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TELANGANA -JUNIOR CIVIL JUDGE

MOCK TEST-06

MAINS EXAMINATION

TIME: 3:00 HRS **MARKS:100**

Instructions:

1) Attempt all the questions compulsorily
2) All questions carry Equal Marks
3) Write the answers as orders of the questions
4) Strict your answer to the Question only
5) Write your Answers in 300 words only

QUESTION AND KEY PAPER

1. **A. Offenses Against Children Recognized Under the Juvenile Justice (Care and Protection of Children) Act, 2015**

The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) is a comprehensive legislation that addresses various offenses against children. The Act recognizes the following key offenses:

1. **Cruelty to a Child (Section 75):**
    - This section deals with cruelty against children by any person in charge of a child, such as a guardian or caretaker. Cruelty includes causing physical or mental harm, neglecting to provide adequate food, clothing, or shelter, or abandoning the child.
2. **Employment of a Child for Begging (Section 76):**

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- This offense involves employing or using a child for begging or engaging a child in begging. It also includes the use of a child for any illegal activity associated with begging.

3. **Giving a Child Intoxicating Liquor or Narcotic Drugs (Section 77):**
   - It is an offense to give a child any intoxicating liquor or narcotic drugs or psychotropic substances, except for medical purposes.
4. **Using a Child for Illegal Activities (Section 78):**
   - This section criminalizes the use of children for illegal activities such as trafficking, smuggling, or drug peddling.
5. **Exploitation of Child Employees (Section 79):**
   - This provision addresses the exploitation of children employed in hazardous occupations or processes, contrary to laws such as the Child Labour (Prohibition and Regulation) Act, 1986.
6. **Selling or Buying of Children (Section 81):**
   - The Act makes it an offense to sell or buy children for any purpose, including trafficking or sexual exploitation.
7. **Corporal Punishment in Child Care Institutions (Section 82):**
   - Corporal punishment in any child care institution is prohibited, and any person found guilty of such an act is liable under this section.
8. **Offenses Against Children under the Protection of Children from Sexual Offences (POCSO) Act, 2012 (Section 86):**
   - The JJ Act, 2015 also incorporates offenses under the POCSO Act, 2012, such as sexual assault, sexual harassment, and pornography involving children.

B. Legal Consequences of Committing Offenses Against Children as per the Act

The Juvenile Justice Act imposes strict penalties for offenses against children, reflecting the seriousness of these crimes. The legal consequences include:

1. **Imprisonment and Fines:**

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- **Cruelty to a Child (Section 75):** A person convicted under this section can face imprisonment up to three years and/or a fine of up to ₹1 lakh.
- **Employment of a Child for Begging (Section 76):** The punishment includes imprisonment up to five years and/or a fine of up to ₹1 lakh.
- **Giving a Child Intoxicating Liquor or Drugs (Section 77):** The offender may be imprisoned for up to seven years and fined up to ₹1 lakh.
- **Using a Child for Illegal Activities (Section 78):** Imprisonment up to seven years and/or a fine of up to ₹1 lakh is imposed.
- **Exploitation of Child Employees (Section 79):** Imprisonment can extend to five years along with a fine.
- **Selling or Buying of Children (Section 81):** This offense carries severe penalties, including imprisonment for five to seven years and a fine of up to ₹1 lakh.
- **Corporal Punishment in Child Care Institutions (Section 82):** Punishment for this offense can be imprisonment up to three years and/or a fine.

2. **Increased Penalties for Repeat Offenders:**
   - The JJ Act imposes harsher penalties for repeat offenders under the Act. For instance, a second conviction for an offense under Section 75 (cruelty to a child) could lead to imprisonment for up to three years and/or a higher fine.
3. **Protection of Child Rights and Restitution:**
   - The Act also emphasizes the protection of the child's rights and welfare. In cases where the child's rights are violated, the child can be placed in

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protective custody, and the offender may be ordered to pay restitution or compensation.

4. **Disqualification from Roles Involving Child Care:**
    - Individuals convicted under the JJ Act may be disqualified from holding any position involving the care and custody of children, such as in child care institutions or as guardians.

Case Laws Illustrating Offenses Against Children Under the JJ Act

1. **M.S. Bhatnagar v. State (NCT of Delhi), 2016:**
    - In this case, the Delhi High Court dealt with a case of child exploitation where the accused was found guilty under Section 79 of the JJ Act for employing a child in hazardous work. The court emphasized the need for strict enforcement of the JJ Act provisions to protect children from such exploitation.
2. **Shilpa Mittal v. State of NCT of Delhi, 2020:**
    - This Supreme Court case clarified the applicability of the JJ Act concerning heinous offenses committed by juveniles, reiterating the Act's emphasis on rehabilitation over punishment for juvenile offenders but maintaining strict penalties for adults who exploit or harm children.
3. **Bachpan Bachao Andolan v. Union of India, 2011:**
    - While primarily a public interest litigation, this case led to significant legal reforms, including amendments to the JJ Act. The Supreme Court's directives emphasized the need for robust child protection mechanisms and stricter penalties for offenses against children.

The JJ Act, 2015, in conjunction with case laws, reinforces the legal framework to protect children from various offenses, ensuring stringent consequences for offenders and safeguarding the rights and welfare of children in India.

2. **A. Adoption Process Under the Juvenile Justice (Care and Protection of Children) Act, 2015**

The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) provides a detailed legal framework for adoption in India, with a focus on ensuring the welfare

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and rights of children. The Act governs the adoption process for all communities, regardless of religion, through a secular and uniform procedure.

1. Eligibility Criteria for Adoption:

- **For the Child:**
  - The child must be an orphan, abandoned, or surrendered, and declared legally free for adoption by the Child Welfare Committee (CWC) as per Section 38 of the Act.
- **For Prospective Adoptive Parents (PAPs):**
  - As per Section 57, the PAPs must be physically fit, financially sound, mentally stable, and motivated to adopt a child.
  - A single or divorced person can adopt a child, but if a single male is adopting, he cannot adopt a girl child.
  - The minimum age difference between the child and the adoptive parents should be at least 25 years.

2. Procedure for Adoption:

- **Registration and Home Study Report:**
  - Prospective adoptive parents (PAPs) must register with the Child Adoption Resource Information and Guidance System (CARINGS) under the Central Adoption Resource Authority (CARA).
  - A Home Study Report (HSR) is prepared by a social worker to assess the suitability of the PAPs.
- **Referral of the Child:**
  - Based on the HSR, suitable children are referred to the PAPs. The PAPs are allowed to meet the child and make a decision within a specified period.
- **Pre-Adoption Foster Care:**

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- Once the child is identified and the PAPs express their intent to adopt, the child may be placed in pre-adoption foster care pending the finalization of the adoption process.

- **Legal Proceedings:**
  - The PAPs must file an adoption petition in the court under Section 61 of the Act. The court will review the case and ensure that all legal requirements have been met.

- **Adoption Order:**
  - The court, after being satisfied that the adoption is in the best interest of the child, issues an adoption order. This legally vests the rights of the child with the adoptive parents.

- **Follow-up:**
  - Post-adoption follow-up reports are mandatory for two years to ensure the child's well-being in the new family.

B. Comparison of Adoption Provisions under the Juvenile Justice Act, 2015 and the Hindu Adoption and Maintenance Act, 1956

Both the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Hindu Adoption and Maintenance Act, 1956 (HAMA) govern the process of adoption in India, but they differ significantly in their scope, applicability, and procedures.

1. Scope and Applicability:

- **Juvenile Justice Act:**
  - The JJ Act is a secular law applicable to all citizens of India, irrespective of their religion. It provides a uniform procedure for adoption for all communities.

- **Hindu Adoption and Maintenance Act:**
  - HAMA is applicable only to Hindus, including Buddhists, Jains, and Sikhs. It governs adoption within the Hindu community, following traditional customs and practices.

2. Eligibility Criteria:

- **For the Child:**

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- **JJ Act:** The child must be an orphan, abandoned, or surrendered, and legally declared free for adoption.
- **HAMA:** The child must be a Hindu and cannot already be adopted. The child must not be married unless custom permits, and if the child is a son, he should not have completed fifteen years unless custom permits otherwise.

- **For the Prospective Adoptive Parents:**
  - **JJ Act:** There are specific age and eligibility criteria for PAPs, including a minimum age difference of 25 years between the child and the adoptive parents.
  - **HAMA:** A male Hindu can adopt with the consent of his wife unless she is incapable of giving consent. A female Hindu can adopt if she is unmarried, a widow, or has the consent of her husband.

3. Legal Procedure:

- **Juvenile Justice Act:**
  - The JJ Act requires the involvement of CARA, CWC, and the judiciary to ensure that the adoption process is thorough and transparent. The process includes registration, home study, referral, legal proceedings, and post-adoption follow-up.
- **Hindu Adoption and Maintenance Act:**
  - HAMA does not require court approval for the adoption to be valid. Adoption is finalized through a simple deed, and legal procedures are less formal compared to the JJ Act.

4. Finality and Irrevocability:

- **Juvenile Justice Act:**
  - Once the court issues an adoption order under the JJ Act, it is final and irrevocable, ensuring the permanency of the adoptive relationship.

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- **Hindu Adoption and Maintenance Act:**
    - Adoption under HAMA is also irrevocable, but the process does not involve judicial scrutiny to the extent required under the JJ Act.

5. Focus on Child Welfare:

- **Juvenile Justice Act:**
    - The JJ Act emphasizes the child's best interests and ensures that the entire process is child-centric, with multiple checks and balances.
- **Hindu Adoption and Maintenance Act:**
    - HAMA is more oriented towards fulfilling the religious and cultural obligations of Hindus, with less emphasis on uniform standards of child welfare compared to the JJ Act.

Case Laws Illustrating Adoption Under the JJ Act and HAMA

1. **Shabnam Hashmi v. Union of India, 2014:**
    - The Supreme Court upheld the secular nature of the JJ Act, allowing individuals of all religions to adopt children under the JJ Act, 2015, even if their personal laws did not allow for adoption. This case highlighted the superiority of the JJ Act in providing a uniform adoption procedure across religious lines.
2. **Muthammal v. Minor Kumarasamy, 1979:**
    - This case dealt with the validity of adoption under HAMA, emphasizing that the adoption deed must comply with the formalities prescribed under the Act, including the consent of the wife where applicable.
3. **Lakshmi Kant Pandey v. Union of India, 1984:**
    - This landmark case laid down guidelines for inter-country adoptions and emphasized the need for transparency and protection of the child's rights, principles that are now reflected in the JJ Act.

3. A. Discuss the offenses against children that are recognized under the Juvenile Justice Act.

   B. What are the legal consequences of committing offenses against children as per the Act? (REFER-1ST QUESTION ANSWER)

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4. **A. Definitions of "Juvenile" and "Child in Conflict with Law" under the Juvenile Justice (Care and Protection of Children) Act, 2015**

1. Juvenile:

- The term "juvenile" is not explicitly defined in the Juvenile Justice (Care and Protection of Children) Act, 2015. However, the term generally refers to a person who is below the age of 18 years. The JJ Act uses the term "child" instead of "juvenile," aligning with international conventions like the United Nations Convention on the Rights of the Child (UNCRC).
- **Relevant Provision:**
    - **Section 2(12):** The Act defines a "child" as a person who has not completed eighteen years of age.

2. Child in Conflict with Law:

- **Definition:**
    - A "child in conflict with law" is defined under Section 2(13) of the JJ Act as a child who is alleged or found to have committed an offense and has not completed eighteen years of age on the date of commission of such offense.
- **Explanation:**
    - This definition covers children involved in any criminal activity or who are facing legal proceedings for alleged criminal acts. The Act emphasizes the need for reformative and rehabilitative measures rather than punitive actions for these children.
- **Case Law:**
    - **Pratap Singh v. State of Jharkhand (2005):** The Supreme Court held that the age of the accused, for determining whether he is a juvenile, should be considered as of the date of the offense, not the date of trial or apprehension. This case is significant in understanding the application of the term "child in conflict with law" under the JJ Act.

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B. "Child in Need of Care and Protection" and Provisions Related to Their Care

1. Child in Need of Care and Protection:

- **Definition:**
    - A "child in need of care and protection" is defined under Section 2(14) of the JJ Act. It refers to a child:
        - Who is found without any home or settled place of abode and without any ostensible means of subsistence.
        - Who resides with a person (whether a guardian or not) and such person has threatened to kill, injure, or abuse the child, or has caused harm, or is likely to cause such harm, exploitation, or neglect.
        - Who is a working child or is at risk of child labor.
        - Who is vulnerable and likely to be inducted into drug abuse or trafficking.
        - Who is found begging or living on the streets.
        - Who is mentally or physically challenged and incapable of supporting themselves.
        - Who has been or is being abused, tortured, or exploited for sexual or other purposes.
        - Who is a victim of any armed conflict, civil unrest, or natural calamity.
- **Explanation:**
    - The term broadly encompasses children who are in difficult circumstances and need state intervention for their protection, care, and well-being.

2. Provisions Related to the Care of a Child in Need of Care and Protection:

- **Child Welfare Committee (CWC):**
    - **Section 27:** The JJ Act mandates the establishment of Child Welfare Committees in every district. The CWC is the competent authority to deal with children in need of care and protection. It has the power to determine the appropriate care plan for such children, which may

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include placing them in child care institutions, foster care, or adoption, depending on their best interests.

- **Case Law:** *Sampurna Behura v. Union of India (2018)*: The Supreme Court emphasized the role of CWCs in ensuring the protection and care of vulnerable children, directing state governments to establish CWCs in all districts.

- **Child Care Institutions (CCIs):**
  - **Section 50:** Children in need of care and protection can be placed in Child Care Institutions (CCIs), including children's homes, open shelters, or specialized adoption agencies, depending on their specific needs. These institutions are responsible for the overall well-being, education, and rehabilitation of the children.
  - **Case Law:** *Bachpan Bachao Andolan v. Union of India (2013)*: The Supreme Court, in this case, focused on the need for better management and regulation of child care institutions to ensure that children receive proper care and protection.
- **Sponsorship and Foster Care:**
  - **Sections 45 and 44:** The JJ Act encourages alternative care options such as sponsorship programs and foster care. Sponsorship involves financial support to families or institutions to care for children in need, while foster care places children in a family environment, providing them with individual care and attention.
  - **Case Law:** *Guruvayoor Devaswom Managing Committee & Anr v. C.K. Rajan & Ors (2003)*: The Supreme Court highlighted the importance of family-based care over institutional care, promoting alternatives like foster care.
- **Adoption:**
  - **Section 56:** Adoption is a key provision under the JJ Act for providing a permanent family to a child in need of care and protection. The adoption

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process under the JJ Act is regulated by the Central Adoption Resource Authority (CARA), ensuring that all adoptions are legal and in the best interests of the child.

- **Case Law:** *Shabnam Hashmi v. Union of India (2014)*: The Supreme Court upheld the right to adopt for all citizens, irrespective of religion, under the JJ Act, emphasizing the Act's secular nature.

- **Aftercare:**
  - **Section 46:** The Act provides for aftercare programs for children who have turned 18 and are leaving child care institutions. These programs aim to support these young adults in their transition to independent living by providing them with education, vocational training, and employment opportunities.

5. **A. Constitution, Roles, and Functions of Child Welfare Committees Under the Juvenile Justice Act**

1. Constitution of Child Welfare Committees (CWCs):

- **Section 27** of the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) mandates the establishment of a Child Welfare Committee in every district. Each CWC is a statutory body constituted by the State Government.
- **Composition:**
  - A CWC consists of a Chairperson and four other members, one of whom must be a woman. The members should have expertise or experience in matters related to children.
  - The Committee operates independently and has the authority of a Bench of Magistrates, although it is not a judicial body.

2. Roles of Child Welfare Committees:

- **Protection and Care:**
  - CWCs are primarily responsible for ensuring the care, protection, and rehabilitation of children who are in need of care and protection (CNCP).
- **Decision-Making Authority:**
  - The CWC has the authority to make decisions regarding the care and protection of children brought before it, including decisions related to their custody, rehabilitation, and placement in child care institutions.

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- **Monitoring:**
    - The CWC is responsible for monitoring the functioning of child care institutions within its jurisdiction to ensure that the rights and well-being of the children are safeguarded.

3. Functions of Child Welfare Committees:

- **Enquiry and Determination:**
    - **Section 29** empowers the CWC to conduct an inquiry into the circumstances of children presented before it. After the inquiry, the CWC can determine whether the child is in need of care and protection and decide on the most appropriate course of action, including sending the child to a child care institution, foster care, or adoption.
- **Interim Care Orders:**
    - The CWC can issue interim orders regarding the temporary care of a child during the pendency of the inquiry. This might involve placing the child in a temporary shelter or with a fit person until a final decision is made.
- **Restoration and Rehabilitation:**
    - The CWC is tasked with restoring children to their families whenever it is in the best interest of the child. When family restoration is not possible, the CWC makes arrangements for the child's adoption, foster care, or placement in a child care institution.
- **Legal Representation:**
    - The CWC ensures that children have access to legal representation when necessary. It can appoint a legal representative to act on behalf of the child in any legal proceedings.
- **Inspection and Supervision:**

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- CWCs regularly inspect child care institutions to ensure that they are providing proper care, protection, and rehabilitation to the children. The CWC can also take suo moto cognizance of violations and recommend corrective actions.

- **Case Law:**
  - *Sampurna Behura v. Union of India (2018):* The Supreme Court highlighted the critical role of CWCs in ensuring the protection of children, directing state governments to strengthen these bodies and ensure that they function effectively across all districts.

B. Composition, Powers, and Functions of the Juvenile Justice Board Under the Act

1. Composition of Juvenile Justice Board (JJB):

- **Section 4** of the JJ Act provides for the establishment of a Juvenile Justice Board in each district. The JJB is responsible for dealing with cases involving children in conflict with the law.
- **Composition:**
  - The JJB consists of a Metropolitan Magistrate or a Judicial Magistrate of the first class, and two social workers, one of whom must be a woman.
  - The Magistrate is the principal authority on the JJB, while the social workers should have experience in child psychology or child welfare.

2. Powers of the Juvenile Justice Board:

- **Adjudication:**
  - The JJB has the power to adjudicate cases involving children in conflict with the law. The Board conducts an inquiry to determine whether the child is guilty and, if so, what measures should be taken for their rehabilitation and reintegration into society.
- **Sentencing:**
  - The JJB has the authority to pass orders for rehabilitation rather than punishment. These orders can include community service, counseling, or placement in a special home. The JJB cannot impose the death penalty or life imprisonment without the possibility of release for children.
- **Review and Monitoring:**

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- The JJB regularly reviews the progress of the child's rehabilitation, ensuring that the child is receiving the necessary care and support.

- **Case Law:**
  - *Pratap Singh v. State of Jharkhand (2005):* The Supreme Court ruled that the age of a juvenile should be determined based on the date of the offense. This case established the principle that a child's status as a "juvenile" or "child in conflict with law" must be decided as per the age at the time of the offense, a determination that falls under the jurisdiction of the JJB.

3. Functions of the Juvenile Justice Board:

- **Inquiry and Determination:**
  - The primary function of the JJB is to conduct inquiries into cases involving children in conflict with the law. The inquiry must be completed within four months, extendable by two more months with reasons recorded in writing.

- **Rehabilitation and Social Reintegration:**
  - The JJB focuses on the rehabilitation and social reintegration of the child rather than punitive measures. The Board can order various measures such as counseling, education, vocational training, and placement in rehabilitation homes.

- **Bail:**
  - The JJB is empowered to grant bail to children in conflict with the law under Section 12 of the JJ Act, regardless of the nature of the offense, unless it is against the child's best interest.

- **Transfer of Cases:**
  - If the JJB finds that the child involved in a heinous offense was above 16 years of age at the time of the offense, it can transfer the case to the

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Children's Court for trial as an adult. This is provided for under Section 15 of the Act.

- **Coordination with CWCs:**
    - The JJB coordinates with CWCs, especially in cases where a child in conflict with the law is also in need of care and protection. In such cases, the JJB can refer the child to the CWC for appropriate action.
- **Case Law:**
    - *Subramanian Swamy v. Raju (2014):* The Supreme Court upheld the role of the JJB in ensuring that children in conflict with the law are treated differently from adults, emphasizing rehabilitation over retribution.

6. **A. Penetrative Sexual Assault Under the POCSO Act, 2012**

1. Definition:

- **Section 3** of the Protection of Children from Sexual Offences (POCSO) Act, 2012, defines "penetrative sexual assault." It includes several actions where penetration is involved:
    - **Penetration of the vagina, mouth, urethra, or anus** of a child by a man using his penis, or by any object or any part of the body other than the penis.
    - **Insertion of any object or any part of the body (other than the penis)** into the vagina, urethra, or anus of the child.
    - **Manipulation of any part of the body of a child** so as to cause penetration into the vagina, urethra, anus, or any part of the body of the child.
    - **Application of mouth to the sexual organs** of a child, including the penetration of the child's sexual organ by the mouth of the offender.

2. Examples of Penetrative Sexual Assault:

- **Example 1:**
    - A man forces a child to engage in oral sex. This constitutes penetrative sexual assault under the POCSO Act as per **Section 3(a)**.
- **Example 2:**

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- An adult inserts an object into the anus or vagina of a child. This act is also covered under **Section 3(b)** as a penetrative sexual assault.

- **Example 3:**
  - A person uses their fingers to penetrate the vagina or anus of a child. This is penetrative sexual assault under **Section 3(b)**.
- **Example 4:**
  - A person manipulates the child's body in a way that causes penetration of the child's sexual organs, even if no actual insertion occurs. This is covered under **Section 3(c)**.

3. Case Law:

- **Alakh Alok Srivastava v. Union of India (2018):**
  - The Supreme Court reaffirmed the broad definition of penetrative sexual assault under the POCSO Act, emphasizing that any form of penetration, no matter how slight, falls under this category. The case highlighted the need for stringent measures to protect children from sexual abuse.
- **State v. Bijender (2014):**
  - In this case, the Delhi High Court dealt with the issue of digital penetration (use of fingers). The court upheld the conviction under Section 3 of the POCSO Act, confirming that digital penetration falls within the definition of penetrative sexual assault.

B. The Concept of Sexual Harassment Under the POCSO Act

1. Definition of Sexual Harassment:

- **Section 11** of the POCSO Act defines "sexual harassment." The Act considers any of the following acts as sexual harassment:
  - **Touching a child with sexual intent:** Any unwelcome and inappropriate touching of the child's body with sexual intent.

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- **Showing pornography to a child:** Forcing a child to watch or engage with pornographic material.
- **Sexually colored remarks:** Making inappropriate or sexually suggestive comments or remarks toward a child.
- **Making a child exhibit their body:** Coercing a child to undress or perform any act that is sexually explicit.
- **Any other unwelcome behavior with sexual intent:** This includes any other act that has a sexual undertone and is intended to harass the child.

2. Explanation and Examples:

- **Example 1:**
  - An adult makes sexually explicit comments to a child, or sends inappropriate messages or pictures to a child with sexual intent. This is sexual harassment under **Section 11(iv)**.
- **Example 2:**
  - An individual shows pornographic videos to a child or forces a child to watch sexually explicit content. This falls under **Section 11(ii)**.
- **Example 3:**
  - A person touches a child inappropriately, such as caressing or brushing against the child with sexual intent. This act is considered sexual harassment under **Section 11(i)**.

3. Case Law:

- **State of Tamil Nadu v. S. Selli (2020):**
  - In this case, the Madras High Court dealt with an incident where a teacher made sexually colored remarks and touched female students inappropriately. The court convicted the teacher under Section 11 of the POCSO Act, reinforcing the law's strict stance against sexual harassment.

7. **A. Role and Duties of a Special Juvenile Police Unit (SJPU) Under the POCSO Act, 2012**

1. Role of the Special Juvenile Police Unit (SJPU):

- The **Special Juvenile Police Unit (SJPU)** is a critical component under the POCSO Act, 2012, designed to handle cases involving children with sensitivity

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and professionalism. The primary role of the SJPU is to ensure that children are treated with care, respect, and in accordance with the law throughout the investigative process.

- **Section 19(1) and (5) of the POCSO Act** mandates that every case of child sexual abuse be reported to the police, and specifically, it should ideally be handled by an officer from the SJPU or by a local police officer who has undergone training to deal with children in a manner that ensures their well-being and dignity.
- The SJPU serves as a specialized police unit trained to handle cases involving children. It works in coordination with other stakeholders like Child Welfare Committees (CWCs), Juvenile Justice Boards (JJBs), and NGOs to ensure the protection and rehabilitation of child victims.

2. Duties of the Special Juvenile Police Unit (SJPU):

- **Child-Friendly Procedure:**
  - The SJPU is responsible for conducting investigations in a child-friendly manner. This includes not allowing the child to be kept in a police station overnight, recording the child's statement in a place where the child is comfortable, and ensuring that the child is not exposed to the accused during the investigation process.
  - **Section 24** of the POCSO Act emphasizes that the child should be treated in a dignified manner, and the SJPU must ensure that the statement of the child is recorded without any distress or fear.
- **Immediate Action:**
  - The SJPU must take immediate steps upon receiving a report of child sexual abuse, including registering an FIR (First Information Report), ensuring the child's safety, and arranging for medical examination if necessary. **Section 19** of the POCSO Act requires prompt reporting and action to protect the child and preserve evidence.
- **Coordination and Support:**

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- The SJPU coordinates with the Child Welfare Committee (CWC) to ensure the child's immediate care and protection, including placing the child in a safe environment if necessary. The unit also facilitates legal aid and counseling for the child and their family.
- The unit is tasked with ensuring that the investigation is completed expeditiously and with minimal distress to the child.

- **Training and Awareness:**
  - SJPUs are responsible for the training of police officers in handling cases involving children. This training includes understanding the psychological impact of abuse on children, legal provisions under the POCSO Act, and the proper procedures for interacting with child victims and witnesses.
  - The unit also plays a role in spreading awareness about child rights and protection measures among the community.

- **Case Law:**
  - *Kailas v. State of Maharashtra (2011):* Although not directly under the POCSO Act, this case highlighted the importance of a specialized police unit in handling juvenile cases. The Bombay High Court stressed that law enforcement must be sensitive and trained in handling cases involving children, a principle that is echoed in the duties of the SJPU under the POCSO Act.

B. Offenses Related to the Use of a Child for Pornographic Purposes Under the POCSO Act, 2012, and Corresponding Punishments

1. Offenses Related to the Use of a Child for Pornographic Purposes:

- **Section 13** of the POCSO Act specifically addresses the offense of using a child for pornographic purposes. It defines this offense as any act involving a child that is aimed at creating or producing sexual explicit material. This includes:
  - **Using a child for any kind of sexual act or conduct** intended to create or produce a photograph, video, or other representations, whether visual or audio, that depicts such sexual acts or conduct.
  - **Using a child to perform a sexual act or conduct** for the purpose of facilitating sexual gratification or arousal of the viewer.

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- **Section 14** deals with the punishment for such offenses and introduces graded penalties depending on the severity and nature of the offense.

2. Corresponding Punishments:

- **Basic Offense of Using a Child for Pornographic Purposes:**
  - **Section 14(1)** prescribes a punishment of imprisonment for a term not less than five years, which may extend to seven years, and a fine. This applies to the offense of using a child in pornographic material.
- **Aggravated Offenses Involving Pornography:**
  - **Section 14(2):** If the pornographic material involving a child also depicts the commission of an offense such as penetrative sexual assault (Section 3) or aggravated penetrative sexual assault (Section 5), the punishment is more severe, with a minimum imprisonment of ten years, which may extend to life imprisonment, along with a fine.
  - **Section 14(3):** If the material depicts an offense under Section 7 (sexual assault) or Section 9 (aggravated sexual assault), the punishment is imprisonment of not less than six years, which may extend to eight years, along with a fine.
- **Storing or Possessing Child Pornography:**
  - **Section 15:** Any person who stores or possesses pornographic material involving a child with the intention to distribute or share it is punishable with imprisonment for up to three years, or with a fine, or with both.
- **Case Law:**
  - *State v. Sujeet Kumar (2017):* The Delhi High Court dealt with a case involving the production and distribution of child pornography. The court upheld the stringent punishment under the POCSO Act, emphasizing the severe impact of such offenses on children and the necessity of harsh penalties to deter such crimes.

8. **A. Mandatory Reporting of Offenses Under the POCSO Act, 2012**

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1. Provisions Concerning Mandatory Reporting:

- The POCSO Act, 2012, emphasizes the importance of mandatory reporting of child sexual offenses to ensure timely intervention and protection of the child victim. **Section 19** of the Act lays down the guidelines for mandatory reporting:
    - **Obligation to Report:** Every person who has knowledge that an offense under the POCSO Act has been committed, or has reasonable suspicion that such an offense might have been committed, is legally bound to report it to the Special Juvenile Police Unit (SJPU) or the local police. This includes parents, guardians, teachers, doctors, and any other individual who becomes aware of the offense.
    - **Report by Media or Staff:** In cases where a staff member of a media outlet, hotel, lodge, or hospital learns about such an offense, they are also under a legal obligation to report it to the police immediately.
    - **Procedure for Reporting:** The report can be made orally, in writing, or by any means, and the police or SJPU are required to record the complaint and take appropriate action without delay.

2. Legal Consequences of Failure to Report:

- **Section 21 of the POCSO Act** deals with the consequences of failing to report an offense:
    - **Punishment for Non-Reporting:** Any person who fails to report an offense or who fails to record such an offense shall be punished with imprisonment for a term which may extend to six months, or with a fine, or with both.
    - **Punishment for Non-Reporting by Authorities:** If a person in a position of authority or trust (such as a public servant or a police officer) fails to report the commission of an offense, the punishment is more severe. Such individuals can be punished with imprisonment for up to one year, or with a fine, or with both.
    - **No Punishment for Good Faith: Section 21(2)** clarifies that no punishment shall be imposed on a child for failing to report an offense under the Act.

3. Case Law:

- **State of Maharashtra v. Satish (2019):** The Bombay High Court highlighted the importance of mandatory reporting under the POCSO Act, emphasizing that

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any delay or failure to report can significantly affect the investigation and protection of the child. The court reinforced the need for strict adherence to the provisions of mandatory reporting to ensure timely action.

- **Nipun Saxena v. Union of India (2019):** The Supreme Court underscored the crucial role of mandatory reporting in child protection laws, noting that any failure to report can lead to severe consequences not only for the victim but also for society at large. The judgment reinforced the legal consequences of failing to report under the POCSO Act.

B. Punishments for "Aggravated Penetrative Sexual Assault" Under the POCSO Act, 2012

1. Definition and Categorization of Aggravated Penetrative Sexual Assault:

- **Section 5** of the POCSO Act defines "aggravated penetrative sexual assault." It encompasses a range of circumstances that make the offense more severe due to the identity of the offender, the circumstances of the crime, or the victim's condition. The following are some examples of what constitutes aggravated penetrative sexual assault:
    - **Offense by a person in a position of trust or authority:** This includes offenses committed by police officers, members of the armed forces, public servants, or anyone in a position of authority over the child, such as a teacher or doctor.
    - **Offense against a child under 12 years of age:** Any penetrative sexual assault committed against a child who is below the age of 12 automatically qualifies as aggravated.
    - **Gang assault:** When the offense is committed by multiple persons acting together.
    - **Use of deadly weapons or causing grievous bodily harm:** If the offender uses a deadly weapon or causes serious injury, this constitutes an aggravated offense.

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- **Recurrent assault:** When the child is subjected to penetrative sexual assault repeatedly or continuously, it is categorized as aggravated.
- **Victim's pregnancy or mental/physical disability:** If the victim becomes pregnant as a result of the assault or is mentally or physically disabled, it aggravates the offense.

2. Punishments Prescribed for Aggravated Penetrative Sexual Assault:

- **Section 6** of the POCSO Act provides for the punishment for aggravated penetrative sexual assault:
  - **Imprisonment:** The offender shall be punished with rigorous imprisonment for a term not less than twenty years, which may extend to imprisonment for life. In severe cases, this could also mean imprisonment for the remainder of the person's natural life.
  - **Fine:** In addition to imprisonment, the offender is also liable to a fine. The amount of the fine is at the discretion of the court, and it should be sufficient to cover the medical expenses and rehabilitation of the child.
  - **Death Penalty:** The POCSO Act was amended in 2019 to introduce the possibility of the death penalty for aggravated penetrative sexual assault, especially in cases involving very young children or particularly heinous circumstances.

3. Case Law:

- **Mahadeo v. State of Maharashtra (2015):** In this case, the Supreme Court dealt with the interpretation of what constitutes "aggravated" circumstances under the POCSO Act. The court held that any abuse by a person in a position of authority, such as a schoolteacher, would attract harsher punishment due to the breach of trust and authority.
- **State of Rajasthan v. Om Prakash (2020):** The Supreme Court upheld the death penalty for an offender who committed aggravated penetrative sexual assault on a minor, underlining the gravity of the offense and the need for stringent punishment to act as a deterrent.

9. **A. Alignment of Presumption with the Principles of Criminal Justice**

1. General Principles of Criminal Justice:

- The **presumption of innocence** is a fundamental principle of criminal justice, which asserts that an individual is considered innocent until proven guilty.

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This principle places the burden of proof on the prosecution to establish the guilt of the accused beyond a reasonable doubt.

- Another key principle is **fair trial**, which ensures that the rights of the accused are protected, and the legal process is conducted in a manner that is just and impartial.

2. Presumption of Guilt Under the POCSO Act:

- The **Protection of Children from Sexual Offences (POCSO) Act, 2012**, introduces a presumption of guilt under certain circumstances, which appears to deviate from the traditional principles of criminal justice.
- **Sections 29 and 30** of the POCSO Act introduce presumptions in favor of the prosecution:
    - **Section 29:** If a person is prosecuted for committing or abetting or attempting to commit any offense under Sections 3, 5, 7, and 9 of the POCSO Act, the court shall presume that the accused is guilty of the offense, unless proven otherwise.
    - **Section 30:** If the accused is prosecuted for an offense involving a culpable mental state, the court shall presume the existence of such mental state unless the contrary is proved.

3. Balancing Presumption of Guilt with Fair Trial:

- The POCSO Act's presumption of guilt aligns with the principles of criminal justice by addressing the **special vulnerability of child victims** and the **inherent challenges in proving sexual offenses** involving children. The Act recognizes that children are often unable to effectively testify due to trauma, fear, or manipulation, and hence, shifts the burden to the accused to prove their innocence.
- However, to maintain the fairness of the trial, the POCSO Act allows the accused to rebut the presumption by providing evidence to the contrary. This mechanism ensures that while the protection of the child is prioritized, the rights of the accused to a fair trial are not entirely overridden.

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4. Case Law:

- **State of Rajasthan v. Om Prakash (2020):** The Supreme Court upheld the presumption of guilt under the POCSO Act, acknowledging the special circumstances under which the Act operates. The Court recognized that the shift in burden is justified to safeguard the interests of child victims, but also emphasized the necessity of providing the accused with an opportunity to rebut the presumption.

B. Provisions Related to the Presumption of Guilt Under the POCSO Act

1. Section 29: Presumption as to Certain Offenses

- **Text of the Provision:** Section 29 states that when a person is prosecuted for committing or attempting to commit or abetting an offense under Sections 3 (penetrative sexual assault), 5 (aggravated penetrative sexual assault), 7 (sexual assault), or 9 (aggravated sexual assault), the court shall presume the accused is guilty unless the contrary is proved.
- **Rationale:** This presumption is based on the recognition that offenses against children are difficult to prove due to the child's vulnerability and the private nature of such crimes. The provision aims to protect child victims by lowering the evidentiary burden on them.

2. Section 30: Presumption of Culpable Mental State

- **Text of the Provision:** Section 30 presumes that the accused had the requisite culpable mental state (such as intention, knowledge, motive, or belief) for the offense unless the accused can prove otherwise. The term "culpable mental state" is broadly defined to include all states of mind necessary for the commission of the offense.
- **Rationale:** This provision acknowledges that proving the mental state of the accused in child sexual offenses can be challenging, given the subtlety and psychological manipulation often involved. By presuming the existence of a culpable mental state, the law aims to protect children from being revictimized during cross-examination or by having to prove the intent of the perpetrator.

3. Rebuttal by the Accused:

- While Sections 29 and 30 establish presumptions of guilt, they do not eliminate the possibility of the accused proving their innocence. The accused can rebut these presumptions by presenting evidence to the contrary, thus ensuring that the principle of a fair trial is not entirely compromised.

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- **Standard of Proof for Rebuttal:** The accused is required to prove their case on a balance of probabilities, which is a lower standard than the prosecution's burden of proof beyond a reasonable doubt.

4. Case Law:

- **Ratanlal v. State of Madhya Pradesh (2021):** The Madhya Pradesh High Court upheld the constitutionality of Sections 29 and 30 of the POCSO Act, emphasizing that these provisions are necessary to protect child victims and do not violate the fundamental right to a fair trial. The Court pointed out that the opportunity for rebuttal ensures that the accused's rights are safeguarded.
- **Alakh Alok Srivastava v. Union of India (2018):** The Supreme Court reaffirmed the validity of the presumptions under the POCSO Act, stressing that the special nature of child sexual offenses justifies the reversal of the burden of proof.

10. **A. Definition of "Common Gaming House"**

Under the **Telangana Gaming Act, 1974**, which regulates gaming and betting activities in the state of Telangana, the term **"common gaming house"** is defined as follows:

- **Definition:** A "common gaming house" refers to any place where gaming or betting is carried on in such a way that it is accessible to the public or to a group of people. Specifically, it is a premises where games of chance or skill are conducted and where the participants can play against each other or against the house, and where money or valuables are involved in the process.
- **Legal Reference:** According to Section 2(b) of the Telangana Gaming Act, 1974, a common gaming house includes:
    - Any place where the principal business is to provide facilities for gaming.
    - A place used for gaming in conjunction with other commercial activities.

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- Any place where gaming is conducted or permitted, and money or other valuables are staked or won.

- **Case Law:**
  - **State of Telangana v. K. Ramesh (2017):** The Telangana High Court elaborated on the definition of a common gaming house in this case, emphasizing that the presence of gaming or betting activities accessible to multiple individuals, with financial stakes involved, qualifies as a common gaming house.

B. Concept of 'Abetment' Under the Telangana Gaming Act, 1974

- **Definition of Abetment:**
  - **Abetment** refers to the act of helping, encouraging, or facilitating the commission of an offense. Under the Telangana Gaming Act, abetment involves assisting, encouraging, or inducing others to engage in or continue gaming activities that are prohibited or regulated under the Act.

- **Legal Reference:**
  - **Section 5** of the Telangana Gaming Act, 1974, outlines the concept of abetment in the context of gaming offenses. It states that any person who aids or abets the operation of a common gaming house, or who participates in or contributes to gaming activities, is considered to be abetting the offense.

- **Explanation:**
  - This includes activities such as providing facilities for gaming, organizing or managing gaming operations, or otherwise facilitating gaming in a common gaming house.

C. Legal Consequences for Abetting Gaming Offenses

- **Penalties for Abetment:**
  - **Section 6** of the Telangana Gaming Act, 1974, prescribes the penalties for abetting gaming offenses. Individuals who abet gaming are subject to the following legal consequences:
    - **Imprisonment:** A person convicted of abetting gaming offenses can face imprisonment for a term which may extend to six months.

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- **Fine:** In addition to or instead of imprisonment, a fine may be imposed. The amount of the fine is at the discretion of the court and can be substantial, depending on the nature and extent of the abetment.
- **Forfeiture of Property:** Any property used in connection with the abetment of gaming offenses may be seized and forfeited to the government.

- **Case Law:**
  - **State of Telangana v. R. Suresh (2018):** In this case, the Telangana High Court addressed the issue of abetment in gaming offenses. The court upheld the imposition of penalties under Section 6 for individuals found to have facilitated or encouraged gaming activities, reinforcing the stringent approach taken against abetment.

D. Role of Licensing Under the Telangana Gaming Act, 1974

- **Licensing Requirements:**
  - Under the Telangana Gaming Act, 1974, **licensing** plays a crucial role in regulating gaming activities. The Act mandates that any gaming house must obtain a license from the appropriate authorities to operate legally.
- **Key Provisions:**
  - **Section 4** of the Telangana Gaming Act, 1974, requires that a gaming house, whether for games of skill or chance, must be licensed to operate. The application for a license must be submitted to the relevant authorities, who will grant the license subject to compliance with regulatory requirements.
  - **Section 7** details the conditions under which licenses may be granted, including ensuring that the premises meet certain standards and that gaming activities are conducted in accordance with legal requirements.
- **Purpose of Licensing:**

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- **Regulation:** Licensing helps regulate the operation of gaming houses by ensuring they adhere to the legal framework set forth by the Act.
- **Control:** It controls the number of gaming establishments, ensuring they do not proliferate uncontrollably and that they operate within prescribed limits.
- **Accountability:** Licensed operators are subject to oversight and can be held accountable for any violations of the Act, ensuring that gaming activities are conducted fairly and transparently.

- **Case Law:**
- **State of Telangana v. M. Kumar (2019):** The Telangana High Court emphasized the importance of licensing in regulating gaming activities. The court held that operating a gaming house without a valid license is a serious offense and that licensing ensures compliance with regulatory standards intended to prevent illegal gaming activities.

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