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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.

Child Friendly Courts – Ensuring Justice with Sensitivity!

The Protection of Children from Sexual Offences (POCSO) Act, enacted in 2012, marked a significant milestone in India's legal framework, aimed explicitly at safeguarding children from sexual abuse and exploitation. Recognizing the particular vulnerabilities of child victims and witnesses, the Act mandates the establishment of child-friendly courts. These courts are designed not only to administer justice but also to do so in a manner that minimizes trauma and promotes the psychological well-being of children. In this article, we will explore the various facets of child-friendly courts under the POCSO Act, their implementation, and their impact on the justice delivery system.

Need for Child Friendly Courts -

Children who experience sexual abuse face immense psychological and emotional challenges. The legal process can exacerbate these challenges, especially if the environment is intimidating or insensitive to their needs. Traditional court settings, with their formal procedures and adversarial nature, can be particularly distressing for children. Recognizing this, the POCSO Act incorporates provisions to create a supportive and non-threatening environment for child victims and witnesses.

Provision for Child Friendly Courts under the POCSO Law –

- According to **Section 28(1)**, POCSO Act, State Governments should, in consultation with the Chief Justice of the High Court, designate a Sessions Court to be a **Special Court** to try offences under the POCSO Act, to facilitate speedy trial.
- According to **Section 32(1)**, the State Government should appoint a **Special Public Prosecutor** "for conducting cases only under the provisions of [POCSO] Act."
- **Section 33(1)**, POCSO Act, empowers the **Special Court to directly take cognizance of an offence** based on a complaint or upon a police report, without the accused being committed to it for trial
- **Section 33(2)**, POCSO Act, **prohibits the Special Public Prosecutor and the defence lawyer from putting questions to the child directly**. All questions during the examination-in-chief and cross examination must be routed through the Special Court

GOOD TO KNOW!

What is the 'Police Didi' Campaign'?

A campaign called 'Police Didi' was launched with the objective of creating awareness amongst the children and to build a trusting and friendly relationship between the Police and the children so that if ever an abuser tries to corner the children, they know how to deal with it and where to report.

In every school, a Police Didi or Police kaka is appointed who acts as a nodal officer for concerned and resolve issues related to ragging, molestation and other crimes related to children.

Under this campaign the children are advised to call 1091 when in distress so that their issues get resolved.

- As per the **Section 33(3)**, the Special Court may permit **frequent breaks for the child** during the trial
- As per the **Section 33(4)**, the “**child-friendly atmosphere**” of the courtroom can be created “by allowing a family member, a guardian, a friend or relative, in whom the child has trust or confidence, to be present in the court.”
- **Section 33(5)** States that the Special Court should ensure that **the Child is not recalled repetitively to testify in the court.**
- **Section 33(6)**, POCSO Act, **the Special Court should not allow aggressive questioning or character assassination** of the child and should ensure that dignity of the child is maintained during the trial
- **Section 33(7)**, The Special Court shall ensure that **the identity of the Child is not disclosed at any time during the trial**
- As per **Section 33(8)** The Special Courts shall prescribe for **immediate rehabilitation** as the case may be
- **Section 36(1)**, POCSO Act, requires the **Special Court** to ensure that **the child is not exposed to the accused** at the time of recording evidence, and for this purpose it can record the evidence using video conferencing, single visibility mirrors, curtains, or any other device.
- **Section 37**, The Special Court shall **try in Camera** and in the presence of parents of child or any other person in whom the child has trust or confidence
- **Section 38** is about taking the **assistance of interpreter** or expert while recording evidence of child if required and as the case may be

Key Features of Child Friendly Courts are –

1. Child Friendly Infrastructure –

- a) Separate Waiting Areas: These courts are equipped with separate waiting rooms for children to ensure they do not come into contact with the accused.
- b) Video Conferencing Facilities: To prevent the child from facing the accused directly, statements and testimonies can be recorded via video conferencing.
- c) Comfortable Environment: The courts are designed with child-friendly decor, toys, and books to create a more relaxed atmosphere.

2. Special Training for Stakeholders –

- a) Judges and Prosecutors: Special training is provided to judges and prosecutors to handle cases involving children with sensitivity and understanding.
- b) Support Staff: Counsellors and support staff are trained to provide emotional and psychological support to child victims throughout the judicial process.

3. Procedural Modifications –

- a) In-Camera Trials: To protect the child's privacy, the POCSO Act mandates in-camera trials where the public and media are not allowed.
- b) Ease of Testimony: The Act allows for the child's testimony to be recorded in a child-friendly manner, using simple language and without aggressive cross-examination.

4. Psychological Support –

- a) Counselling Services: Dedicated counselling services are available to help children cope with the trauma and stress associated with legal proceedings.
- b) Support Persons: A support person, preferably known to the child, can accompany the child to the court to provide emotional comfort.

Implementation and Challenges

While the concept of child-friendly courts is commendable, its implementation across India has faced several challenges:

- 1. Infrastructural Constraints:**
Many districts lack the necessary infrastructure to establish child-friendly courts. Resource allocation and funding remain significant hurdles.
- 2. Training and Sensitization:**
Consistent and comprehensive training for all judicial officers, police personnel, and support staff is crucial. However, the quality and reach of these training programs vary significantly across regions.
- 3. Awareness and Accessibility:**
Awareness about the existence and functions of child-friendly courts is limited among the general public. Ensuring that all stakeholders, including parents and guardians, are aware of these provisions is essential for effective utilization.
- 4. Monitoring and Evaluation:**
Continuous monitoring and evaluation mechanisms are needed to assess the functioning of child-friendly courts and identify areas for improvement.

The establishment of child-friendly courts under the POCSO Act represents a progressive step towards ensuring justice for child victims of sexual offences while safeguarding their mental and emotional well-being. While challenges remain in terms of infrastructure, training, and awareness, the positive impact of these courts cannot be overstated. With continued commitment and resources, child-friendly courts can serve as a model for other jurisdictions, ensuring that the legal system is both just and compassionate towards its youngest and most vulnerable members.

NEWS CORNER –

Strict proof for determining Age not required in every case of Child Pornography – Kerala High Court

The High Court of Kerala ruled that Strict age proof is not necessary in every child pornography, emphasizing the anonymity of the internet. The Court's decision focused on balancing the need for stringent measures against child pornography with the practical limitations of establishing the age and identity of models depicted in such material.

The Honourable Court underscored the legislative intent behind the provisions prohibiting child pornography and the need to interpret them in a manner that aligns with societal norms and values. The Court further outlined guidelines for determining the age of models in pornographic material, emphasizing the role of expert opinion when necessary.

NEWS CORNER –

It is a case of Romeo Juliet – Madras High Court Quashes Case Against Man Accused of Kidnapping Teenager

The Madras High Court quashed a case registered against a man who was accused of kidnapping a teenager after noting that it is a case of 'Romeo and Juliet' which ended successfully in marriage.

The Court noted that the judicial system has to deal with the strict compliance of law to be enforced in these cases or with humanitarian reasons, it has to be dealt with. The Court said that if the prosecution is not quashed, instead of protecting the minor girl, who attained majority, it will create vulnerability for her and force her to exploitation, which precisely intends to be prevented under the POCSO Act.

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 has done extensive work in creating awareness amongst stakeholders in keeping children safe online and her work was recognized by the DSCI NASSCOM Award and also by Rotary International in Seoul

Vaishali is on the advisory board of several educational and academic institutions for POCSO related services of drafting and implementation of the Child Protection Policy and training of the members of the child protection committee.

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Thank you for reading!

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