

## ROLE OF IMPLEMENTING AUTHORITIES UNDER POCSO ACT IN INDIA

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### Abstract

Every country needs laws for securing safety and security of its citizens. For achieving the desired outcome and for the effective implementation of these laws, there has to be an efficient machinery. There are several departments or sections whereupon different roles are assigned. More often, for implementation of one Act there could be one or more machinery required. Effectiveness and success of each Act depends on these machineries. Every person who works under any such section/department needs to be sensitized apart from his/her expertise. Since recent past whole world has noticed that there were increasing number of cases of violence committed against children. Apart from other forms of violences, children were found sexually abused too. Similarly it is seen that the offences are committed across the borders of the nation also. The National Crime records also consistently showing increasing number of criminal sexual offences committed against children. Therefore, at international level efforts have been taken and declarations were entered into. India is one of the signatory of these declarations and optional protocols. Therefore, in the year 2012, new legislation has been enacted for protecting children from sexual offences. This Act is known as The Protection of Children from Sexual Offences Act, 2012<sup>1</sup>. It is clear from the title of the Act that it is in respect of protecting children from sexual offences, therefore the key functionaries apart from Government are Police, Medical officers, Courts and support persons. As one of the special feature of this Act, it has clothed some responsibilities on media, studios and also on the public. There are also some stringent provisions made for non-fulfilling the duties by these authorities. In spite of this, still number of sexual crimes committed against children is increasing day by day. Therefore, it is necessary to study about the duties assigned to these various functionaries and if there are any lacunas. Children are future of our nation and we have to do every possible efforts to provide them safe and secured environment. Therefore, it is most important to take a review about all these functionaries, as such they plays a pivotal role. Hence this topic has been selected for the research.

**Keywords:** Court, Special Court, special public prosecutor, District Child Protection Unit, Expert, Special Educator, Registered Medial Practitioner, media, Support Person and Commission for Protection of Child Rights.



## Introduction

“The true character of a society is revealed in how it treats its children.”

Nelson Mandela.

Children forms a major part of the population of any nation. They are the future of mankind. It is our duty to give them a world as better place to live. When a child is borne, it is free from any impressions. As a baby grows, he observes the world around and starts forming opinions about the world. If we give them positive acts like love, happiness, compassion, food, care free environment, education and respect them, then they will reciprocate same things. But if we give them negativities such as abuses, torture, violations, starvation, threats and cries, then future of that nation will be in dark. Therefore, it is vary much important to treat every child as supreme assets. Unfortunately since past few years entire world is noticing threat to safe childhood.

United Nations General Assembly has adopted The Convention on the rights of the Child (CRC)<sup>2</sup> in the year 1989. The primary aim of this convention is to protect the rights of child. Every human being has his basic natural rights which are his basic human rights. According to age of an individual some additional rights are given to him. Similarly, child also has all basic human rights and some additional rights due to his age. These rights includes freedom of expression, information, conscience and join a peaceful assembly, privacy and access to information.<sup>3</sup> United Nations has also issued some optional protocols in addition to the Convention. India is one of the signatory of the Convention and Optional protocols. Consequently, one special legislation has been enacted to protect the children from sexual offences. This new legislation is The Protection of Children from Sexual Offences Act.<sup>4</sup> (Hereinafter referred as the ‘Said Act’). For the effective implementation of this Act, some functionaries have been appointed. Some special duties have been vested in some persons such as experts. In spite of this, the society is witnessing increase in number of cases of sexual violence against the children. Therefore it is very important to assess effectiveness and flaws of the provisions, if any, in the implementing machineries. Hence this topic has been selected for the research.

On the outset before starting the discussion it will be appropriate to highlight some key words for the better understanding of the topic -

As per the Section 2(d) of the Said Act, “Child” means any person below the age of eighteen years.<sup>5</sup>

Rule 1(b) of The Protection of Children from Sexual offences Rules, 2012 prescribes a duty on the State Government to establish a District Child Protection Unit under Section 62 -A of the Juvenile Justice (Care and Protection of Children) Amendment Act,2006.<sup>6</sup>

Rule 1(c) of The Protection of Children from Sexual offences Rules, 2012 further provides that Expert is a trained person in the field of mental health, medicine, child development or other related discipline. Such person is required to facilitate communication with such a child whose communication ability has been affected by trauma, disability or any other vulnerability.<sup>7</sup>

Further Rule 1(d) of The Protection of Children from Sexual offences Rules, 2012 provides a “Special Educator” who is such a trained communicator. Victim may be a child having special needs and for addressing regarding his individual differences and needs, which include challenges with learning and communication, emotional and behavioral disorders, physical disabilities and developmental disorders, he needs help of such Special Educator.<sup>8</sup>

Rule 1(f) of The Protection of Children from Sexual offences Rules, 2012 provides that Child welfare Committee assigns a duty to any person for rendering assistance to the child under sub-rule (8) of rule 4. Such person is called as “Support person”. Support person will assist the child during the investigation and trial. Support person may be appointed by the Child Welfare Committee or he may be any other person assisting the child in the pre-trial or trial process in respect of an offence under the Act.<sup>9</sup>

Sec. 2(1)(l) of Said Act provides “Special Court” which is designated under section 28 of the Protection Of Children from Sexual Offences Act.<sup>10</sup>

Further Sec. 2(1)(m) of Said Act provides for “Special public prosecutor” who has been appointed under section 32 of the Protection Of Children from Sexual Offences Act.<sup>11</sup>

Explanation (b) to Sec.53 of the Code of Criminal Procedure, 1973 defines a “Registered Medical Practitioner” who possesses any medical qualification as defined in clause (h) of Section 2 of the Indian Medical Council Act, 1956 and whose name has been entered in a State Medical Register.<sup>12</sup>

Sec. 44 of The Said Act prescribes the “Commission for Protection of Child Rights”. It includes National Commission for Protection of Child Rights constituted under Section 3 and State Commission constituted under section 17 of the Commission for Protection of Child Rights Act, 2005<sup>13</sup>

### **Objective**

When any offence has been committed then the law has been set in motion by lodging report at police station. Any person who has the knowledge that any cognizable offence has taken place may lodge a report. Then as per the provisions code of Criminal Procedure, investigation and trial takes place. The Protection of Children from Sexual Offences Act is special legislation. It is enacted for the victims who are under 18 years of age irrespective of their sex. To curb this menace many authorities with specific duties have been included for the implementation of the Act. Further there are some stringent provisions incorporated for punishing the authorities who failed to fulfill their duties. Though there are stricter provisions made in the Act, but still the scenario has not changed.

On the contrary cases under this Act has seen to be increasing. As such necessity has been felt to discuss the role of these authorities and their duties.

### **Police**

Chapter V of the Act provides for reporting of cases. Any person including a victim who who has any apprehension or knowledge of such act shall provide the information to Special Juvenile Police Unit<sup>14</sup> or to local police. Every such information shall be taken down in writing and it be read over to said person. Further said information, if given by a child then it should be in simple language and if needed help of translator or interpreter be taken. If police feel that such a victim child is in need of care and protection then he shall record reasons for the same and make such arrangements at shelter home or hospital as the case may be, within twenty four hours of the receipt of information. Further it is the specific duty casted upon the police that after receipt of information they should send a special report to the Child Welfare Committee or Special Court within twenty four hours.<sup>15</sup> Further it is the duty of the media as well as persons from hotel, lodge, hospital, or photographic facilities that if they come across any sexually explicit material involving a child they should report about it to Special Police or local Police.<sup>16</sup> Further the Act prescribes punishment upto two years or fine or both, for non reporting of the incident by these persons.<sup>17</sup> But this punishment is not attracted against the

child. If any person lodges false report in order to humiliate or defame any person, then the person who lodged such report is punished with 2 years imprisonment or fine or both. But if such complaint is lodged against a child then there is a provision of enhanced punishment up to one year or fine or both.<sup>18</sup>

There are also special provisions regarding of statement of the victim. It is specifically enacted that statement of child should be recorded at his residence or at any place of his choice. Further as far as possible such statement is recorded by the woman police officer and at the time of such recording the police should not be in uniform. Such police is also expected to take care that while recording such statement child should not come in contact with the accused. Further the child should not be detained in police station during night for any reason. It is specifically provided that police should protect the identity of the child from media.<sup>19</sup>

### **Medical Officer**

Victim of sexual offence has been brought before Medical Officer for conducting medical examination, for providing medical aid or for collecting samples for forensic analysis. Medical officer shall not deny or delay for medical examination for want of registration of offence. If the victim is a girl child then she should be examined by a lady doctor. There is a special mandatory provision that the medical examination of victim child has to be conducted when victim is accompanied with his parents, guardians or any trusted person. There is another requirement of the said Act that every medical institute has to nominate a woman. If the victim is not accompanied by any such member, then medical examination of the victim is required to be conducted in front of such nominated woman of the hospital.<sup>20</sup> If such medical examination has been conducted with consent of parents or guardian of child, then provisions of Sec. 3 to 13 shall not be applicable.<sup>21</sup> It is widely observed that in our country not every hospital has lady medical officer appointed in it. Further there are less number of lady medical officer appointed in the Government Hospitals. It is also required to consider here that doctors appointed at Government Hospitals have duties on rotation. So if any victim is taken to hospital for medical examination, then there is possibility that lady doctor may not be available and the time wasted for taking appointment of such lady doctor may result in loss of important medical evidence. So this mandatory provision needs to be reconsider with some modifications.

### **Magistrates**

When a child is produced before a Magistrate for recording his statement under section 164 of Code of Criminal Procedure, such statement should be recorded in the actual spoken

words of the child. Further provision of Sub-Section (1) of the Sec.164 of Code of Criminal Procedure which permits presence of advocate of the accused to remain present at the time of such recording is not applicable under the POCSO Act.<sup>22</sup>

There are some more provisions for recording statement of the child whether by police or by Magistrate. Statement of the child shall be in the words of child and it is to be recorded in presence of his parents, guardians or person whom he trusts. Wherever necessary help of experts such as translators or interpreters be taken. In case of recording of statement of physically or mentally disabled child, help of special educator or the person familiar with the child shall be taken. Wherever possible such statement be recorded by audio-video electronic means.<sup>23</sup> Provision of Section 164(1) in respect of permitting presence of advocate of accused at the time of recording of statement of witness by Magistrate shall not apply under this Act.<sup>24</sup>

Such statement is not a substantive piece of evidence, but it can be used for the purpose of corroborating or contradicting a witness in the manner provided under section 157 and 145 of Indian Evidence Act.<sup>25</sup> It must be borne in mind that the victims under POCSO Act are of tender age and vulnerable in nature. It must also necessary to be consider that by the lapses of time, due to developmental age of the child there are possibilities that the child may forget important aspects which he may have deposed before the Magistrate. Therefore, more special evidential value needs to be given to such statements.

### **Special Courts**

Special Courts<sup>26</sup> while recording evidence of child ask special prosecutor and defence counsel to give questions in writing which shall be put to the child by the court. Further the court may give frequent breaks during the trial. Court should provide child friendly atmosphere and during such recording of evidence of child permit his parent, guardian or person whom child trusts to remain present in the court. Court should not allow aggressive questioning and maintain dignity of the child. It is also provided that during recording of the evidence of the child the court should strike balance by making such arrangements so that the child should not see the accused, at the same time accused is able to hear the evidence.<sup>27</sup> Further the identity of the child should not be disclosed.<sup>28</sup> The Court shall record the evidence of the child within thirty days of taking cognizance by it and the trial should be complete within one year.<sup>29</sup> Trials under this Act is to be conducted in camera or for recording evidence of child commission should be issued under Sec.284 of the Code of Criminal Procedure.<sup>30</sup> During trial the Court may take assistance of experts.

Special Court has power to grant interim compensation to victim in appropriate cases, either on its own motion or on the application on behalf of victim. Furthermore, the Court has power to recommend for compensation after trial whether accused may be convicted, acquitted or discharged.

### **Support persons**

Special provisions are made so that the child can take assistance of experts, as support persons. The Act casts special duty on State Government to prepare a list of NGOs, Psychiatrists, Social workers, health workers etc. The child may access assistance from amongst these enlisted specialists, during pre-trial and trial stage.<sup>31</sup> If the child is need of emergency medical aid then he is referred to the hospital. Further it is informed to the child or the parents or guardians etc. about availability of support services such as counseling, legal aid etc. If the they are unable to afford legal assistance, then it is the duty of the Legal Services Authority to provide the requisite help. if the child is without any support, he shall be produced before Child Welfare Committee, who may take assistance of social workers whether to send the child to shelter home or to shared household etc. It is the duty of police to inform the developments in investigation and court proceedings to parents or guardians and the support person. Police as well as the support person has been assigned the duty that they should inform about criminal prosecution, compensation schemes, status of investigation, arrest of accused, filling of charge-sheet, bail, stages of trial, judgment and appeal etc.

### **Media**

Media plays important role in the society. It is considered to be the fourth pillar of the society. Whenever any offence takes place media whether print or electronic, reports same. Many a times they publish details of the crime which are necessary to be kept secrete. Considering this tendency, POCSO Act imposes a special duty on media. It is the duty of the media not to publish any such information which will disclose the identity of the child. This information may include name of the parents, name of school, name of area where child resides etc. It is also the responsibility of the media that it should not report or comment on child in any of its form without having any complete and authentic information which may lower the reputation or privacy. Whoever breaches the provisions, is liable for punishment. There will be joint and several liability of the owner or publisher.<sup>32</sup> Media has clothed with great responsibility as it has a major impact on the society.

## **Commissions**

There are three tire commissions set up for the protection of child rights. National Commission of the Child rights has been casted a duty of monitoring of the implementation of the said Act. National and State Commissions have been set up for the effective implementation of the Act having jurisdiction of the area.<sup>33</sup> These commissions have been constituted under the Commissions for Protection of Child Rights Act, 2005. These commissions have powers to inquire the matters. It has also duty to monitor designation of Special Court as well as appointment of Special Prosecutors, services rendered by support persons and modules for the training of the officers and publicity of the Act. It has power to call report of any particular case and collection of data.

## **Government**

Each and every Act needs some functionaries or acts to be done by the government. It may either the Central Government or State Government. It is the duty of the State Government to prepare a list of experts who will assist the child. Further the government shall give wide publicity of the Act through media. Similarly, periodical trainings should be given to its officers in order to sensitized them. Central Government is empowered to make rules for effective implementation of the Act.

State Government shall pay the compensation recommended by the Court to the victim from any special fund established for that specific purpose or where no such fund is available then from State Government's fund. Further the compensation amount awarded has to be paid to the concerned person within 30 days of the receipt of such order by the State Government.

## **Suggestions**

As already discussed above the strict provisions made for the medical examination of the girl child victim by woman doctor needs to be diluted to some extent. It must be further amended that in case of non-availability of lady medical officer, considering the exigency of the case, victim may be examined by medical officer who is available on duty in presence of either of parent and one lady police or lady medical attendant. It is also necessary to add some more evidentiary value to the statement of victim recorded by the Magistrate. State should be directed to provide more infrastructure to the Special Courts for separate and protective building as well as sufficient staff for the expeditious trials of these offences. Further there must be some strict provisions made at the schools and public places for protection of children. Moreover, for effective implementation of Act and for curbing the evil, there should be more



provisions made for the protection issue by the State as well as by the Commission for the protection of child. The Act is silent as to what protective provisions are made to stop the offence before its commission.

### **Conclusion**

After above mentioned authorities and discussion of their roles it comes to picture that there are various stakeholders for the effective implementation of the Act and to help the child. The idea behind this, is that if the support system is provided to the victim then, they may come up freely against the criminal. Even the Act further prescribes punishments for non-obedience of the respective duties by each functionary. In spite of the stringent provisions, it has been noticed that still there is rise in number of offences committed against the children. Here researcher also wants to point out that in some areas these stakeholders need little discretionary powers to take immediate action, such as in the POCSO Act there is provision that girl victim of sexual assault needs to be examined by lady medical practitioner, but in rural places it is difficult to find lady medical officer to examine girl child. In such a situation if a gents medical officer is allowed so there may be chances to get sound evidences, otherwise in want of immediate medical examination by lady officer creates problem.

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