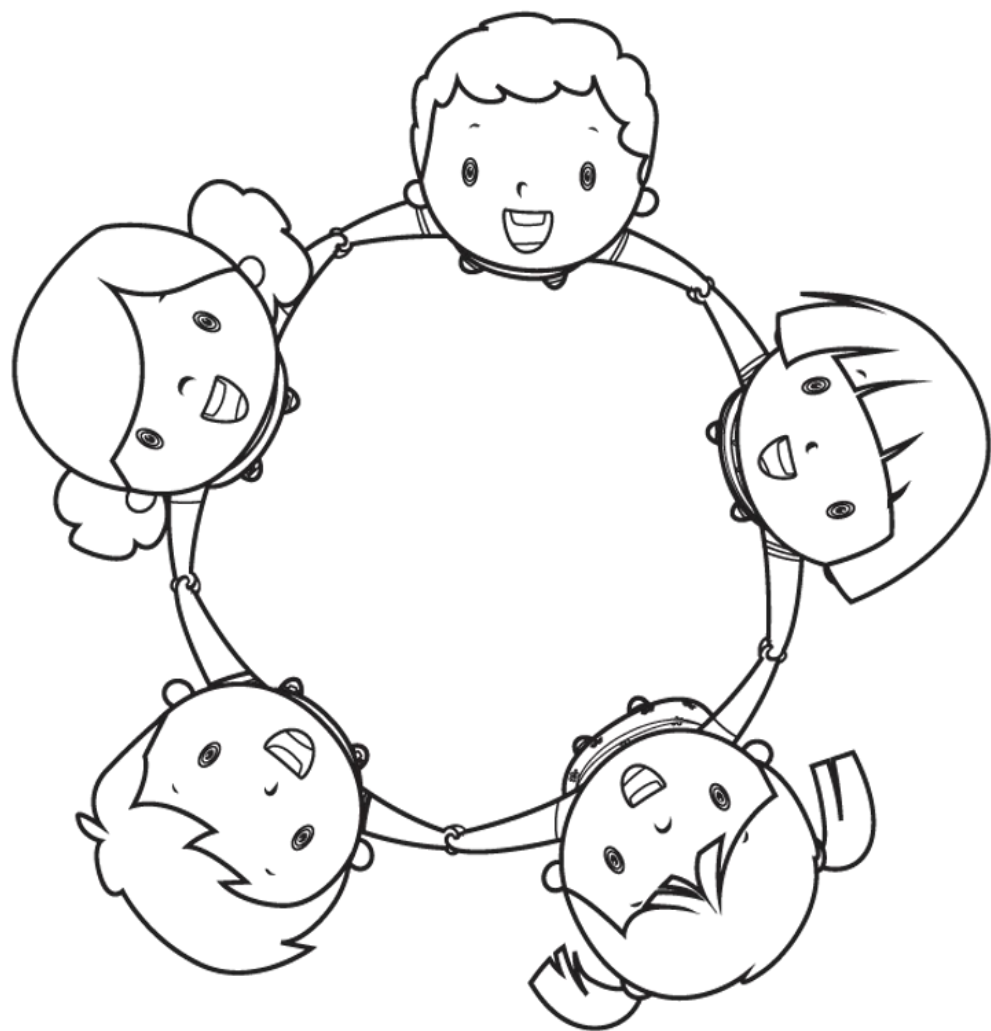




# POCSO TTT

Aparna Gonate





# **POCSO Act, 2012**

# Salient Features of POCSO Law

- Applies **whole of India**
- It's a **Special Law**;
- It's a **Criminal Law**;
- Applies only to '**Sexual Offences**'
- Law of **limitation is NOT applicable**;
- all sexual offences against the **persons below 18 years (Child)**;
- It's a **Gender-Neutral Law**;
- A **Child** can be an accused;
- **Non-reporting** of an offence is an offence (Public)
- Under POCSO, the **Death Penalty** can be imposed
- Presumption of **Guilty**

# Structure of an Act

Definitions

The Offences

The  
punishments

Procedure

# Criminal Process-Stages

---

Police Complaint; -**Anyone**

---

First Information Report (FIR)- **Police**

---

Medical Examination: **Doctor/Hospital**

---

Investigation-**Police**

---

Submission of Charge Sheet- **Police**

---

Framing of Charges- **Special Court**

---

Trial; **Special Court**

---

Conviction/Acquittal. **Special Court**

## **Key Principles in POCSO Investigations:**

### **Child-Friendly Environment:**

The investigation should be conducted in a manner that minimizes trauma to the child victim, ensuring their safety and well-being at all times.

### **Confidentiality:**

Maintaining the confidentiality of the child victim's identity and information is crucial.

### **Prompt Investigation:**

The law mandates a two-month deadline for completing the investigation and a six-month deadline for the trial.

### **Specialized Units:**

Many districts are establishing dedicated units to investigate POCSO cases, staffed with trained personnel to handle these sensitive cases with compassion.

In essence, while the police are the primary investigators in POCSO cases, the Act also emphasizes the importance of collaboration with various stakeholders to ensure a thorough and child-sensitive investigation.

In **POCSO (Protection of Children from Sexual Offences) Act** cases, the police, specifically a designated Investigating Officer (IO), are primarily responsible for conducting the investigation.

However, the Act also emphasizes the involvement of other relevant parties, including the **Child Welfare Committee (CWC)**, **Special Juvenile Police Units (SJPU)**s, and sometimes NGOs, to ensure the child's well-being and proper handling of the case.



## Police Investigation:

- Designated Investigating Officer (IO):**

- The IO, typically a police officer not below the rank of Deputy Superintendent of Police, is responsible for gathering evidence, recording statements, and preparing the charge sheet.

- Special Juvenile Police Unit (SJPU):**

- SJPU are specifically established to handle cases of sexual offenses against children, ensuring a child-friendly approach to investigations.

- Compliance with Cr.P.C.:**

- While POCSO provides specific protections for child victims, the investigation also adheres to procedures outlined in the Criminal Procedure Code (Cr.P.C.).

Other Relevant Stakeholders:

**Child Welfare Committee (CWC):**

CWCs play a crucial role in assessing the child's well-being, providing necessary support, and ensuring the child's safety throughout the investigation and trial.

**Support Persons/Counselors:**

Trained individuals, including social workers and counselors, provide support to the child victim during the investigation, including during interviews and medical examinations.

**NGOs:**

Non-governmental organizations specializing in child protection can also play a vital role in supporting the child victim, providing legal aid, and advocating for their rights.

**Medical Professionals:**

Medical examination of the child victim is often necessary, and this should be conducted by a female medical officer, preferably in the presence of a trusted person or a woman nominated by the medical institution

## CWC stands for Child Welfare Committee.

It is a quasi-judicial body established under the Juvenile Justice (Care and Protection of Children) Act, 2015, to address the needs of children who are in need of care and protection. The CWC is responsible for the care, protection, treatment, development, and rehabilitation of such children, ensuring their basic needs and human rights are met.

### **Key functions and roles of the CWC:**

#### **Handling cases of children in need:**

The CWC is the authority to dispose of cases related to children who are orphaned, abandoned, abused, or neglected.

Ensuring basic needs and protection:

It works to provide for the basic needs of these children and protect their human rights.

#### **Rehabilitation and development:**

The CWC plays a crucial role in the rehabilitation and development of children under its care, helping them reintegrate into society.

#### **Collaboration with other agencies:**

It collaborates with other agencies like the District Child Protection Unit (DCPU), police, and NGOs to ensure comprehensive care for the child.

#### **Making decisions about children's placement:**

The CWC has the authority to make decisions about where a child should be placed, whether in a children's home, with a foster family, or other suitable arrangements.

#### **Monitoring and reviewing:**

It monitors the progress of children under its care and conducts regular reviews to ensure their well-being.

Working with victims of sexual abuse:

The CWC may also be involved in providing support to children who are victims of sexual abuse, under the Protection of Children from Sexual Offences (POCSO) Act.

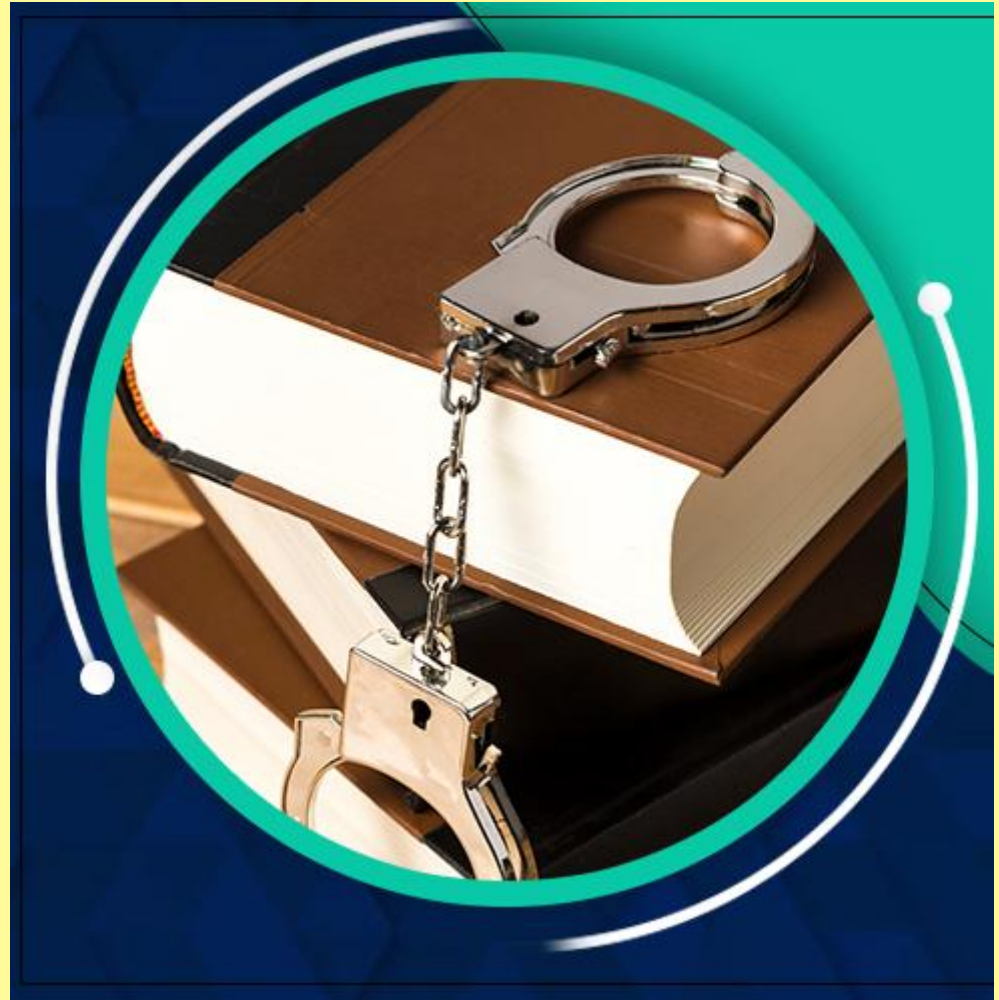
**NCPCR:** National Commission for Protection of Child Right

It is a statutory body in India established under the Commission for Protection of Child Rights Act, 2005. The NCPCR is responsible for ensuring that all laws, policies, programs, and administrative systems are in line with the vision of child rights as enshrined in the Indian Constitution and the United Nations Convention on the Rights of the Child.

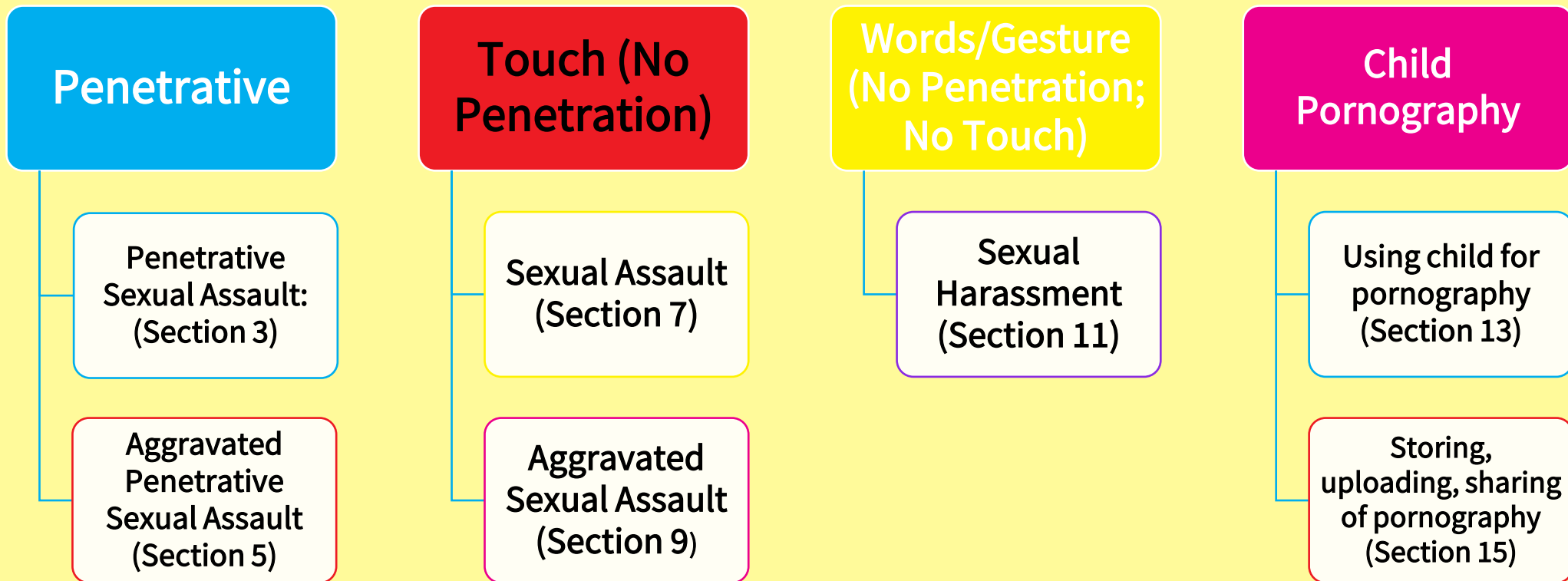
**National Commission for Protection of Child Rights (NCPCR) and State Commissions for Protection of Child Rights (SCPCR):**

They monitor the implementation of the POCSO Act and investigate violations. The NCPCR also has a dedicated POCSO e-Box portal for online complaint registration.

# The Offences



# Offences under POCsO



## 1. Penetrative Offences

Section 3: Penetrative Sexual Assault – Involves penetration of a sexual nature with a child.

Section 5: Aggravated Penetrative Sexual Assault – Involves more serious circumstances, such as by a person in a position of trust (e.g., police, relatives), use of weapons, gang assault, etc.

## 2. Touch (No Penetration)

Section 7: Sexual Assault – Involves inappropriate touching without penetration.

Section 9: Aggravated Sexual Assault – More serious touching offences under certain aggravating conditions (like authority figures, repeated assault).

## 3. Words/Gestures (No Penetration, No Touch)

Section 11: Sexual Harassment – Involves verbal abuse, showing pornographic content, or making sexual gestures toward a child.

## 4. Child Pornography

Section 13: Using child for pornography – Any involvement of a child in pornography creation.

Section 15: Storing, uploading, sharing pornography – Includes possession or dissemination of child pornography material.

Category	Section	Offence Description	Nature	Severity
<b>Penetrative Sexual Offences</b>	Section 3	Penetrative Sexual Assault	Penetration involved	High
	Section 5	Aggravated Penetrative Sexual Assault	Penetration + aggravating factors	Very High
<b>Touch (No Penetration)</b>	Section 7	Sexual Assault	Physical touch without penetration	Moderate
	Section 9	Aggravated Sexual Assault	Touch + aggravating factors	High
<b>Words/Gesture (No Touch)</b>	Section 11	Sexual Harassment	Verbal/gesture-based sexual behaviour	Low to Moderate
<b>Child Pornography</b>	Section 13	Using child for pornography	Child exploitation through media	High
	Section 15	Storing/uploading/sharing pornography	Distribution or possession of child porn	High



## Penetrative Sexual Assault: (Section 3)

- Penetrates the penis, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
- inserts, any object or a part of the body into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- 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
- 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.

# **Punishment for penetrative sexual assault (Section 4)**

- Ten Years extend up to life imprisonment
- with fine.

If victim is below sixteen years:

twenty years, may extend to life imprisonment,  
(imprisonment for the remainder of natural life)

with fine.

The fine which shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.

# **Aggravated Penetrative Sexual Assault (Section 5 )**

If the accused is a:

- police officer;
- Armed force officer,
- Public servant,
- Security officer,

**OR**

The management or the staff of a:

- educational institution
- protection home, observation home,
- or other place of custody;
- hospital
- jail, remand home,
- religious institution,

# **Aggravated Penetrative Sexual Assault (Section 5 )**

- By using deadly weapons, fire, heated substances;
- causing bodily harm and injury (including sexual organs);
- female child, makes the child pregnant as a consequence of sexual assault;
- inflicts the child with HIV or any other life-threatening disease or Infection impair the child by rendering physically incapacitated, or mentally ill to perform regular tasks;
- taking advantage of a child's mental or physical disability, commits the offence more than once or repeatedly;

**by one or more persons of a group, each of such persons shall be deemed to have committed gang penetrative sexual assault and each of such person shall be liable for that act in the same manner as if it were done by him alone.**

# Aggravated Penetrative Sexual Assault (Section 5 )

- a **relative** of the child;
  - through blood; or
  - Adoption; or
  - Marriage; or
  - Guardianship; or
  - in foster care; or
  - having a **domestic relationship** with a parent of the child; or
- who is **living in the same or shared** household with the child;

# Aggravated Penetrative Sexual Assault (Section 5 )

- Management, or
- staff of any institution providing services to the child;
- or trust or authority;
- knowing that the child is pregnant;
- attempts to murder the child; or
- in the course of communal or sectarian violence;
- was previously convicted under this Act; or
- commits penetrative sexual assault on a child and makes the child to strip or parade naked in public.

**Punishment  
for  
aggravated  
penetrative  
sexual  
assault :  
(Section 6)**

Rigorous imprisonment not less than **Twenty Years**; may extend to **imprisonment for life**, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine and shall also be liable to fine:

- **or with DEATH.**

## Meghalaya High Court -2022

For the purpose of the POCSO Act, '**Aggravated Penetrative sexual assault**' **does not require deep or complete penetration** and even the slightest amount of penetration would constitute the offence.



# Sexual Assault-Touch (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.

**Punishment  
t for sexual  
assault :  
(Section 8)**

Imprisonment which shall  
not be less than **Three  
Years: extendable to Five  
Years;**  
With Fine.

# Aggravated Sexual Assault (Section 9)

Whoever being a police officer;

- Within the limit of police station; premises
- In the premises of any station house;
- In the course of his duties or otherwise;
- Known as identified as a **police officer**;

Whoever being Armed force officer:

- Within the limit of the area, he deployed;
- Any area **under the command** of the security or armed forces;
- In the **course of his duties** or otherwise;
- Where he is known as identified as member of a **security armed force**;

➤ Whoever being **Public servant**,

# Aggravated Sexual Assault (Section 9 )

- Management, staff of a jail, remand home, protection home, observation home, or other place of custody or care or protection established by or or under any law;
- commits sexual assault on a child being inmate of such place; by giving any payment or benefits to the child or to any other person;
- the management or staff of a hospital, whether Government or private;
- management or staff of an educational institution or religious institution;
- Gang sexual assault (considered each one has done it alone);
- Using deadly weapons, fire heated substance, corrosive substance

# Aggravated Sexual Assault (Section 9 )

- Using deadly weapons, fire, heated substance or corrosive substance;
- causing grievous hurt or causing bodily harm including injury to the sexual organs of the child;
- physically incapacitated or mentally ill;
- inflicts the child with HIV or any other life-threatening disease or
- taking advantage of a child's mental or physical disability, commits the offence more than once or repeatedly;

# Aggravated Sexual Assault (Section 9 )

- child below 12 years;
- a relative of the child;  
management, or staff, of any institution providing services to the child,
- whoever being in a position of trust or authority;
- knowing the child is pregnant;
- attempt to murder the child; or
- in the course of communal or sectarian violence or during a situation of natural calamity;
- previously convicted under this Act or any other Act;
- administers any hormone or any chemical substance to a child with the intent that such child attain early sexual maturity for
- purpose of penetrating sexual assault (2019)  
and makes the child to strip or parade naked in public.

**Punishment  
for  
aggravated  
sexual  
assault :  
(Section 10)**

- Rigorous imprisonment of Five Years
- Extendable to Seven Years
- & Fine;

## Sexual Harassment (Section 11)- Contd..

**Stalking:** repeatedly or constantly follows or watches or contacts a child either directly or **through electronic, digital or any other means**; or

**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 entices a child for pornographic purposes or gives gratification therefor.

- *Explanation.*--Any question which involves 'sexual intent' shall be a 'question of fact.'



# Stalking(Sexual Harassment)

**Stalking:** repeatedly or constantly follows or watches or contacts a child **either directly or through electronic, digital or any other means; or**

*Explanation.*--Any question which involves 'sexual intent' shall be a 'question of fact.'



## **Punishment for sexual harassment : (Section 12)**

- Imprisonment of **three Years;**
- Fine.

# Sexual Harassment (Section 11)


With a **sexual intent:**

utters any word; or makes any sound; or any gesture;

**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;

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

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



# Sexual Intent

Sexual Assault: Touch

Sexual Harassment: words/gestures.

A factual Case

Supreme Court in 2021:

“what’s important to see whether the action is with **sexual intent** or not.

# Sexual Intent

1

calling a minor girl an "item" is an offence under POCSO;

2

Holding hands in public place does not amount to sexual intent, thus not an act of sexual assault;

3

Touching 'bum' of a minor girl is an offence under POCSO Act.

# **2023- Kerala High Court quashes POCSO case against mother for posting video of kids painting on her body**

**<https://www.thehansindia.com/news/national/kerala-high-court-quashes-pocso-case-against-mother-for-posting-video-of-kids-painting-on-her-body-800963>**





# Medical Report- Bombay HC-2022

*"The absence of injury mentioned in the medical certificate **will not make any difference to her case** because the very nature of the offence of sexual assault defined under Section 7 of the POCSO Act mentions that even touching private part with sexual intent is sufficient to attract the provisions of Section 7 read with Section 8 of the POCSO Act."*



## Using child for pornography (Section 13)

- Use a child in any form of media; including:
  - program or **advertisement** telecast by television channels or internet or other electronic form or printed form;
  - such program or advertisement is intended for **personal use** or for **distribution**, **for the purposes of sexual gratification** 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.



**Punishment for  
use children for  
pornographic  
purposes:  
(Section 14)**

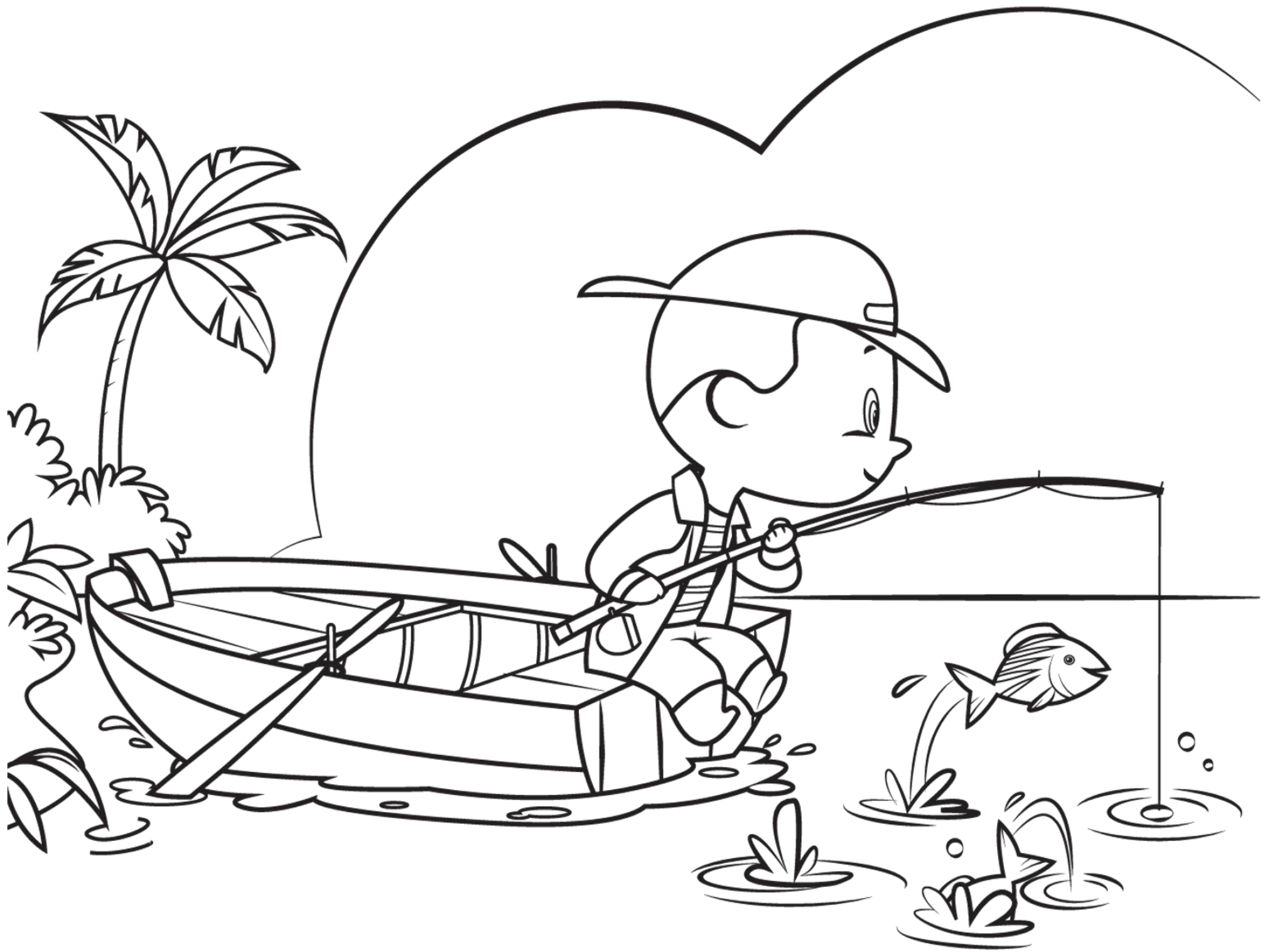
**Five years** Jail;  
& fine

2nd offence;  
**Seven Years;**  
& fine.

Additional to other  
punishments, if any

# Storing or possessing of pornographic material (Section 15)

- Storage of any **objectionable materials** involving a Child:
- Fails to **delete or destroy** or **report to Police**;
- Fine up to 1000/- & 5000/- for repeated offence
- **Transmitting or propagating or distributing** of such materials:
  - three years Jail, or fine, or both.
- **Storing or possessing** the material in any form for **commercial purposes**:
  - **three years extendable to five years of Jail, or fine, or both.**
- Second Offence: imprisonment not less than five years extendable to seven years and Fine.



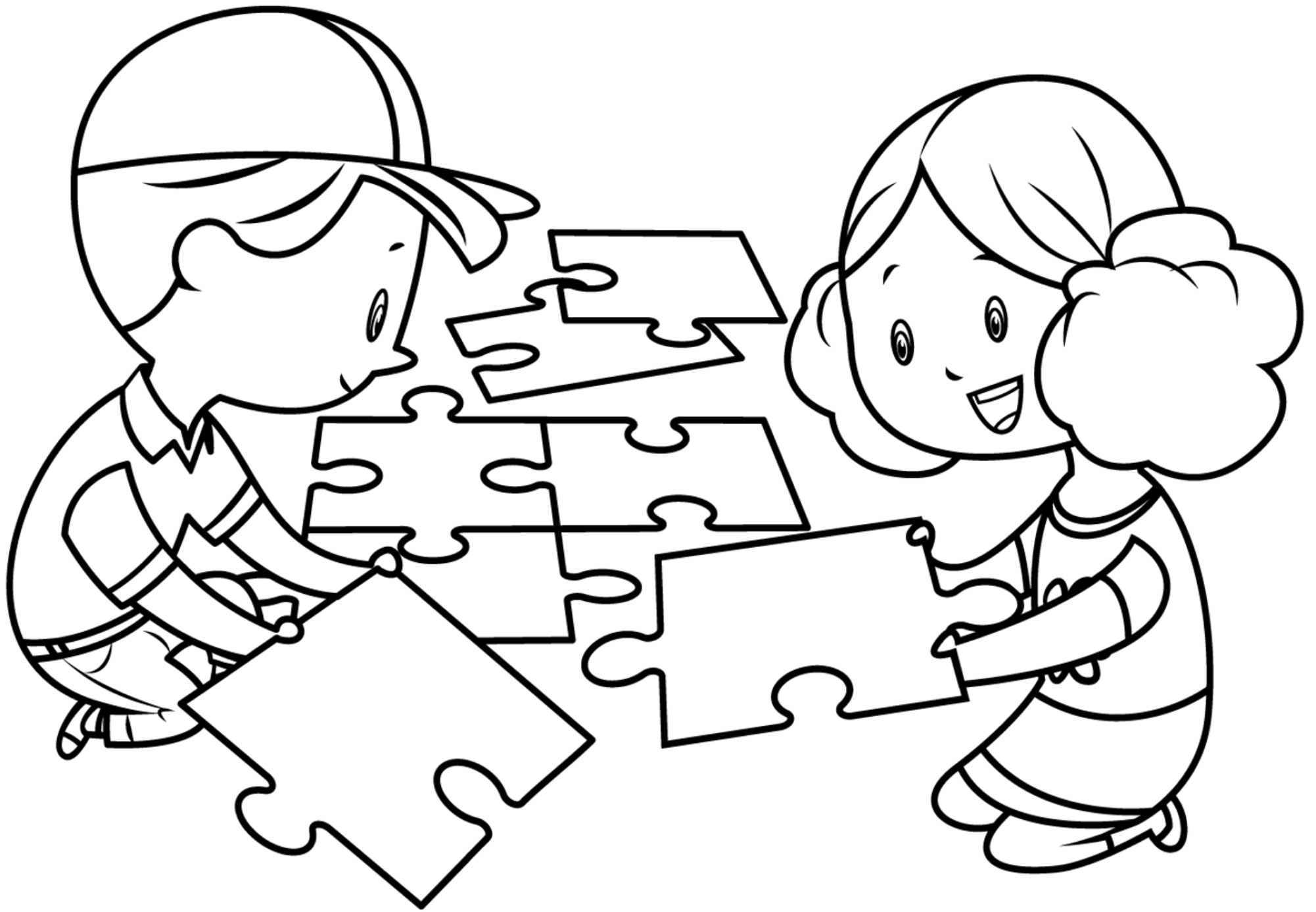




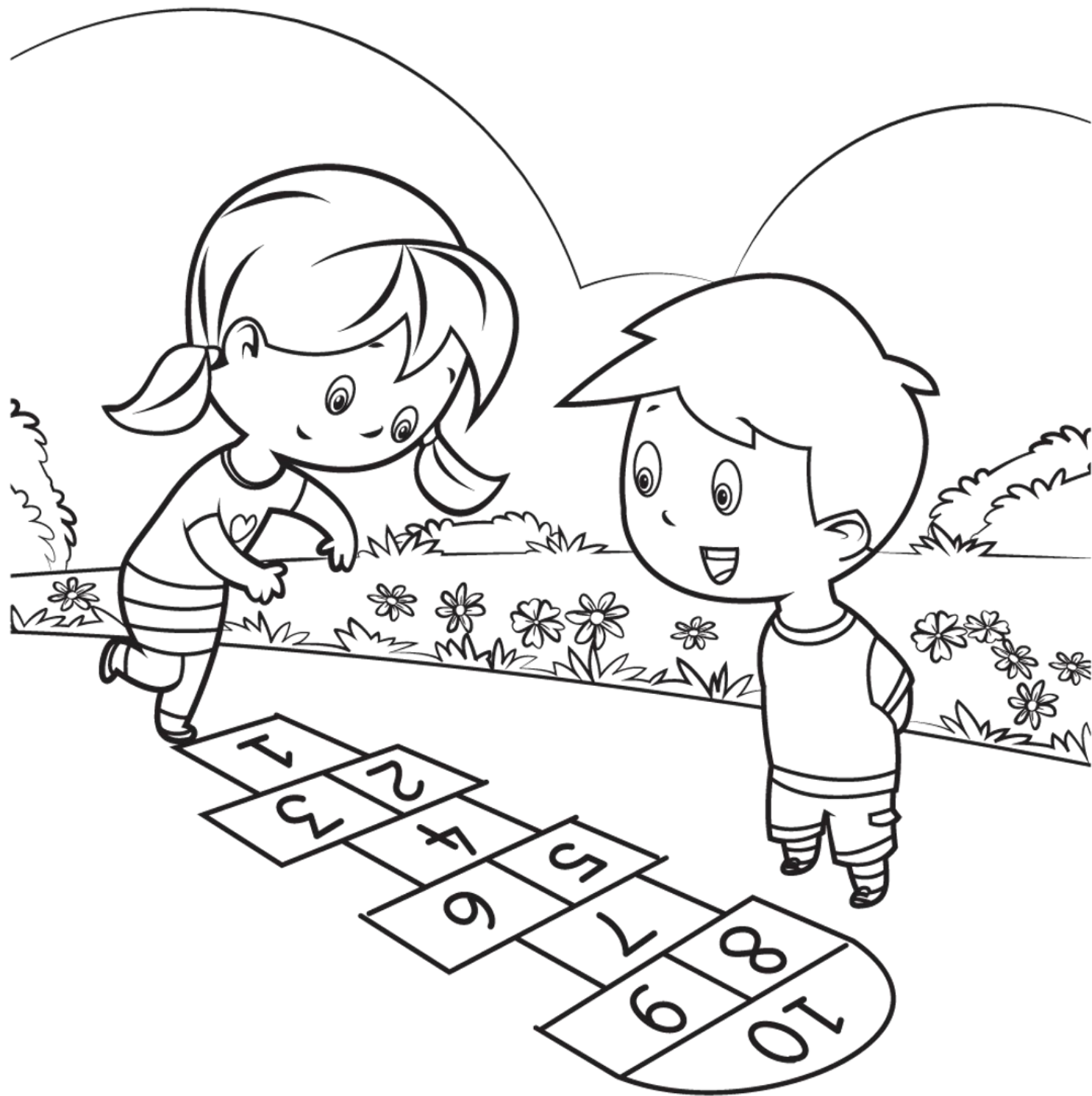




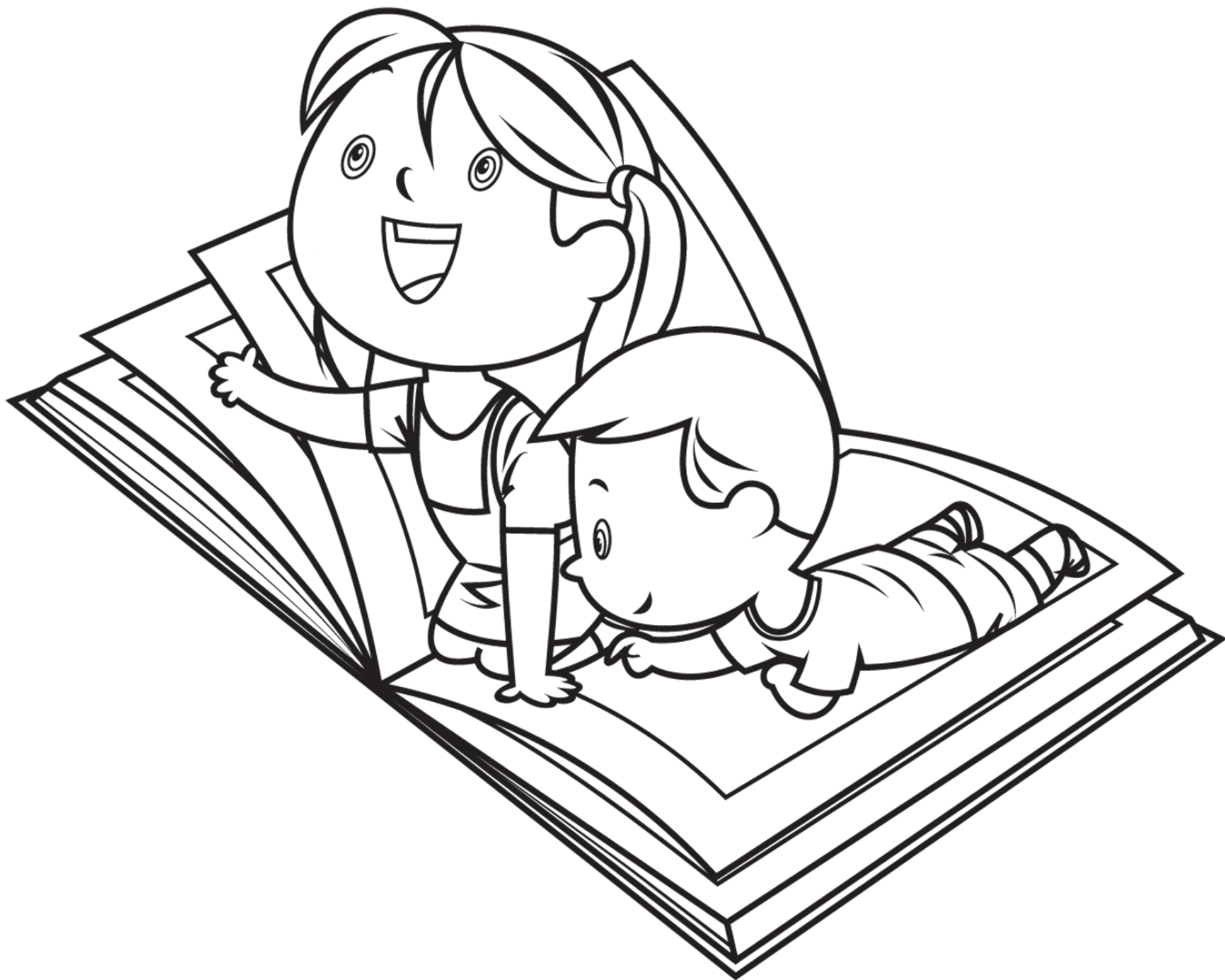






















**POCSO ACT**

