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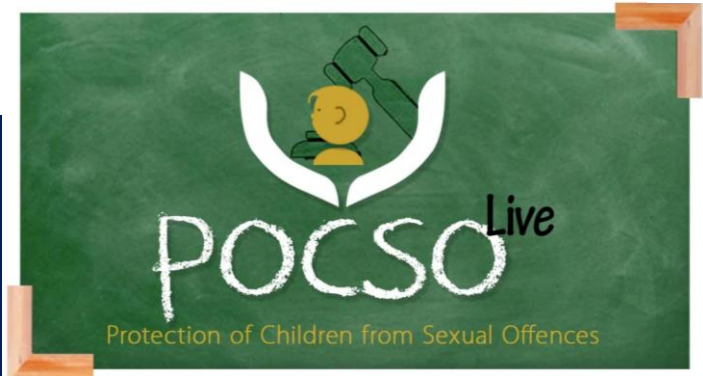
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A quarterly insight to the POCSO Law!

By V.P Shintre & 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.

Recording of Evidence under the POCSO Act: Safeguarding the Child, Strengthening Justice

The **Protection of Children from Sexual Offences (POCSO) Act, 2012** is a landmark legislation in India designed to address sexual offences against children with sensitivity, speed, and fairness. One of the most critical aspects of this law is the **recording of evidence**, which directly impacts both the child's well-being and the outcome of the case. Recognizing the vulnerability of children, the Act lays down child-friendly procedures to ensure that the process of justice does not become a second trauma. Some important points for consideration on this topic are -

1. Child-Centric Approach to Evidence Recording

Under the POCSO Act, the process of recording evidence is designed to be **non-intimidating and supportive**. The law acknowledges that children may feel fear, shame, or confusion while recounting traumatic experiences. Therefore, it mandates that evidence be recorded in a manner that ensures **comfort, dignity, and psychological safety** of the child.

2. Role of the Police in Recording Statements

The Act provides specific guidelines for police officers while recording the statement of a child:

- The statement should be recorded at the **child's residence or a place of their choice**, not necessarily at a police station.
- As far as possible, the statement should be recorded by a **woman police officer**, not below the rank of Sub-Inspector.
- The officer must be in **plain clothes** to avoid intimidation.
- The child should not be detained in the police station at night.

This approach reduces the fear associated with formal legal environments and encourages the child to speak freely.

3. Assistance of Parents and Support Persons

The presence of a parent, guardian, or a trusted individual during the recording of evidence is permitted to provide emotional support. Additionally, the court may appoint a support person or interpreter if needed, especially in cases involving children with disabilities or language barriers.

GOOD TO KNOW!

What is POSHAN Abhiyan?

POSHAN Abhiyaan is a program launched by Women and Child Ministry to achieve improvement in the nutritional status of Children from 0 to 6 years, Adolescent Girls, Pregnant Women and Lactating Mothers.

It aims to ensure and facilitate the convergence of all the schemes that can improve the nutritional status of the country, this is done by convergence committees constituted from the block up to the state level. The Mission will monitor and review the implementation of all such schemes through monitoring dashboards. An ICT based Real-Time Monitoring (ICT-RTM) tool has also been rolled out at the Anganwadi level, under which mobile phones pre-loaded a specialized application has been provided to all Anganwadi Workers. The mission also aims to spread awareness through Community-Based Events (CBE) and campaigns under the 'Jan Andolan' initiative.

<https://poshanabhiyaan.gov.in/>

4. Recording of Evidence by the Magistrate

The statement of the child can be recorded by a Magistrate under **Section 164 of the Code of Criminal Procedure (CrPC)**. The POCSO Act emphasizes:

- Prompt recording of statements to preserve accuracy.
- Use of **audio-video recording** wherever possible.
- Ensuring that the child is not exposed to the accused at this stage.

This step strengthens the evidentiary value and reduces chances of later contradictions.

In the **XYZ Vs. State of Madhya Pradesh and others, The Honourable Supreme Court** stated that under Section 156 (3) of CrPC; **“In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same.”**

5. Special Courts and In-Camera Proceedings

POCSO mandates the establishment of **Special Courts** for speedy trials. These courts follow procedures such as:

- **In-camera trials**, meaning proceedings are not open to the public.
- Ensuring that the child does not have to face the accused directly.
- Allowing **frequent breaks** during testimony to reduce stress.
- Prohibiting aggressive or character-assassinating cross-examination.

The judge plays an active role in maintaining a child-friendly atmosphere.

For instance, Section 327 CrPC provides for in camera trials to be conducted with respect to offences punishable under Sections 376, 376A, 376B, 376C or 376D of the Penal Code, 1860.

6. Use of Technology in Evidence Recording

To minimize repeated questioning, the law encourages:

- **Video recording of statements**, which can be used during trial.
- Use of **video conferencing** to avoid physical presence in court.
- Avoidance of repeated medical examinations or interviews.

This reduces re-traumatization and preserves the integrity of the child's testimony.

7. Timelines and Speedy Trial

The POCSO Act emphasizes **time-bound recording of evidence**. The evidence of the child should ideally be recorded within **30 days of the court taking cognizance**, and the trial should be completed within **one year**, ensuring swift justice.

In **Atul Gorakhnath Ambale Vs. State of Maharashtra, Bombay High Court**; states –

“First and foremost, it is pertinent to note that under Section 35(1) of the POCSO Act, the evidence of the child/victim is to be recorded by the Special Court within a period of 30 days of taking cognizance of the offence and reasons for delay, if any, are to be recorded by the special Court. Sub-section (2) mandates that the Special Court shall complete the trial as far as possible within a period of one year from the date of taking cognizance of the case. Having regard to the large number of cases under the POCSO Act and paucity of Judges, it may not be possible to complete the trial as far as possible within one year from the date of taking cognizance of the case and therefore, in cases such as POCSO, where the child/victim is young, it is imperative that the learned Judge should record at least the evidence of the child/victim, as expeditiously as possible, lest the minor forgets the incident due to passage of time. Younger the child/victim, earlier the recording and strict adherence to sub-section (1) of Section 35 of the POCSO Act.”

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8. Protection of Identity and Confidentiality

The identity of the child must be kept **strictly confidential**. Media reporting is restricted, and any disclosure of identity is punishable under law. This ensures the child's dignity and social protection.

9. Challenges in Implementation

Despite progressive provisions, challenges remain:

- Lack of trained personnel to handle child victims sensitively.
- Inadequate infrastructure for video recording.
- Delays in trial due to case backlog.
- Social stigma and pressure on victims.

Addressing these gaps requires continuous training, awareness, and systemic improvements.

Courts in India, including the Supreme Court of India, have played a crucial role in strengthening the process of recording evidence under the POCSO Act by issuing detailed, child-centric guidelines. Through various judgments, the Court has emphasized that the testimony of a child must be recorded in a **sensitive, non-intimidating, and child-friendly environment**, ensuring that the child is not re-traumatized during the process.

Supreme Court has given Guidelines for recording evidence of victim of Sexual Offence in XYZ Vs. State of Madhya Pradesh and others, which are as follows –

1. Allowing proceedings to be conducted in camera, where appropriate, either under Section 327 CrPC or when the case otherwise involves the aggrieved person (or other witness) testifying as to their experience of sexual harassment/violence
2. Allowing the installation of a screen to ensure that the aggrieved woman does not have to see the accused while testifying or in the alternative, directing the accused to leave the room while the aggrieved woman's testimony is being recorded
3. Ensuring that the counsel for the accused conducts the cross-examination of the aggrieved woman in a respectful fashion and without asking inappropriate questions, especially regarding the sexual history of the aggrieved woman. Cross-examination may also be conducted such that the counsel for the accused submits her questions to the court, who then poses them to the aggrieved woman
4. Completing cross-examination in one sitting, as far as possible

Further, while giving guidelines on recording evidence under POCSO Act, The Bombay High Court, in CRIMINAL PUBLIC INTEREST LITIGATION NO. 1 OF 2016; Sangita w/o Yeshwant Tanpure Vs The State of Maharashtra; states –

1. It is noticed that while framing of charge, recording evidence, recording statement of accused under section 313 of the Code of Criminal Procedure, name of the victim is disclosed. Therefore, while framing charge, mentioning name of the victim should be avoided. Instead, he/she should be referred to as 'X' or any other alphabet the Court deems fit and proper.
2. The name of the witness should not be disclosed. Her name, place of residence, age, occupation shall be kept in a sealed cover and in the name column, she can be referred in the same manner described while framing charge keeping the address column, occupation column blank.

Supreme Court Guidelines for the recording evidence of child witnesses through Video conferencing, In Re Children in Street Situations –

1. It is suggested that testimony of children, who are victims of inter-state/inter-district child trafficking, is recorded through video conferencing either at the video conferencing room of the court complex in the district or vulnerable witness room in the court complex of the district or the office of DLSA in the district where the child is residing.
2. When an offence of inter-state/inter-district child trafficking is taken up for trial by a Court, and if the Court point and the remote point have video conferencing facilities, the Trial Court should ordinarily give preference to examination of the child witness through video conferencing.
3. The authorized officer at the Court Point may get in touch with the RPC at the Remote Point and work out all modalities for recording of the child witness statement through video conferencing.

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4. The child witness shall be entitled to the presence of a support person as defined in the Protection of Children from Sexual Offences Rules, 2020 or any other applicable laws/guidelines or as allowed by the Trial Court. Further, best practices that are required to be followed in recording the evidence of child witnesses should continue to be followed even during the recording of the testimony through video conferencing. These include, ensuring that the child witness is provided diet money on the basis of the distance travelled by him or her to reach the remote point, the presence of a police officer at the remote point to ensure that the child witness does not come in contact with the accused (if out on bail) or any relative of the accused, and any other best practice required by the law/relevant guidelines/being followed by the States.

5. Copy of documents, if any, required to be marked or shown to the witness may be transmitted by the Court electronically to the RPC. The RPC at the Remote Point would assist in examination of the witness and ensure that no tutoring takes place and no unauthorized person or recording device is present in the room

6. The RPC may take all measures possible and shall seek the assistance of the support person to ensure that the child witness is comfortable. Questions posed by the Public Prosecutor/Defence Counsel may be put to the Ld. Trial Judge, who in turn will put them to the witness and the Trial Court would record the testimony of the witness. The RPC may help with translation or take the assistance of a translator/special educator if required or render any other assistance which the Learned Trial Court may require

7. On completion of recording of evidence, the deposition will be sent by the Trial Court on email to the RPC at the Remote Point who shall take a print-out and read the same out to the witness. After ascertaining the deposition is correct and verified as under law including the affixation of the child's thumb impression/signature, the RPC may certify the same and send the deposition back, in a secure manner, to the Trial Court by Speed Post and by electronic means as permitted by law. An original may also be kept by RPC in case the Speed Post is misplaced for some reason.

8. Whenever a Trial Court proposes to record the testimony of a child witness, who is residing in another State, an intimation of the same should also be given to the Registrar of the High Court of the Court point. The Ld. Registrar may intimate the same to the Ld. Registrar of the High Court of the Remote Point with a request to render all assistance possible for recording of the testimony of the child.

We can thus say that Courts have encouraged the use of video conferencing, in-camera proceedings, and support persons, while strictly discouraging repeated questioning and aggressive cross-examination. The judiciary has also stressed the importance of timely recording of evidence, proper training of judicial officers, and the use of special courts to maintain the dignity and psychological well-being of the child. These guidelines collectively aim to make the justice delivery system more responsive, humane, and effective in cases involving child victims.

NEWS CORNER –

POCSO and Rape charges cannot be used to punish consensual relationship with girl near 18 years - Delhi High Court grants bail

Considering the case of a "romantic relationship" based on consent, The Delhi High Court has granted bail to a youth booked under POCSO Act. The accused had already spent over two years behind the bars, while the girl's bone ossification test revealed that she was on the verge of attaining majority when she had the relationship. These two factors convinced the Court to intervene. While pointing out that a minor's consent for sexual relationship has no value in the eyes of the law, the Court stated, "taking her age as 17 years, it prima facie appears that she was of sufficient maturity and intellectual capacity, and her romantic involvement with petitioner is one of the considerations which tilts the balance in the favour of the petitioner for the purpose of granting bail."

Supreme Court on POCSO and Adolescence intimacy

A recent decision of the Supreme Court in *State of Uttar Pradesh v. Anurudh & Anr.* (2026 INSC 47) is an illustration of today's social milieu. In the post-script, the Supreme Court explicitly conceded the increased abuse of the POCSO Act, in situations of romantic and consensual adolescent relationships. More importantly, it recommended that the Union Government think about bringing narrowly defined, the so-called, 'Romeo-Juliet' clause, which certain jurisdictions recognised inter alia the US, Germany, Australia to exempt any close-in-age relationships between adolescents from the severe impact of criminal charges. This observation is one of the most explicit judicial acknowledgements of the conflict between the generality of the criminal law and the particularity of adolescent experience.

The key issue to the Court is the approach through which POCSO considers any sexual act between minors as exploitative regardless of circumstances, consent or even age proximity. This model breaks down important differences between predation and affection, coercion and companionship into one type of criminality. Consequently, sexual relations between teenagers (typically separated by a year or two) are tried under POCSO. In most instances, POCSO is not called upon by the minor herself but by a parent or a guardian who is likely trying to punish, discourage or break a relationship, which he or she does not approve of. Criminal process thereby turns into a form of implementing the family authority instead of averting the abuses. The post-script by the Supreme Court recognises this fact: That a legislation, which was meant to safeguard children, is being actively used to criminalise teenage intimacy.

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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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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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