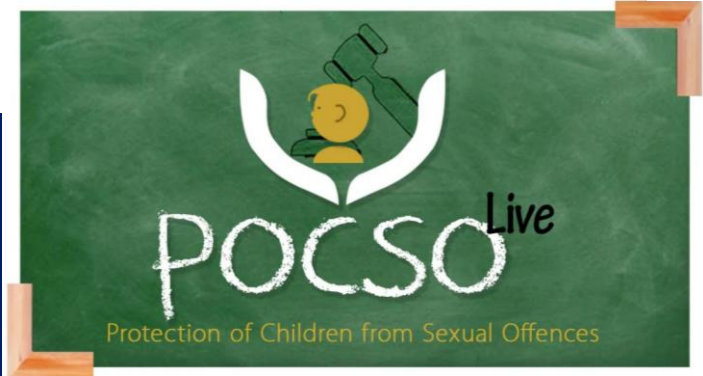




A quarterly insight to the POCSO Law!

By V.P Shintre & Associates

www.vaishalibhagwat.com

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.

Understanding the Duties of Support Persons, Social Workers and Other Child-Support Professionals under POCSO Act 2012

When a child suffers from sexual abuse, an entire family suffers along with the child. The journey from registering FIR to stand in the court of law is often confusing, frightening and overwhelming. At such a time, a **Support Person** who is a **Social Worker, Probation Officer, NGO or other person appointed by the Child Welfare Committee** can play an important role in helping the child and family understand and navigate the process. POCSO Act, 2012 prescribes this provision through its section 39 and Rule 4(7) which states as below-

Section 39 of POCSO Act 2012

"Subject to such rules as may be made in this behalf, the State Government shall prepare Guidelines for use of Non-Governmental Organizations, professionals, experts, or persons having knowledge of psychology, social work, physical health, mental health, and child development to be associated with the pre-trial and trial stage to assist the child."

Rule 4(7) of POCSO Act 2012

"The Child Welfare Committee, on receiving a report under sub-section (6) of section 19 of the Act or on the basis of its assessment under sub-rule (5), and with the consent of the child and his/her parent or guardian or other person in whom the child has trust and confidence, may provide a support person to render assistance to the child through the process of investigation and trial. Such support person may be a person or organisation working in the field of child rights or child protection, or an official of a children's home or shelter home having custody of the child, or a person employed by the DCPU:

Provided that nothing in these rules shall prevent the child and his/her parents or guardian or other person in whom the child has trust and confidence from seeking the assistance of any person or organisation for proceedings under the Act."

IN THIS ISSUE

Articles –

Understanding the Duties of Support Persons, Social Workers and Other Child-Support Professionals under POCSO Act 2012

News Corner –

Muslim Marriage cannot override POCSO Law – Delhi High Court

Good to know –

Supreme Court Issued Nationwide Safeguards to prevent misuse of POCSO in matrimonial and custody disputes

Disclaimer

This newsletter does not intend to advertise or solicit work and is for private circulation only. This newsletter is for the purpose of education and creating awareness on POCSO law and its latest developments. It does not intend to be comprehensive nor intends to provide any legal advice. Though every effort is made to share accurate, reliable and current information, POCSO LIVE is not responsible for any errors or omissions in information made available through this Newsletter. Sharing of this Newsletter does not intend to create attorney – client relationship between authors and reader.

GOOD TO KNOW!

Supreme Court Issued Nationwide Safeguards to prevent misuse of POCSO in matrimonial and custody disputes

The Safeguards would apply when
a) the alleged person is either a parent or a family member living with the child under the same roof and
b) matrimonial dispute exists between the parents

Safeguards are -

1. Investigating officers cannot make hasty or routine arrests under Section 35 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), the law governing when police may arrest a suspect without a warrant, without first establishing a genuine reason to believe that the crime was committed.
2. Before making an arrest or taking coercive steps, the police or Special Juvenile Police Unit (SJPU) must engage an expert in child and adolescent psychiatry or clinical psychology, in consultation with the District Child Protection Unit (DCPU), to independently evaluate the child victim.
3. The police must take the child mental health expert's evaluation report into consideration alongside other evidence before deciding whether there is sufficient justification to effect an arrest. When a parent approaches a special court with a direct private complaint under Section 33 of the Pocso Act, the judge must involve a child psychiatric expert to evaluate the child before deciding whether to take judicial note of the case and issue summons to the accused.

Thus, the support person may be appointed either by the Child Welfare Committee or by the child and his/her family themselves.

Rule 4(2) (e) of the POCSO Rules, 2012 states that it shall be the duty of the police official who receives a report of an offence to inform the child and his/her parent or guardian or other person in whom the child has trust and confidence of the availability of support services including counselling, and assist them in contacting the persons who are responsible for providing these services and relief. The police official should therefore inform the child and his/her parent, guardian or other person in whom the child has trust and confidence of the provision for engaging a support person to help him and his/her family through the trial and pre-trial process, and assist them in accessing these services.

Under Rule 4 (9) and (10) of the POCSO Rules, 2012 the Special Court is to be informed by the SJPU or local police station about the appointment and termination of support person. This reflects that the support person also has a role to play before the Special Court. The support person may be called upon by the Special Court to ascertain information about the child, such as whether the child is in a safe and protective environment, preferences of the child in a given situation. As the support person is required to assist the child through the entire process, s/he should also be present each time the child is required to attend before the Special Court.

In the Landmark Judgement of *We The Women of India v. Union of India*, Civil Writ Petition No. 1156 of 2021; Supreme Court opined that the need for support person should not be left to parents' discretion, and that the State has the obligation to provide support persons to victims under Protection of Children from Sexual Offences Act, 2012 ('2012'), which cannot be made optional. The Court had directed NCPCR to formulate model guidelines after due consultation with the Central and State Governments for the States and Union Territories to frame their rules respecting the support persons under Section 39 of POCSO Act.

But being a support person is not simply about being available to the child. It comes with an important responsibility—to protect the child's interests, dignity, safety and well-being throughout the process.

The Model Guidelines by NCPCR lay down some important principles that every person supporting a child should keep in mind. The duties as per these guidelines are –

1. Ensuring the continuation of education, including facilitating a change of school if required in the best interest of the child if the incident occurred at school, and obtaining the victim's last attendance records.
2. Assessing the presence of any threat, coercion or pressure and invoking victim/witness protection scheme as necessary.
3. Identifying if the child is in need of care and protection and alerting the CWC if the child should be moved to Child Care Institutions.
4. Ensuring the relocation of the victim, if required.
5. Conducting regular home visits to the child survivor.
6. Identify any specific requirements the child might have due to his/her disability and ensure these needs are met throughout the process.
7. To raise the concern in case the child friendly procedures (inter-alia child friendly court procedures) are not followed.
8. Informing the CWC in monthly report if the witness turns hostile, which shall thereafter be shared with the prosecution and the trial court. Failure to report such instances shall lead to inquiry against the corresponding Support Person.
9. Maintain confidentiality of all information pertaining to the child.
10. Addressing any concerns, the child and the family may have.

11. Accompany the child during statement recording, medical examination and trial. Accompanying the child victim to court, for compensation, bail, and prosecution evidence etc.
12. From the day support person is appointed, it is his duty to facilitate the child with medical assistance and treatment, counselling to come out of the trauma, and inform the victim about the availability of the legal aid assistance through DLSA, and the provision of interim compensation for medical and other expenses.
13. Address safety concerns that the child may have concerning the accused.
14. For a child without parental/familial support, the support person can play the major role by providing the assistance and access to protection, rehabilitation, reintegration, healing and justice to the child by informing and getting recommendations from CWC and concerned authorities.
15. Provide information promptly to the child and the family about the procedural steps involved in a criminal prosecution, which includes but is not limited to: the availability of public and private emergency and crisis services.;
 - (i) provision of private counsel as per Section 40 of the POCSO Act.
 - (ii) the procedural steps involved in a criminal prosecution;
 - (iii) the availability of victim's compensation benefits;
 - (iv) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;
 - (v) the arrest of a suspected offender;
 - (vi) the filing of charges against a suspected offender;
 - (vii) the schedule of court proceedings that the child is either required to attend or is entitled to attend;
 - (viii) the bail, release or detention status of an offender or suspected offender;
 - (ix) the rendering of a verdict after trial; and
 - (x) the sentence imposed on an offender.
16. Submit monthly updates to the CWC on the child's well-being, including physical, emotional, and mental health, collaborate with medical facilities for necessary care, and facilitate the child's education, potentially relocating them to a new school as needed.
17. The Support Person appointed shall be unbiased and impartial and shall disclose any real or perceived conflict of interest and shall render a complete and accurate interpretation or translation without any additions or omissions, in accordance with section 282 of the Code of Criminal Procedure, 1973 (2 of 1974).
18. For the purpose of tracking, and monitoring of each case assigned to him on the NCPDR's "POCSO Tracking Portal", the Support Person shall be provided with login credentials so as to facilitate the process of rehabilitation and upload the status on the portal.
19. The Support Person shall in coordination with the CWC, police and DCPU, take appropriate steps for the child's safety and security.
20. While dealing with the incest cases, the support person shall assist the child and the family in finding alternate residences and connect child with people who can provide support and facilitate relocation.
21. The support person, with the help of DLSA or public prosecutor, shall submit an application to the appropriate authority for the relocation of the victim and their family, if required.
22. The Support Person shall seek immediate assistance of CWC or the police if he believes that the child is under the influence of the accused and/or their associates and also intimate the same to the Court.
23. The Support Person shall assist the child in accessing facilities such as education, health services, and public distribution system.
24. That in cases where the child is pregnant, the Support Person shall connect the child with the hospitals to address to the child's healthcare needs. In cases where the child has contacted or is infected by Sexually Transmitted Infections or has become HIV positive then the support persons can connect the child to services and organizations with necessary expertise.
25. Normalization of the child's routine could often mean resuming education. The support person shall ensure that the child resume his or her studies and get the child enrolled for education by ascertaining when the child is ready to resume school and facilitate the same. If the child has dropped out of school, the same must be discussed and resolved, by encouraging the child to resume education. Support Persons can assist the child in accessing the Education Department's sponsorship programs.
26. A support person shall also assist the child in obtaining admission in connect child with people who can provide support and facilitate relocation.
27. The support person, with the help of DLSA or public prosecutor, shall submit an application to the appropriate authority for the relocation of the victim and their family, if required.
28. The Support Person shall seek immediate assistance of CWC or the police if he believes that the child is under the influence of the accused and/or their associates and also intimate the same to the Court.

.... continued on page 4

29. The Support Person shall assist the child in accessing facilities such as education, health services, and public distribution system.
30. That in cases where the child is pregnant, the Support Person shall connect the child with the hospitals to address to the child's healthcare needs. In cases where the child has contacted or is infected by Sexually Transmitted Infections or has become HIV positive then the support persons can connect the child to services and organizations with necessary expertise.
31. Normalization of the child's routine could often mean resuming education. The support person shall ensure that the child resume his or her studies and get the child enrolled for education by ascertaining when the child is ready to resume school and facilitate the same. If the child has dropped out of school, the same must be discussed and resolved, by encouraging the child to resume education. Support Persons can assist the child in accessing the Education Department's sponsorship programs.
32. A support person shall also assist the child in obtaining admission in government-run schools or private school as per requirement. The Support person shall also educate the family and the child regarding the child's right to receive free and compulsory education till completion of elementary education under the Right to Education Act, 2009.
33. In case of financial difficulty, support persons may connect the child and his/her family with philanthropic organizations or individuals willing to sponsor the child or refer to the government scheme in their region to fund their education, etc. while maintaining utmost confidentiality.
34. In cases where the child is not keen or is reluctant to resume school, the support person shall connect the child with vocational training/skill development center that help develop a skill that enables the child's financial independence.
35. Support person shall facilitate the family or the minor victim to obtain identity documents like Aadhar, PAN card, ration card, BPL card, and open bank accounts in coordination with and assistance from the CWC/ DCPU/CCI.
36. The Support Person shall assist the families in collecting documents related to the case, such as copies of the FIR, medical reports, statements, and charge sheet.
37. The Support Person to ensure Form A and B of POCSO Rules 2020 have been duly filled and submitted by Special Juvenile Police Unit (SJPU) before CWC and the victim and family are aware of the entitlements to receive information and services mentioned in Form A.

Supporting a child does not mean making decisions for the child or taking control of the child's story. It means helping the child understand the process, protecting their interests, respecting their dignity and ensuring that they do not have to face the system alone.

For a child, the right support can make a difficult journey feel a little safer.

NEWS CORNER –

Muslim Marriage cannot override POCSO Law – Delhi High Court

The Delhi High Court holds that “personal law may determine whether a marriage has been contracted”, but cannot create an exception to a criminal law where Parliament has provided none, dismissing a petition seeking quashing of an FIR registered against a man for rape under BNS and POCSO Act 2012.

The girl stated that she had married out of her will. The petitioners argued that under Muslim personal Law, a Muslim girl who has attained puberty was competent to marry and that the subsequent sexual relationship therefore could not attract criminal liability. The court rejected the contention, holding that POCSO fixes 18 as the age below which consent to sexual activity has no legal efficacy.

ABOUT THE AUTHORS

Adv Vaishali Bhagwat



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.

Vaishali is retained by several schools and NGO s for POCSO related work including litigation.

www.vaishalibhagwat.com

Mrudula Arjunwadkar

BSc., LLB, MPM



POSH and POCSO trainer

Helping organizations in end-to-end POSH Compliance, External member to IC, POSH trainings, POCSO First Responder Trainings