

ANALYSIS ON THE ROLE OF DIFFERENT STAKEHOLDERS UNDER THE POCSO ACT WHILE DEALING WITH CHILD VICTIM

Ms. Sparsita Garg, Research Scholar, Oriental University, Indore

Dr. Ankita Nirwani, Research Guide, Oriental University, Indore

ABSTRACT

The Constitution of India aims to provide protection and welfare to children and bring all round development among them but the need for a special legislation was felt when child sexual incidents became rampant in India. Curbing the menace of sexual offences became the need of the hour as there were some loopholes and lapses in the framework of the existing criminal law. With a view to bring changes the Ministry of Women and Child Development circulated the draft offences against children bill among stakeholders which led to the enactment of the POCSO Act. The Act focuses on the importance of providing legal aid and assistance to child victims, appointment of Special Public Prosecutors (SPP), support persons and the for establishment of Special Juvenile Police Units (SPJU) to cater to a fair investigation process. Child Welfare Committees (CWC) is constituted at the district level to ensure the safety and welfare of a child. The Act emphasises and focuses on the need for orientating police administration, judiciary and other stakeholders involved in the criminal justice system by providing and implementing awareness programmes, trainings etc.,. The research paper focuses on the study of role of stakeholders under the POCSO Act for child protection.

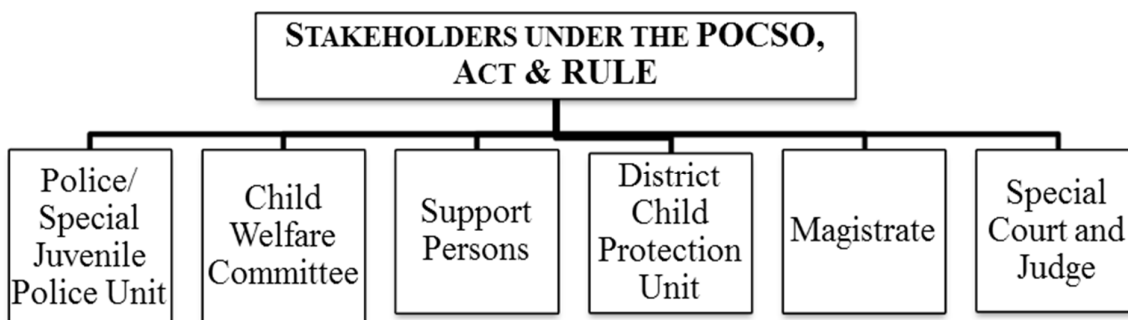
Key words: POCSO Act, child sexual abuse. Stake-holders, CWC, police unit

INTRODUCTION-

Stakeholders are considered to be an integral part in any legal system and more so when it comes to dealing with issues related to sexual abuse on child. It is pivotal to investigate and verify as to whether the stakeholders are contributing towards the criminal justice system under the Act. The aim and objective of this research paper is as follows-

- (i) To study and understand the role of stakeholders in implementation of the POCSO Act.
- (ii) To understand the issues and challenges faced by stakeholders while dealing with POCSO cases.
- (iii) To understand the whether training programs, seminars, stakeholders meeting, workshops, conferences etc., imparted to the stakeholders are sufficient enough to facilitate a co-ordinate response.

Role of stakeholders under Act-



SCHEMETIC REPRESENTATION OF STAKEHOLDERS

Special Juvenile Police Unit (SJPU)

The Special Juvenile Police Unit was introduced which aim to create an environment wherein the interaction between the child in conflict with law (CICL), children in need of care and Protection (CNCP) and police officers shall be cordial, amicable and friendly. Section 107 of the Juvenile Justice (Care and Protection of Children) Act, 2015 provides for creation of a SJPU by State Governments/Union Territories for every district and cities to coordinate all functions of police related to children.¹ The Act² states that any person including a child, who has an apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to SPJU or local police and every report given shall be-

¹ Dr. Kavita Singh “Role of Special Juvenile Police Unit in Interface with Juvenile in Conflict with Law” 11 Indian Journal of Law and Justice 88 (2020)
² Section 19 of the POCSO Act

- Entered and recorded in writing
- The writing should be read over and explained to the informant/complainant
- It shall be entered in a register

A Report given by a child is to be recorded in a simple language so that the contents of the writing is easily understandable to the child and in case it is not understandable a translator or an interpreter having qualifications and experience shall make the child understand the same. Immediate necessary arrangements within 24 hours of filing report shall be made by SPJU if satisfied that a child against whom an offence has been committed is in need of care and protection. Thereafter the matter is to be informed to the CWC and the Special Court.

Procedure regarding care and protection of child:

On receiving any information the police unit shall immediately disclose to the person making the report the following details-

- Name and designation;
- Address and telephone number
- Name, designation and contact details of the officer who supervises the officer receiving the information.

If any information regarding commission of an offence under the Act is received by the child helpline-1098, the child helpline shall immediately report such information to SJPU or Local Police.³

If SJPU or the local police receives any information in accordance with the provisions contained under Section 19 (1)⁴ of the Act in respect of an offence that has been committed or attempted or is likely to be committed, the authority concerned shall, where applicable⁵-

³ Rule 4 (2)³

⁴ Section 19 of the POCSO Act

⁵ Rule 4(3) ⁵ of the POCSO rules

- Record and register FIR
- Free copy of the FIR is to be furnished to the informant
- Medical aid to be provided to the child in need of immediate treatment.
- Samples collected for the purposes of the forensic tests are to be sent to the forensic laboratory forthwith.
- Proper information to be furnished regarding the availability of support persons.
- Right to be represented by a counsel

On receiving information that an offence has been committed or is attempted or is likely to be committed by a person living in the shared household with a child or a child living in a child care institution the police unit shall produce the child before the CWC within 24 hours of receipt of report. The reasons must be reduced to writing as to whether the child is in need of care and protection. The child and his guardian must be informed about the benefits available to them under the Act as per **Form-A** and the preliminary assessment Report in **Form B** within 24 hours of the registration of the ejarah and submit it to the CWC. The information to be provided includes the following-

- Availability of emergency services (both public and private)
- Procedural aspect in a criminal trial
- Victim's compensation
- Investigation of the crime
- Non interfere with the investigation process
- Arrest and filing of charges against the accused
- Manner of court proceedings
- Bail, release or detention status of an offender
- Verdict
- Sentence imposed

Reporting of pornographic material-

Whoever receives receives any pornographic material involving a child or any pornographic material being stored, transmitted or displayed shall report the contents to the police unit and upon such receipt of the report necessary action is to be taken

as per the directions of the Government. If a “person” is an “intermediary” then such person is to hand over the material and the source from which the material has originated to the police or the cyber-crime portal and upon such receipt of the said material necessary action as per the directions of the Government is to be followed.

Child Welfare Committee-

CWC is formed to deal with cases relating to children who are abandoned, or orphaned, or children in need of care and protection and also to cater to the basic needs and requirements of a child.

The functions of the committee is listed below-

- To take cognizance of offence
- To conduct inquiry relating to the safety and well-being of the children
- CWC to direct probation officers or District Child Protection Unit (DCPU) or any non-governmental organisations to conduct social investigation and submit a report
- Declaring a person to be fit to take care of CNCP
- Placement of a child in foster care
- To ensure that a CNCP is given proper care and protection based on the individual care plan
- Registered institution for placement of child
- Visiting residential facilities for children twice a month to conduct inquiry
- Abandoned children or any lost child be restored to their families
- Free legal adoption of orphan, abandoned and surrendered child
- Taking *suo motu* cognizance of cases
- Rehabilitation of sexually abused children

Special relief-

The Committee may recommend immediate payment for basic amenities such as such as fooding, clothing, transportation and other needs transport and other essential needs from the following-

- (i) District Legal Services Authority
- (ii) District Child Protection Unit

(iii) Funds maintained under the Juvenile Justice (Care and Protection of Children) Act, 2015

Support persons-

A person working in the field of child rights and protection employed by the DCPU is called a support person who renders support throughout the entire investigation and trial process.

Interpreters, Translators, Special Educators and Experts

The DCPU of every district shall maintain a register containing name, address and contact details including e-mail of interpreters, special educators and experts, support persons and the register shall be made available to the police and court as and when the necessity arises. Such people should be well acquainted with a familiar language spoken by the child or the medium of instruction at school and they shall be paid fees for assisting the child as per the rules of the State Government. Such specialised people should be well familiar with the mode of communication of the child and shall be unbiased and impartial. They should disclose the real issues relating conflict of interest and should provide accurate interpretation or any translation without any additions, alterations or omissions as per the procedure of the criminal code and they shall be bound by the rules of confidentiality prescribed under of the Indian Evidence Act, 1872.

District Child Protection Unit-

DCPU in every district ensures the proper implementation of the Act along with child related issues in the district. Where an interpreter, translator, or special educator is engaged, otherwise than from the list maintained by the DCPU the rule may be relaxed on evidence of relevant experience or formal education or training in the relevant languages.

Role of Magistrates-

The worst form of violence against a child is sexual abuse. It is not mandatory to record a statement under section 164 CrPC in every case relating to sexual abuse on child. The provisions of CrPC⁶ states that statement should be recorded as soon as the commission is brought to the notice of the police and the victim should be taken Judicial Magistrate (preferably a lady judicial officer) within 24 hours of lodging of the ejarah. The recording of the statement must be confidential and kept in a sealed cover. The Investigating Officer not to disclose the contents of the statement recorded till the filing of FF in final. A child victim when brought before a Magistrate for recording statement must be dealt with care and caution as matter involves serious allegations. In case of a statement of a victim less than 12 years special care must be taken and certain questions are to be put to test to test rationality.

Role of Special Court-

While dealing with cases of CSA the special court should create a child-friendly atmosphere and should ensure that the child is not repeatedly called to give evidence. It is the duty of the special court to ensure that identity of the child is not disclosed during the investigation or trial process and if disclosure is made then the best interest of child is to be taken into consideration with reasons recorded in writing. It is the duty of the Presiding Officer to determine the age of the child so as ensure that the child is not exposed to the accused at the time of recording of evidence. Such trail should be taken in camera and in the presence of the parents or guardian of the child and the entire trail shall be completed within a period of one year from the date of taking cognizance of the offence.

⁶ Section 164(5-A) (a)

Conclusions

Sexual abuse has an inherent social stigma in our society and due to the social taboos the victim and their families out of shame, fear and family honour do not report such crime. It is important and essential that timely reporting and registration of such cases are done in order to ensure a fair trial process in criminal adjudication. It is the duty of every stakeholder to imbibe a concrete co-ordination among each other for proper implementation of the Act in the true sense of term.

Stakeholders play an important role in dealing with CSA cases both at the stage of pre-trial and trial. It is essential to impart special training to stakeholders relating to such cases. An interview was carried out with 12 stakeholders in the month of November 2023 and May 2024 at Kamrup (M) and Jorhat at Assam and it revealed that they were never provided with any proper training prior to taking up of the task. The Hon'ble Gauhati High Court and the Assam government are providing periodical trainings to the judges, judicial officers, public prosecutors, Legal aid defence counsel, Police, CWC, DCPU, medical officers etc., on interviewing children, appreciating their statement, addressing their issues along with grievances and preparing a child to face trial without being tutored.

Stakeholders were found to be not well equipped and did not have the necessary skills to enable them to elicit information from children in a non-threatening and child-friendly manner. The study aims to address the gap of lack of understanding of all the issues relating to CSA. The special judges should be provided training, seminars and orientation programme on the various aspects of CSA as well on judicial decisions and precedents. Training is also imparted to the judicial officers on core minimum measures that should be taken to ensure compliance with the child-friendly procedures under the Act. The newly appointed stakeholders at all levels must be provided with induction and it is seen that in-service training are provide to the newly appointed judicial officers of the subordinate judiciary by Judicial Academy, Assam. The academies organises refresher courses, orientation programmes sensitisation programmes along with seminars and workshops for different stakeholders under the direction of the Hon'ble Gauhati High Court. In Assam the CIS system along with official websites of every district are well

maintained and updated on a regular basis. The DLSA's plays a pivotal role in providing training and workshops to stakeholders at all levels. The POCSO Act and Rules mandates the central and state governments to take necessary measures so as to ensure that the judicial officers and other stakeholders receive periodic training on the deal with matters relating to the implementation of the Act. Thus, stakeholders play a very essential role on issues relating to child sexual abuse and as these issues are very sensitive in nature and needs to be dealt with due caution.