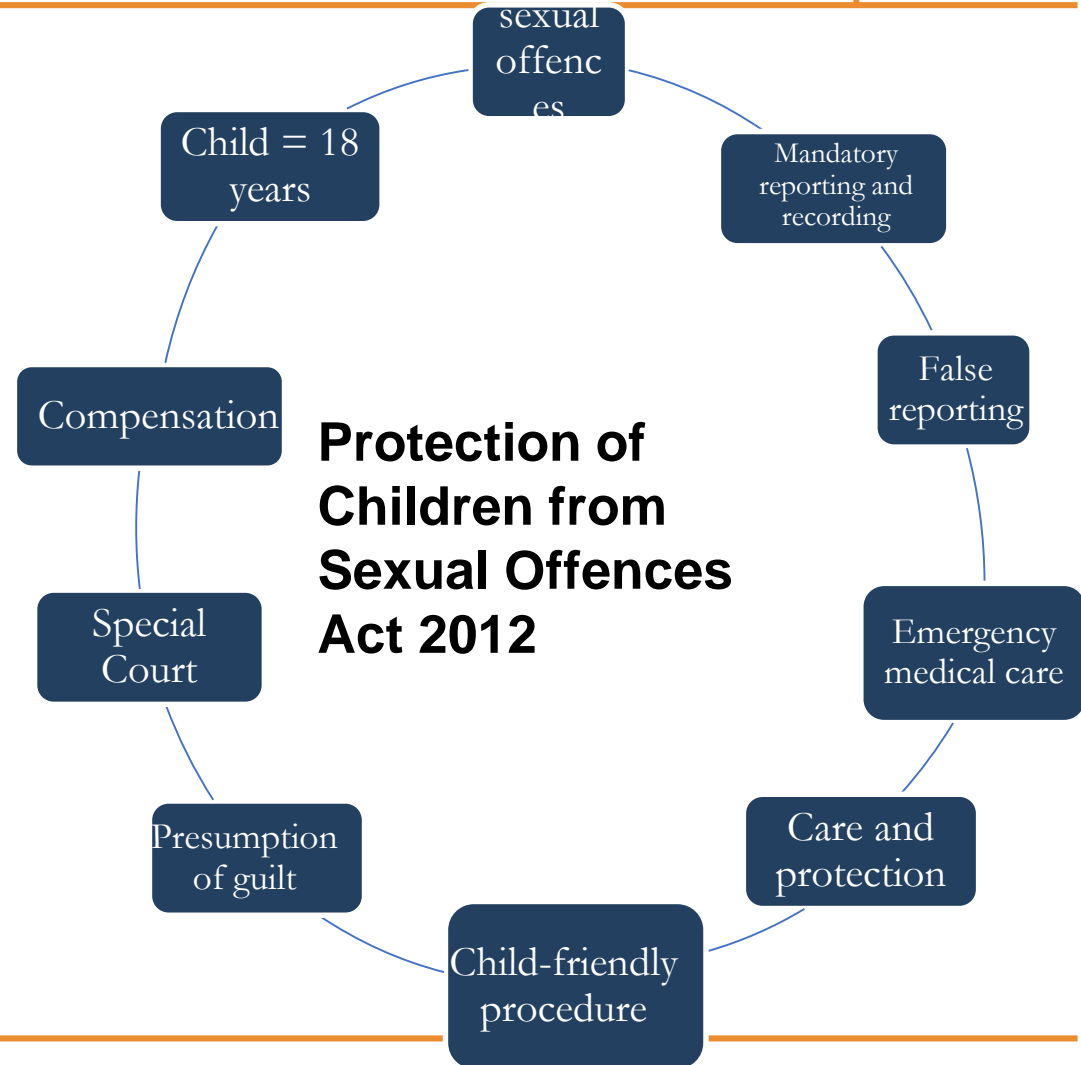
Gender neutral.

Child-friendly provisions for reporting, recording of evidence, investigation and trial.

Offender is presumed guilty.

Special Courts for speedy trial
Punishment graded as per gravity of the offence.

Child offenders will be tried under the Juvenile Justice (Care and Protection of Children) Act, 2000.



Roles and Responsibilities



Reporting

- Child, family, school, media, NGOs, hospitals, person-in-charge of an institution, CWC, Childline, and others

Investigation and recording of statement

- SJPU/ Police
- Magistrate

Care and Protection

- SJPU/Police
- Child Welfare Committee, DCPU
- Special Court
- Medical practitioners

Trial

- Special Court
- Special Public Prosecutor
- Support Person

Implementation and Monitoring

- State Government
- NCPCR & SCPCR

Offences under POCSO



TOUCH-BASED OFFENCES

- Penetrative Sexual Assault & Aggravated Penetrative Sexual Assault
- Sexual Assault & Aggravated Sexual Assault (Any touch with sexual intent without penetration)
- Using child for pornographic purposes and one of the above.

NON-TOUCH BASED OFFENCES

- Sexual Harassment
- Using Child for Pornographic Purpose
- Storage for commercial purposes of pornographic material in any form involving a child is also an offence.

OTHER OFFENCES

- **Failure to report**
- Failure to record
- False complaint
- Disclosure of the identity of a child without the permission of the Special Court

- Abetment (1) Instigates (2) Conspires for doing of that offence (3) intentionally aids by act or illegal omission
- Attempt to commit offence, cause such an offence to be committed, does any act towards commission of the offence

Aggravated Penetrative Sexual Assault: Section 5



Aggravating Factors	Grounds
Status of the Accused	Police officer; member of the armed forces or security forces; public servant; management or staff of any custodial institution for children, hospital, educational institution, religious institution, institution providing services to the child; relative of the child through blood, adoption, marriage, guardianship, foster care, or having a domestic relationship with parent, or living in the same or shared household; person in a position of trust or authority; repeat sexual offender.
Nature of the Assault	Gang assault; use of deadly weapons, fire, heated or corrosive substance; repeated assaults; assault + attempt to murder; assault in the course of communal or sectarian violence or any natural calamity or similar situations; assault followed by stripping and parading the child naked in public
Impact on the Victim	Grievous hurt or bodily harm and injury; physical incapacitation, mental illness, or temporary/permanent impairments; pregnancy; HIV or any other life threatening disease or infection that impairs the child; causing death of child.
Status of the Victim	Child below 12 years of age; pregnant child (knowledge of pregnancy is necessary); child with disability (taking advantage of the disability)



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Internal Response and Redressal Process

Strengthening the system: School and State Child Protection Policy



In Karnataka and some other States, every school has to have:

- Recruitment policies, background check, check with previous employer. An unofficial chat better than written documents. Ask: *“Would you recommend this person to work with children?”*
- A Child Protection Policy to take care of a child’s physical, emotional and sexual safety – to be shared with every parent and staff member
- A Child Protection Officer, A Child Protection Committee

Every School has to conduct:

- Awareness sessions for all parents, teaching and non-teaching staff
- Personal Safety sessions for all students from grade 1 to 12
- Annual appraisal of staff and personnel.

Strengthening the system: Child Protection Committee



Members of the Child Protection Committee

- Principal/ Head of Institution: President
- Senior Teacher/ Caregiver
- Senior Non teaching staff.
- 2 senior students
- 2 parents
- External member of good standing.

An incident is reported or witnessed or suspected



- A **child reports** a child safety violation/abuse/ sexual abuse to a **teaching or non-teaching staff or any other adult** engaged by the EI
- A **teaching or non-teaching staff** or any other **adult** engaged by the EI **witnesses or suspects** a child safety violation/ abuse/sexual abuse in EI

Inform
CPO
or
Chairper
son of
CPC

To be Completed within 24 Hours



Remove child from imminent danger
If child abuse or sexual abuse ensure child is not further questioned

Ensure safety of child victim

If child is at risk or harm, inform CWC/Police and remove child to safe place.

Assess Immediate Risk

Administer First Aid/CPR
For Medical Tests take child to nearest hospital, preferably after parents arrive

Medical Intervention

Inform & reassure parents
If cognizable offense appraise them of legal obligations

Inform Parents / Guardians

Secure Premises
Preserve any evidence e.g. clothing

Evidence Preservation

Within 24 hrs.
Inform EI Management
Initiate Inquiry

Convene CPC meeting

File FIR or Complaint with Police

Report cognizable offense

Stmnt by Police in plain clothes at EI or child's home, when child is in a state to talk

Record Child's Statement by Police

Inquiry Procedure and Action



- CPO meets child or adult reporting the incident, incl other adults & children (if necessary) to document facts, reportage, observations and opinions
 - Within 3 working days of incident being reported.
- CPO prepares a detailed case report for the CPC.
- Non-cognizable offenses are inquired & investigated by the CPC.
- All those engaged in the inquiry will be relieved from regular work/class.
- If other children affected, CPC discusses institution's action, progress of case filed

When alleged abuser is an adult



- If a teaching or non-teaching staff of the EI or associated with the EI, he/she must be placed under suspension or kept away from premises till completion of inquiry.
- When the alleged abuser is convicted by Court and sentenced , EI must formally terminate the person.

When alleged abuser is a child



- Must be treated as a child in conflict with law and process as mandated under the Juvenile Justice Act must be followed
- If offense is cognizable, EI:
 - Must inform the parent/guardian of the child who committed the offence and call them over to the EI or police station.
 - Must report/file a complaint with the jurisdictional police station.
 - Shall ensure that the child is not intimidated in any manner or subjected repeated questioning/interrogation.
 - Place the child under suspension until the enquiry process is completed by the Police and Juvenile Justice Board.

When alleged abuser is a child



- If offense is non-cognizable, such as bullying, the EI:
 - Shall talk to the child to understand why the child behaved the particular way.
 - Shall ensure that all measures are taken not to intimidate the child in any way.
 - Parents/guardians shall be called to the EI and counseled to seek help if necessary, keeping the best interest of the child and other children
 - If the child wishes, he /she should be allowed/assisted to have a person of choice who advocates on his/her behalf during discussions and inquiries.
 - Refer child for counseling to facilitate reformative process.
 - Disciplinary action proportionate to the offence shall be initiated.

Follow up and Closure



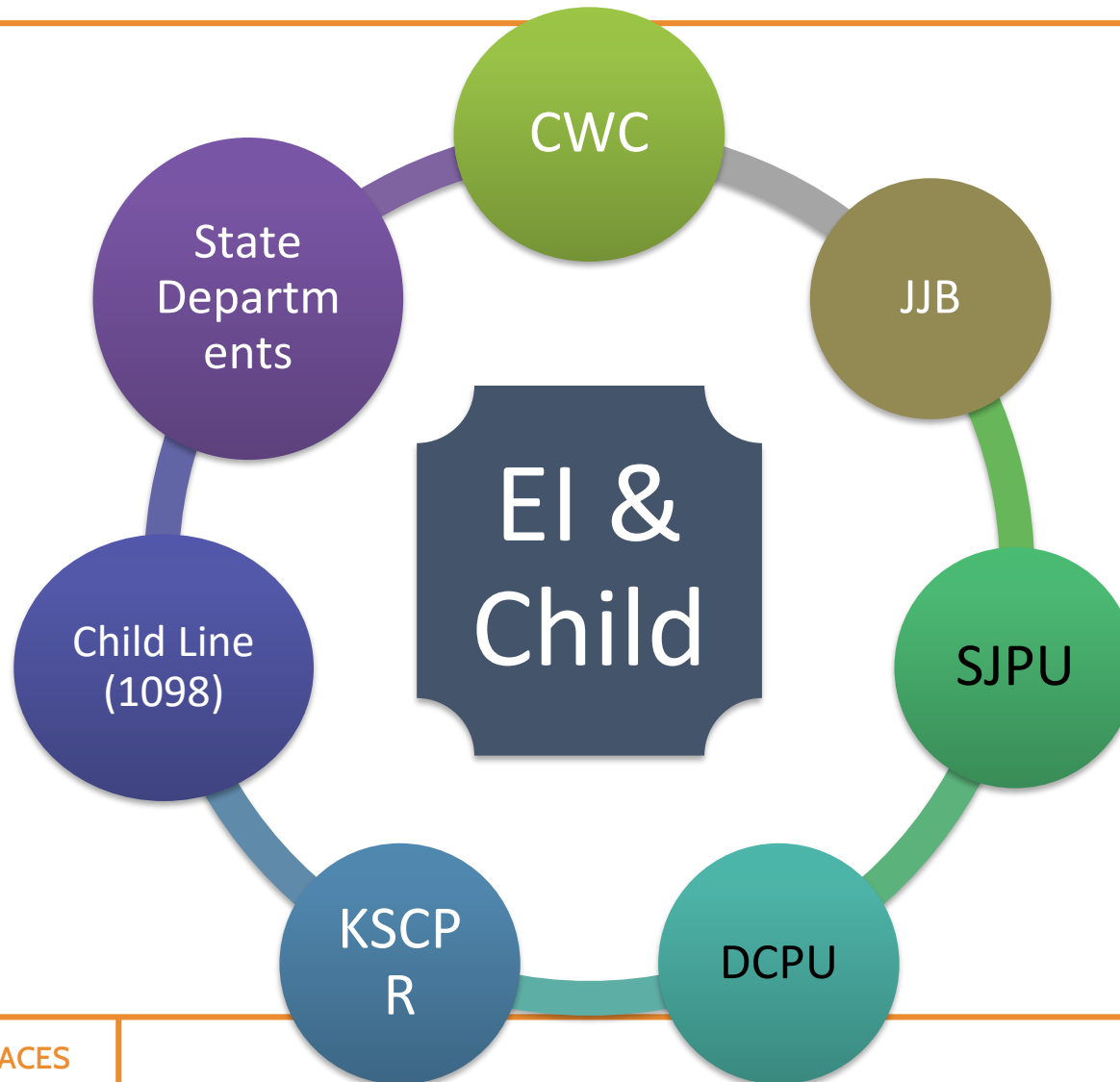
- Head of Institution shall make a report to the BEO including status update of the case in 15 days.
- A Case file of a non-cognizable offense shall be closed within 6 months.
- A Case file for a cognizable child safety violation or child sexual offense is kept open until case is disposed of by the court of jurisdiction.



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EXTERNAL RESPONSE MECHANISMS

External Response Structures



Mandatory Reporting (under Section 19)



- Who must report? Anyone who has:
 - Knowledge of an incident of child sexual abuse
 - Apprehension of a likelihood child sexual abuse
- Whom to report to?
 - SJPU or
 - Local Police
- All teaching and non-teaching staff of the EI as well as the Management are legally obliged to report.

Penalty for non-reporting (under Section 21)

- Failure to report the commission of any child sexual offence shall be punished with imprisonment of up to 6 months or fine or both. (Sec 21(1))
- Any person in charge of an EI who fails to report the commission of an offence in respect of a subordinate under his/her control shall be punished with imprisonment for a term which may extend to one year with fine (Sec 21 (2))

Penalty for False Complaint (Section 22)



- Any person who makes a false complaint or provides false information against any person in respect to specific sexual offences mentioned under POCSO shall be punished with imprisonment between 6 months to 1 year with/without fine, Sec 22 (1).
- Any person who makes a false complaint or false information against a child knowing it to be false, against a child thereby victimizing the child shall be punished with imprisonment up to one year or a fine or both, Sec 22 (2).

Abetment and attempt to commit an offence



- A person who instigates any sexual offence against a child or conspires with others for the commission of the crime, intentionally aids by committing such crime is said to abet an offence, Sec 16, and shall be punished with punishment provided for that offence, Sec 17.
- Punishment for attempt to commit an offence will be one half of punishment as prescribed for the offence itself, Sec 18.



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Documentation and Record Keeping

Importance of Documentation



- Documentation of child safety violations is central to the Child Protection Policy.
- Thorough documentation provides a solid foundation of the school's efforts to provide a safe environment, prevent incidences of abuse and respond sensitively and professionally to incidences of abuse.
- Documenting the incident is very important to record the details of how and where it occurred as soon as it comes to our notice.
- If documentation is not timely, important information and data can get lost,
- Comprehensive documentation of each case facilitates referrals and convergence of services.
- Absence of quality documentation may lead to critical errors in judgement, inability to provide justice to a student-victim and poor outcomes for all students in the school.

Who is Responsible for Documentation



- Head of the Institution
- Child Protection Officer
- Any Teacher / Staff of the school to whom the child has reported an incident of Child Sexual Violence

Important Documents and Records



- Reporting the Case of a Child Protection Violation
- Case File -Annexure 3 of CPP
- Minutes of the CPC Meeting
- Documenting and Keeping the records of Complaint Box and Suggestion Book
- A Section in the Annual Report on Child Protection Measures

Recording a Child Safety Violation



Records to be maintained when a safety violation incident occurs:

- Child's complete case file with
 - Medical reports
 - Counseling Reports
 - Child's Statement
 - Case report: (Refer ANNEXURE 3: Child Abuse Reporting Form)
 - FIR
 - Record of when and how the parent(s) were contacted

Recording Complaints from the Complaint Box



- Date and Time of Opening of the Box
- Attendance Record of who were present during the opening
- Complaints of Child Protection Violation issues are noted down by the CPO to be discussed with HI and CPC meeting. The slips needs to be filed / stored.
- Based on severity of complaint, CPO will record if an Emergency CPC meeting needs to be called.
- Actionables minutes as a part of the Minutes of the Meeting

Suggestion book



Suggestion book should be reviewed once in 3 months

Suggestions should be placed in CPC meetings

- Section in the annual report should contain information on the work done by school with regard to child safety and protection services . It should include
- **Statistics:**
 - Modifications made to infrastructure and processes adopted as preventive measures
 - Number of CPC meetings held
 - Number of Child Protection Violation incidents
 - Children's Complaints and Suggestions Actioned
 - Capacity building sessions held for staff, management, children and parents
- **Case Study**

Where our system fails:



- Confusing reporting mechanism
- Multiple interviews and examinations
- Lack of coordination between stakeholders
- Lack of comprehensive care plans

Trauma Caused To Child (Secondary Victimization)



- Repeated, insensitive, and humiliating interviews
- Frightening, insensitive medical examination
- Confronting the perpetrator
- Facing a hostile family
- Unpleasant placement experience
- Treatment that the child finds unhelpful
- Court testimony
- Not knowing what is going to happen

This PowerPoint is part of a project to prevent gender based violence. This project is supported by Ford Foundation.



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Thank You!

ENFOLD PROACTIVE HEALTH TRUST

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SURAKSHITH APP

Information, stories on personal safety for children.



BAL SURAKSHA APP

Information on answering children's questions,
managing child sexual abuse.



STRI SURAKSHA APP

On crimes against women, laws, interventions and
healing techniques.

All Apps in 10 languages, free on android Developed with UNICEF and MeitY (CDAC Hyderabad)

Punishment for Sexual Offences under POCSO Act



Offence	Minimum	Maximum	Fine
Section 4(1): Penetrative Sexual Assault	7 10 years	Life imprisonment	√
Section 4(2): Penetrative Sexual Assault on child below 16 years	20 years	Life imprisonment (remainder of life)	√
Section 6: Aggravated Penetrative Sexual Assault	RI 10 20 years	Life imprisonment (remainder of life) Or DEATH	√
Section 8 : Sexual Assault	3 years	5 years	√
Section 10: Aggravated Sexual Assault	5 years	7 years	√
Section 12: Sexual Harassment	-	3 years	√
Section 14: Using child for pornographic purposes	1 st CV: 5 years	1 st CV: 5 years	√
	2 nd CV: 7 years	2 nd CV: 7 years	√
Section 14(1) + Section 3	10 years Punishment u/s 4 +S.14(1)	Life imprisonment	√
Section 14(1) + Section 5	RI for life Punishment u/s 6 +S.14(1)		√
Section 14 + Section 7	6 years Punishment u/s 8 +S.14(1)	8 years	√

Punishment for Sexual Offences under POCSO Act



Offence	Minimum	Maximum	Fine
Section 14 + Section 9	8 years Punishment u/s 10 + S.14(1)	10 years	✓
Section 15(1): Storage of pornographic material involving child with intention to share or transmit and failure to delete/destroy/report to prescribed authority	1st offence: Rs 5000 fine 2nd/subsequent offence: Rs 10000 fine		
Section 15(2): Storage or possession of pornographic material in any form involving a child for transmitting or propagating or displaying or distributing in any manner at any time except for the purpose of reporting, or for use as evidence in court		3 years	And/ Or
Section 15(3): Storage or possession of pornographic material in any form involving a child for commercial purpose	1st CV: 3 years 2nd/Subsequent CV: 5 years	3 years 1st CV: 5 years 2nd/Subsequent CV:	And/ Or ✓
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Offences introduced under the Criminal Law (Amendment) Act, 2013 and 2018



Offence	Minimum	Maximum	Fine
Section 370(6): Repeat trafficker of minors	Imprisonment for remainder of natural life		√
Section 376(1): Rape	RI 7 10 years	Life imprisonment	√
Section 376(2): Aggravated Rape (excludes rape of a woman below 16 years of age)	RI 10 years	Life imprisonment for remainder of life	√
Section 376(3): Rape of woman below 16 years	RI 20 years	Life imprisonment for remainder of life	√
Section 376A: Rape causing death or resulting in vegetative state of victim	RI 20 years	Life imprisonment for remainder of life or death	-
Section 376AB: Rape of woman below 12 years	RI 20 years	Life imprisonment for remainder of life or death	√
Section 376C: Sexual intercourse by a person in authority (includes superintendent or manager of children's institutions)	RI 5 years	RI 10 years	√

Offences introduced under the Criminal Law (Amendment) Act, 2013 and 2018



Offence	Minimum	Maximum	Fine
Section 376D: Gang rape	RI 20 years	Life imprisonment for remainder of life	√
Section 376DA: Gang rape of woman below 16 years	Life imprisonment for remainder of life		√
Section 376DB: Gang rape of woman below 12 years	Imprisonment for remainder of the person's natural life	Death	√
Section 376E: Repeat offenders under sections 376, 376A, 376D	Imprisonment for remainder of life	Death	-
Section 509: Word, gesture or act intended to insult the modesty of a woman		SI 3 years	√

Sexual offences against children (POCSO)



- POCSO Act 4 Penetrative sexual assault
- POCSO Act 6 Aggravated penetrative sexual assault
- POCSO Act 8 Sexual assault
- POCSO Act 10 Aggravated sexual assault
- POCSO Act 12 Sexual Harassment
- POCSO Act 14 Using child for pornographic purposes
- POCSO Act 15 Storage of pornographic material involving child
- POCSO Act 17 Abetment (1) Instigates (2) Conspires for doing of that offence (3) intentionally aids by act or illegal omission
- POCSO Act 18 Attempt to commit offence, cause such an offence to be committed, does any act towards commission of the offence

Sexual offences against children (JJ act)



- JJ Act 74 No report in any newspaper, magazine, news-sheet or visual media of any inquiry regarding child in conflict with law or child in need of care and protection
- JJ Act 77 Giving intoxicating liquor or narcotic drug or tobacco products or psychotropic substance, except on the order of a duly qualified medical practitioner
- JJ Act 85 Whoever commits any offences referred to in this act on any child who is disable as so certified by a medical practitioner, then, such person