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POCSO ^{Live}

Protection of Children from Sexual Offences

A quarterly insight to the POCSO Law!

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POCSO LIVE brings you updates and information relating to matters of protection of children from sexual abuse irrespective of gender. This is an effort to create awareness amongst all stakeholders having access to children about their duties and obligations towards protecting children from sexual abuse and keeping them safe.

Mandatory Reporting under POCSO ACT 2012

The Protection of Children from Sexual Offences (POCSO) Act, enacted in India in 2012, is a comprehensive law to provide for the protection of children from the offenses of sexual assault, sexual harassment, and pornography. It is important to understand the mandatory reporting obligations under this Act, as they play a significant role in safeguarding children from sexual abuse and exploitation.

Section 19 (1) of POCSO ACT states that - any person (including the child) who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to, --

- (a) the Special Juvenile Police Unit; or
- (b) the local police.

Section 20 further states that, "Any personnel of the media or hotel or lodge or hospital or club or studio or photographic facilities, by whatever name called, irrespective of the number of persons employed therein, shall, on coming across any material or object which is sexually exploitative of the child (including pornographic, sexually-related or making obscene representation of a child or children) through the use of any medium, shall provide such information to the Special Juvenile Police Unit, or to the local police, as the case may be."

Section 21 states –

1. Any person, who fails to report the commission of an offence under sub-section (1) of section 19 or section 20 or who fails to record such offence under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.
2. Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.

The provisions of section 21 (1) shall not apply to a child under this Act.

GOOD TO KNOW!

The Protection of Children from Sexual Offences (POCSO) e box is an online complaint registration mechanism developed by National Commission for Protection of Child Rights

To register the complaint –

1. Go to NCPCR website ncpcr.gov.in
2. Update the information as required and submit

Child victims themselves or their friends, parents, relatives or guardians can report cyber related crimes by pressing the e-box button available at the Commission's website, www.ncpcr.gov.in. They can also register their complaints on email id: pocsoebox-ncpcr@gov.in or mobile no.: 9868235077

Section 21 of POCSO Act, 2012 makes it mandatory to report the commission of an offence.

- A) **Who is mandated to report?** – Every person (including professionals like teachers, doctors, and social workers) who has knowledge or suspicion that a child has been sexually abused to report the matter.
- B) **What is to be reported?** – The nature of offences that the law covers including but not limited to sexual offences including sexual assault, sexual harassment, and the use of children for pornographic purposes. The details of known incident are to be reported.
- C) **How to report?** – Reporting can be made to the local police station, Special Juvenile Police Unit, Childline 1098 and also through e POCSO box
- D) **Anonymity and Confidentiality** – The identity of child is to be kept confidential.

Importance of Mandatory Reporting –

1. **Early Intervention** - Helps in early detection and intervention in cases of child sexual abuse.
2. **Prevention of Further Abuse** - Timely reporting can prevent further abuse of the child.
3. **Legal Action and Justice** - Facilitates legal action against perpetrators and ensures justice for the child.
4. **Creating Protective Environment for Children** - Mandatory reporting helps in creating a societal environment that is alert and protective of children

Violating the mandatory reporting requirements under the Protection of Children from Sexual Offences (POCSO) Act can have serious legal consequences. The Act makes it compulsory for individuals, especially professionals like teachers, doctors, and social workers, to report cases of child sexual abuse. This obligation is in place to ensure the protection and welfare of children, and failure to comply with it is viewed as a serious offence.

Role of Schools in Mandatory Reporting –

Apart from child's home, school plays an important role in creating nurturing environment for children where they learn and grow. School being the social institution outside family with which the child is constantly in contact with, school staff and management must take effective measures to protect children. Schools must train their staff in identifying signs and behavioural changes when a child is a victim of sexual abuse and must sensitively handle the information if a child shares any such.

Informing the parents about the child's experience of sexual abuse does not automatically release the schools staff/authorities/management/counsellors or others to whom the incident is known; from the responsibility of mandatorily reporting to the police station or nearest special juvenile police unit.

The objective of mandatorily reporting any such incidence is to ensure protection to the victim child and also protect other children who might possibly be the victim.

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Legal Consequences on not reporting –

1. Punishment for Non-Reporting – According to the POCSO Act, any person who fails to report the commission of an offence, or who fails to record such offense, shall be punished with imprisonment of either description which may extend to 1 year or with a fine or with both.
2. Offense by Institutions: If an institution (like a school, hospital, or care home) fails to report a case of child sexual abuse, the person in charge of the institution can be held responsible and penalized.

Implications for Professionals –

1. Professional Consequences: Professionals, such as doctors, teachers, or social workers, might face additional consequences beyond the legal ones. This can include disciplinary action by professional bodies, loss of professional licenses, or termination of employment.
2. Ethical Violations: For professionals bound by ethical guidelines, non-reporting can be considered a violation of professional ethics, leading to a tarnished reputation and loss of credibility in their field.

Social and Moral Implications

1. **Failure in Duty of Care:** Individuals, especially those in positions of trust and authority, have a moral and social responsibility to protect children. Not reporting is seen as a failure in this duty of care.
2. **Risk of Further Abuse:** Non-reporting can lead to continued abuse of the child, as well as the potential abuse of other children, as the perpetrator remains unchallenged.

Impact on the Child

1. **Continued Trauma and Abuse:** If abuse is not reported and addressed, the child continues to suffer, which can have long-term psychological, emotional, and physical impacts.
2. **Lack of Support and Justice:** The child may not receive the necessary support, counselling, or legal intervention, which is crucial for their recovery and for bringing the perpetrator to justice.

Violating the mandatory reporting provisions under the POCSO Act is a serious offense with legal, professional, and ethical consequences. It undermines the protection framework established for the welfare of children and can lead to continued harm and injustice for the victims of abuse. Therefore, it is imperative for individuals, especially professionals who regularly interact with children, to understand and comply with these reporting obligations.

NEWS CORNER –

Not reporting of sexual assault against a minor is a serious crime – Supreme Court

Facts of the case in Criminal Appeal No.1874 of 2022, state that the Doctor who was aware about the sexual abuse of 17 tribal girls staying in a girls hostel where he was appointed as Medical Practitioner for treatment of girls. The girls had stated in their statement of having informed him during medical check-up. The Doctor in charge was under legal obligation as per the provisions of section 19(1) of POCSO ACT. The Supreme Court stated, **“non-reporting of sexual assault against a minor child despite knowledge is a serious crime and more often than not, it is an attempt to shield the offenders of the crime of sexual assault”**.

It further stated that, “To achieve the avowed purpose, a legal obligation for reporting of offence under the POCSO Act is cast upon on a person to inform the relevant authorities specified thereunder when he/she has knowledge that an offence under the Act had been committed”

ABOUT THE AUTHORS

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Advocate Vaishali Bhagwat, is amongst the first technology lawyers in the country with prior qualification and working experience in the field of Computer Science, Cyber Defense and Information Assurance.

Her work also focuses on women and children's rights and has worked extensively on cases relating to violence against women and children including sexual violence. Vaishali is an external member on various ICC committees and has conducted several complex inquiries relating to sexual harassment at workplace. POSH awareness and capacity building workshops conducted by her are rich in content as she discusses various cases and draws on her experience dealing with inquiries and POSH related court litigation including criminal cases.

Vaishali has advised several organizations across varied sectors on POSH compliance, safety in virtual workplaces, cyber safety and is also regularly invited as an expert speaker/ panelist on this subject by various organizations providing POSH services.

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Thank you for reading!

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