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POCSO ^{Live}

Protection of Children from Sexual Offences

A quarterly insight to the POCSO Law!

By VP Shintre and Associates

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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.

General Principles under POCSO Act, 2012!

The Protection of Children from Sexual Offences (POCSO) Act, enacted in 2012, has in its Preamble laid down certain guiding principles for all state governments, the Child Welfare Committee, the police, special courts, non-governmental organizations, all professionals, experts, governmental organizations who are assisting the child at pre-trial and trial stages.

These principles are –

1. **Right to Life and Survival** – Every child has the right to life and survival and the right to be protected from any hardship, abuse or neglect where it also includes – physical, psychological and emotional abuse or neglect. In cases where a child is a victim of abuse, steps should be taken to enable healthy development of the child.
2. **Best interest of child** – Every child has the right to have his/her best interest given primary consideration. This includes the right to protection and an opportunity to harmonious development. Protecting child's best interest does not only mean protecting the child from re-victimisation while in the process of justice but also to be able to enhance the child's capacity to contribute to the process.
3. **The right to be treated with dignity and compassion** - Child victims should be treated with utmost care and in a sensitive manner throughout the judicial process, taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity. Interference in the child's private life should be limited to the minimum needed and information shared on a need to know basis. Efforts should also be made to reduce/avoid further hardship to the child throughout by maintaining a child-friendly environment. All interactions should also take place in a language that the child uses and understands. Medical examination should be ordered only where it is necessary for the investigation of the case and is in the best interests of the child and it should be minimally intrusive.

GOOD TO KNOW!

Sakhi Savitri Committee

In Maharashtra, the Schools are mandated to form a Sakhi Savitri Committee which will constitute the members as below –

1. Representative from School Management (serves as Chairperson to this Committee)
2. School Principal (Serves as Secretary)
3. Female teachers
4. Counsellors
5. Female Medical Specialists
6. Anganwadi worker
7. Police officer
8. Female Gram Panchayat Members
9. Parent Representatives (2 parents)
10. Students (one girl and one boy)

Role –

1. Helping students who have dropped out of school re-enter the educational system
 2. Providing counselling to students and parents if required. Organizing Workshops for parents on Parenting as a part of creating awareness regarding Child Rights
 3. Offer information on Government education schemes
 4. Organize Self-defence training programs
 5. Raise awareness regarding child marriages
 6. Promote Healthy habits in children and provide career guidance
 7. Create awareness on reporting child abuse
- Defaulting on constituting Sakhi Savitri Committee may lead to severe implications on school

4. Right to be protected from discrimination - The justice process and support services available to child victims and witnesses and their families should be sensitive to the child's age, wishes, understanding, gender, sexual orientation, ethnic, cultural, religious, linguistic and social background, caste and socio-economic condition, as well as to the special needs of the child, including health, abilities and capacities. Professionals should be trained and educated about such differences. Age should not be a barrier to a child's right to participate fully in the justice process. Every child should be treated as a capable witness, according to his/her age and level of maturity.

5. Right to be treated with dignity and compassion - Child victims should be treated with care and sensitivity throughout the judicial process. Their information related to personal situation like their immediate needs, age, gender, disability, maturity; should be taken into account. Interference in child's personal life should be limited and only on need to know basis. Efforts should be made to reduce the further hardships of the child by maintaining child friendly environment.

6. Right to special preventive measures – Children are more vulnerable as they are not sure of how to protect themselves and take a strong position unlike adults. Hence, taking preventive measures is inevitable to create protective environment for them. Preventive measures like doing a background check before hiring a professional working with children can be an example.

7. Right to be informed – Informing the child victims and witnesses about the assistance on legal proceedings, and knowing the status of the case, progress, scheduling of the proceedings and about decisions rendered is a part of their right to be informed.

8. Right to be heard and express views and concerns - Every child has the right to be heard in respect of matters affecting him/her. The child has a right to participate at all levels: being informed, expressing an informed view, having that view taken into account, and being the main or joint decisionmaker. When, for any good reason, the requirements and expectations of the child cannot be met, it needs to be explained to the child, in a child-friendly way, why certain decisions are made, why certain elements or facts are or are not discussed or questioned in Court and why certain views are not taken into consideration. It is important to show respect for elements that a child finds important in his/her story, but which are not necessarily relevant as evidence.

9. Right to effective assistance - The child must receive the required assistance to address his/her needs and enable him/her to participate effectively at all stages of the justice process. This may include assistance and support services such as financial, legal, counselling, health, social and educational services, physical and psychological recovery services and other services necessary for the child's healing, as well as for justice and reintegration.

10. Right to privacy - The child's privacy and identity must be protected at all stages of the pre-trial and trial process. The release of information about a child victim or witness, in particular in the media, may endanger the child's safety, cause the child intense shame and humiliation, discourage him from telling what happened and cause him severe emotional harm. Release of information about a child victim or witness may put a strain on the relationships of the child with family, peers, and community, especially in cases of sexual abuse.

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11. **Right to Justice** - - Throughout the justice process, child victims are exposed to hardship, akin to being victimized again: this can occur while reporting the crime and recounting what has happened, or awaiting trial or while testifying in court. The judicial process is a very stressful one for the child; as far as possible, any stress the child may have as a result of the process should be minimized.

12. **Right to safety** - Where the safety of a child victim may be at risk, appropriate measures should be taken to require the reporting of those safety risks to appropriate authorities and to protect the child from such risk before, during and after the justice process. Professionals should be trained in recognizing and preventing intimidation, threats and harm to child victims and witnesses. Where child victims and witnesses may be the subject of intimidation, threats or harm, appropriate conditions should be put in place to ensure the safety of the child

13. **Right to compensation** - The child victim may be awarded compensation for his/her relief and rehabilitation. This compensation may be awarded at an interim stage, during the pendency of trial, as well as at the conclusion of the trial. Procedures for obtaining and enforcing reparation should be readily accessible and child sensitive. Victims may be repaid for material losses and damages incurred, receive medical and/or psychosocial support, and obtain reparation for ongoing suffering

Understanding Child Sexual Abuse!

The Protection of Children from Sexual Offences Act, 2012; section 2 (1) (d) defines Child as any person below 18 years of age. The CSA or Child Sexual Abuse is a broad term used to describe sexual offences against children. Child Sexual Abuse is use of children for sexual gratification or involving children in sexual activities for his/her sexual gratification/satisfaction and/ or for commercial gain or both. The Child Sexual Abuse is of two types namely, viz., -

1. **Contact Abuse** – Cases where there is physical contact between the offender and child such as penetrative sex, fondling of the child’s genitals or making the child touch the offender’s genitals, touching any part of the child’s body, etc
2. **Non-Contact Abuse** - Child Sexual Abuse can also occur without contact between the offender and the child such as showing pornographic videos or pictures to the child, using the child in pornographic material, verbal abuse, making lewd gestures to the child, playing sexualized games, stalking the child or chatting with sexual intent with the child over the Internet, etc.

Children are often scared to report or even to tell about the abuse to anyone. It becomes imperative to understand what are the causes of Child Sexual Abuse

Causes –

1. **Taboo around discussing sex and sexuality** – Adults find it difficult to answer the questions from children about sex and sexuality. In the absence of teaching and appropriate knowledge, ignorance and myths around sexuality pervade. This leaves children at risk. These taboos lead to silence and shame around this issue where often children are not reporting about the abuse due to these reasons
2. **Tolerance to Gender Based Violence** - Representation of women in popular media and the stereotypes perpetrated by popular films play a role in desensitizing our population towards gender-based violence against women and young girls.
3. **Culture that believes Adults over Children** - Children are viewed as not yet fully developed citizens. Their values and voices are mostly absent in public discourses on issues that directly have an implication on them. They are taught to ‘respect’ the absolute authority of adults without even the slightest critical engagement. Their opinion may be regarded as ‘disrespectful.’ Thus, a child who is a victim of sexual abuse is often never believes that an adult could do this to him/her. Often parents and community consider it the ‘child’s fault’ if sexual abuse happens.

Reasons for Non-Reporting of Child Sexual Abuse –

1. **Victim Blaming** - A clear perspective on who is the victim and who is the offender is lost in the details, while there is too much focus on peripherals like what the victim was wearing, what time of the night it was when she went out, who was accompanying her, did she give consent to the sexual activity etc.
2. **Real and Perceived threat to victim and family** - When we put a culture of sexual taboos together with one of victim blaming it becomes clear why most victims are reluctant to report. They are afraid being stigmatized by the community. Even as society passes a moral judgment on the character and dignity of the victim, the offender who may be occupying a position of power vis-à-vis the victim, will threaten the victim and/or family with (sometimes violent and life threatening) consequences if the offence is reported
3. **90% abusers are people whom victims used to trust** – This throws child into an emotional and mental trauma and makes it difficult for the child to cope up with the circumstances and move on in life. It also is difficult to go against such people as the child is not in a position to help himself/herself
4. **Fear of Stigma and Shame** - Victims and their families often fear being judged or ostracized by society. Cultural and social taboos surrounding discussions of sexuality can exacerbate the stigma
5. **Lack of Awareness** – Some victims may be able to recognize what has happened with them and many people are not aware of legal avenues where they can report about it
6. **Institutional barriers** - Lack of child-friendly reporting mechanisms or resources can make the process daunting. Corruption or inefficiency in law enforcement and judicial systems can undermine trust in authorities.

Addressing these barriers requires a multifaceted approach that includes raising awareness, fostering supportive environments, strengthening legal and institutional frameworks, and ensuring access to trauma-informed care.

Steps for Reporting Child Abuse –

1. The responder must remove the bias and stigma from their minds first before interacting with the child and receive the information from the child by hearing with full attention
2. Treat the child without judgment and with utmost empathy, providing comfort and assurance that they are safe now. Reassure the child that you believe in him/her.
3. Provide medical assistance if required. Respond by supporting the child wherever required. Record the details that the child shares with you, make notes of the information received
4. Inform the child about the procedure that will be followed after the abuse is reported to police. While providing information about the applicable/relevant laws one must keep in mind the age and level of understanding of the child and explain accordingly with utmost sensitivity. Take help of the counsellor if required.
5. Even though the POCSO Act does not require the consent of the child to report such abuse, it is better to let the parents or the guardians of the child know about the abuse and counsel them about the further procedure to be followed in the process of justice
6. Report immediately to the nearest police station within 24 hours
7. The first responder can file an FIR and contact national helpline no:1098 known as CHILDLINE. One can also file a complaint on POCSO-E Box (website link)
8. Explain to the child how legal proceedings will follow after the complaint/FIR as give an idea and prepare the child for the further steps.
9. Encourage counselling and connect with an NGO for assistance.

Having laws in place to provide remedies is not enough; adequate sensitization and appropriate steps to access legal remedies must be prioritized, as this paves the way to justice.

NEWS CORNER –

Failure to Report Commission of POCSO Offence to Police within 24 hours would attract offence – Kerala HC

The Kerala High Court observed that if there is omission even after getting information to report the commission of crime under POCSO Act to the Police at least within 24 hours, the offence punishable under the POCSO Act.

The Court mentioned that, “it is emphatically clear that a duty is cast upon a person, who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, to provide such information to the Police. But, when a person notices that an offence under the POCSO Act has been committed and failed to inform the same within a reasonable time, definitely he is said to have committed offence punishable under Section 19(1) of the POCSO Act.”

NEWS CORNER –

Rape, Acid Attack and POCSO Case Survivors must be provided free medical treatment by all hospitals – Delhi High Court

The Delhi High Court has recently ruled that victims of rape, acid attack and sexual attacks as well as POCSO cases survivors are to be provided free medical treatment in all government and private hospitals and nursing homes. The word “treatment” would include first aid, diagnosis, in-patient admission, continued out-patient assistance, diagnostic tests, lab tests, surgery if required, physical and mental counselling, psychological help, family counselling, etc. The bench directed that whenever any victim or survivor of the offences in question approaches a medical facility, diagnostic lab, nursing home or hospitals, such victim or survivor shall not be turned away without providing free medical treatment.

NEWS CORNER –

School Head arrested in child abuse case

As per the news in Times of India dated 20th December, 2024; the School director of a school where a dance teacher was alleged of child abuse was arrested. The parents demanded action against the school authorities and it was found out that several discrepancies in the school like security measures not being up to date and that teacher’s character certificates/police verification certificate was not being obtained before recruitment.

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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.

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