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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.

Protection of Children from Sexual Offences Act, 2012 (POCSO ACT) - SALIENT FEATURES

Introduction

Violence against children is widespread and remains a harsh reality for millions of children from all socio-economic groups in India. Both girls and boys in India face early marriage, domestic abuse, sexual violence, violence at home and in school, trafficking, online violence, child labour and bullying. All forms of violence, abuse and exploitation have lifelong consequences on children's lives. Hence their protection is a vital aspect of a healthy society, ensuring that children grow up in an environment where they feel safe, nurtured, and supported. In India, child protection has become a pressing concern due to the alarming rates of child abuse, particularly child sexual abuse.

Laws relating to child protection in India

India has a fairly comprehensive policy and legal framework addressing rights and protection for children, providing opportunities to ensure that all children have equal access to quality protection services. The core child protection legislation for children is enshrined in four main laws: The Juvenile Justice (Care and Protection) Act (2000, amended in 2015); The Prohibition of Child Marriage Act (2006); The Protection of Children from Sexual Offences Act (2012), and The Child Labour (Prohibition and Regulation) Act (1986, amended in 2016).

This article aims to provide an in-depth understanding of the Protection of Children from Sexual Offences (POCSO) Act and its relevance to protection of children from sexual abuse.

The Act provides a comprehensive legal framework for -

- the protection of children from sexual offences
- prosecution of offenders
- support for child victims.

GOOD TO KNOW!

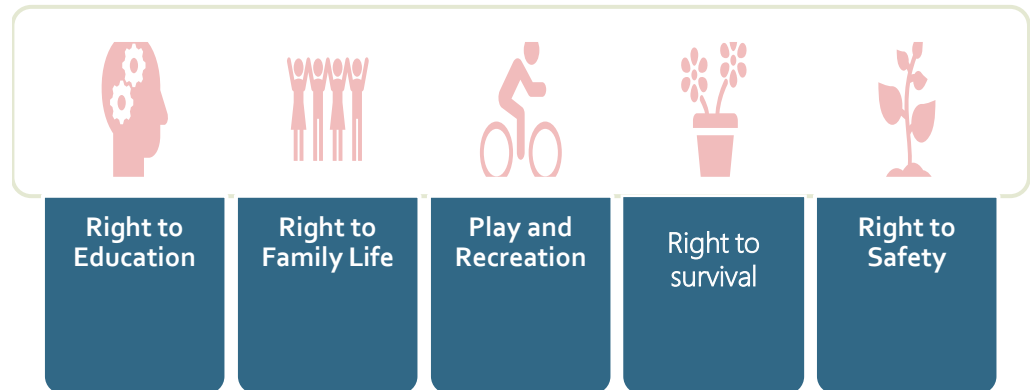
The Protection of Children from Sexual Offences Act, 2012 was enacted to provide a robust legal framework for the protection of children from offences of sexual assault, sexual harassment and pornography, while safeguarding the interest of the child at every stage of the judicial process.

TOP THREE THINGS TO KNOW ABOUT THIS LAW

1. The law is Gender Neutral
2. Not reporting the sexual abuse is an offence
3. Maintaining confidentiality of the victim's identity is mandatory

The Act is designed to be child-centric, ensuring that the best interests of the child are prioritized throughout the legal process. As a result, the POCSO Act has become a cornerstone of child protection in India. Child protection is the fundamental duty of all stakeholders. Stakeholders are ones who have access to children and who are dutybound to protect and guide the child in every situation. They are people in whom the child has faith and trust. Stakeholder may include family members, teachers, neighbours, policemen, army officers, doctors and counsellors.

Rights of Children and Relevant Laws



The foundation of a secure and nurturing environment for children lies in the recognition and protection of their rights. These rights ensure that children are treated with dignity and respect, and are provided with the opportunities necessary for their growth and development. Some of the basic rights of a child include:

- 1. Right to Education:** Every child has the right to access quality education without discrimination, enabling them to achieve their full potential. The Right to Education Act, 2009 which ensures free and compulsory education to all children aged 6 to 14 years in India without any discrimination, neglect, or abuse.
- 2. Right to Family Life:** Children have the right to grow up in a loving, supportive, and stable family environment.
- 3. Play and Recreation:** It is essential for children to engage in play, recreational activities, and cultural experiences that contribute to their holistic development.
- 4. Right to Survival:** Children have the right to the necessary resources, such as healthcare, nutrition, and shelter, to ensure their well-being and survival.
- 5. Right to Safety:** Children should be protected from all forms of abuse, exploitation, and violence. Child labour and child marriage are the examples child exploitation and abuse.

Hence to prevent children below age of 14 years from doing any form of harsh labour, The Child Labour (Prohibition and Regulation) Act, 1986 (Amended in 2016) was enacted. Child Marriage Prohibition Act, 2006 seeks to prevent child marriages and protect the rights of married children, ensuring their access to education, healthcare, and protection from abuse.

The other two major legislations which protect the interest of children are The Information Technology Act, 2000 which has provisions related to the protection of children from online abuse and exploitation, such as cyberbullying, online grooming, and child pornography and Juvenile Justice (Care and Protection of Children) Act, 2015 which provides a legal framework for the care, protection, and rehabilitation of children in conflict with the law and children in need of care and protection.

As a signatory of United Nations convention, India was under obligation to introduce uniform law which safeguards the child irrespective of gender from sexual abuse/ offences. The POCSO Act, enacted in 2012, was a significant step forward in this regard. Building on the foundations laid by the existing laws, the POCSO Act provided a more robust and child-centric approach to addressing child sexual abuse.

The POCSO Act: Salient Features

The Protection of Children from Sexual Offences (POCSO) Act, enacted in 2012 and amended in 2019, is a comprehensive legal framework designed specifically to address child sexual abuse in India. The Act is gender-neutral and considers any person under the age of 18 as a child. One of the most crucial aspects of the POCSO Act is its child-centric approach, ensures the best interests of the child. Act also gives paramount importance to child's interest throughout the investigation and trial process. This approach includes provisions for assistance to the child and their family, which helps create a supportive environment for the child during the entire process.

Definition of Child Sexual Abuse

Child sexual abuse is defined as the use of a child for sexual gratification, which may or may not involve direct contact or violence. As per the law, a child is a person under the age of 18 years and is considered incapable of giving consent. Child sexual abuse can take several forms, which can be broadly categorized into contact and non-contact abuse:

- **Contact abuse:** This form of abuse involves physical contact between the perpetrator and the child. Examples include kissing, fondling, touching of private body parts, or any other act that involves excessive physical proximity, making the child uncomfortable.
- **Non-contact abuse:** Non-contact abuse does not involve direct physical contact but still exploits the child sexually. Examples include the use of sexual body language, the perpetrator exposing themselves, the perpetrator asking the child to expose their body parts, showing pornographic material, or engaging in sexual conversations.

List of Sexual Offences against children as defined by the POCSO Act

The list is as follows:

- Penetrative sexual assault (Sections 3 & 4)
- Aggravated penetrative sexual assault (Sections 5 & 6)
- Sexual assault (Sections 7 & 8)
- Aggravated sexual assault (Sections 9 & 10)
- Sexual harassment (Sections 11 & 12)
- Using a child for pornographic purposes (Sections 13 & 14(1))
- Use of child by participating in pornography by penetrative sexual assault (Section 14(2))
- Use of child by participating in pornography by aggravated penetrative sexual assault (Section 14(3))
- Using child for pornographic purpose by committing sexual assault (Section 14(3))
- Using child for pornographic purpose by committing aggravated Sexual Assault (Section 14(3))
- Storage of pornographic material involving child, but fails to delete, destroy or report to designated authority with an intention to transmit child share or pornography (Section 15(1))
- Storage of pornographic material involving a child for transmitting, propagating or displaying or distributing except for reporting or use as evidence in Court (Section 15(2))
- Storage of pornographic material involving a child for commercial purpose (Section 15(3))
- Attempt for commission of offence punishable under this Act (Section 18)

The POCSO Act serves as a powerful tool in the fight against child sexual abuse, aiming to protect the rights of children and ensure that offenders face strict legal consequences for their actions. By understanding the salient features and offences defined under this Act, community associates and individuals can better advocate for and protect the well-being of children in their care.

...Article to be continued in the next issue of POCSO LIVE Newsletter

NEWS CORNER –

Report and findings by Childline, Pune published in Times of India

Dnyanadevi Childline recently published a report in Times of India, Pune dated 27th March, 2023; reported an alarming increase in child-on-child sexual abuse cases and has attributed this to uncontrolled internet exposure and addiction to pornography.

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 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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