

## **Legal Training on The Protection of Children from Sexual Offences (POCSO Act)**

### **Chin Christian Fellowship, Chanakya Place**

**12th August 2015**

Socio- Legal Information Centre conducted training on the Protection of Children from Sexual offences (POCSO Act) on 12th August 2015 for the Burmese refugee community at West Delhi. The training was felt necessary given the reported cases of sexual offence against children. It was also imperative to aware the parents on the mandatory reporting to police in such cases, beside various other provision provided under the Act. The emphasis was also to strengthen information dissemination on child friendly judicial process.

The training saw an overwhelming attendance of one hundred twenty participants (120) including representation from the Chin Refugee Committee (CRC) and various other community representations. SLIC was represented by Adv Fazal Abdali being the main resource person of the training, Hema Bisht, Sunil Kumar and Ni Cin Tial (Burmese interpreter).

#### **Introduction**

The training started with a brief round of introduction of the resource person, staff and participants. The role of SLIC was also explained in detail. The purpose and the need of the training were explained highlighting the availability of the legal provision in India in case of any offence committed against a child. How the case of such nature need to be treated with sensitivity and confidentiality. The participants were informed that the provision under POCSO Act, case of such nature calls for mandatory reporting to the appropriate authority. Most importantly the participants were informed about the preventive measures and response mechanism and making sure to provide a safe environment to a child.

#### **Highlight of the Session**

**Who is a child:** Under the POCSO Act, a child is defined as any person below eighteen years of age. It defines different forms of sexual abuse, including penetrative and non-penetrative assault, as well as sexual harassment and pornography. The participants were made aware that not only a girl child but also a boy can also be a victim of sexual abuse. Hence if a boy is reporting any such incident, he should not be ignored and provided with care and ensure his safety.

**Role of the Police:** The Act casts the police in the role of child protectors during the investigative process. Thus, the police personnel receiving a report of sexual abuse of a child are given the responsibility of making urgent arrangements for the care and protection of the child, such as obtaining emergency medical treatment for the child and placing the child in a shelter home, and bringing the matter in front of the CWC, should the need arise.

**Mandatory reporting:** The Act provides for mandatory reporting of sexual offences. This casts a legal duty upon a person who has knowledge that a child has been sexually abused to report the offence; if he fails to do so, he may be punished with six months' imprisonment and/ or a fine.



### **Offences Covered under the Act**

The Participants were informed about the offences covered under the act:

1. Penetrative Sexual assault
2. Aggravated penetrative Sexual assault
3. Sexual assault
4. Aggravated Sexual assault
5. Sexual harassment
6. Use of child for pornographic purpose

It was explained that an offence is treated as “aggravated” when committed by a person in a position of trust or authority of child such as a member of security forces, police officer, public servant etc.

### **Punishments under the Act**

1. Penetrative Sexual Assault (section 3) – not less than 7 years which may extend to imprisonment for life and fine (section 4)
2. Aggravated Penetrative Sexual Assault (section 5) – not less than 10 years which may extend to imprisonment for life, and fine (section 6)
3. Sexual Assault (section 7) – not less than 3 years which may extend to five years, and fine (section 8)
4. Aggravated Sexual Assault (section 9) – not less than 5 years which may extend to 7 years, and fine (section 10)
5. Sexual Harassment of the child (section 11) – 3 years and fine (section 12)
6. Use of child for Pornographic purposes (section 13)-5 years and fine and in the event of subsequent conviction, seven years and fine (section 14(1))

### **Procedure for reporting**

The Act incorporates child friendly procedures for reporting, recording of evidence, investigation and trial of offences. These include:

1. Recording the statement of the child at the residence of the child or at the place of his choice, preferably by a woman police officer not below the rank of sub-inspector. Evidence has to be recorded within 30 days
2. No child to be detained in the police station in the night for any reason.
3. Police officer to not be in uniform while recording the statement of the child
4. The statement of the child to be recorded as spoken by the child
5. Assistance of an interpreter or translator or an expert as per the need of the child
6. Assistance of special educator or any person familiar with the manner of communication of the child in case child is disabled
7. Medical examination of the child to be conducted in the presence of the parent of the child or any other person in whom the child has trust or confidence.
8. In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.
9. Frequent breaks for the child during trial
10. Child not to be called repeatedly to testify
11. No aggressive questioning or character assassination of the child

The Act provides for the establishment of Special Courts for trial of offences under the Act, keeping the best interest of the child as of paramount importance at every stage of the judicial process. The possibility of establishment of Special Courts for trial of offences under the law has also been provided for. Also, the Special Court is to complete the trial within a period of one year, as far as possible.

The Act further makes provisions for avoiding the re-victimization of the child at the hands of the judicial system. It provides for special courts that conduct the trial in-camera and without revealing the identity of the child, in a manner that is as child-friendly as possible.

### **Medical Care**

The participants were informed that the police personnel receiving a report of sexual abuse of a child are given the responsibility of making urgent arrangements for the care and protection of the child, such as obtaining emergency medical treatment for the child and placing the child in a shelter home, should the need arise. The police are also required to bring the matter to the attention of the Child Welfare Committee (CWC) within 24 hours of receiving the report. The Act also makes provisions for the medical examination of the child designed to cause as little distress as possible. The examination is to be carried out in the presence of the parent or other person whom the child trusts, and in the case of a female child, by a female doctor.

### **Role of CWC:**

All POCSO cases to be reported to CWC especially of the nature of the case as under:

1. Offence has been committed or attempted or is likely to be committed by a person living in the same or shared household with the child or
2. Child is living in a child care institution and
3. Child is without parental support or Child is found to be without any home and parental support.

CWC will make a determination within 3days as to whether the child needs to be taken out of the custody of his family or shared household and be placed in a children home or a shelter home.



The training saw good participation from the community and they had many queries and doubts for clarification. They showed inclination to more legal aspect of the training and came out with many questions, such as:

1. Who are habitual offenders?
2. What is the punishment for abetment and attempt?
3. Are the laws same if the perpetrator is a female?
4. Minor eloping with local/getting married without the consent of parents
5. Whether the refugee community will get fair justice or not?
6. Role of JJB in cases in case of a child in conflict with law
7. Whether developing sexual relations on false promise of marriage amounts to rape or not?
8. How does the law deal with minors involved in petty crimes?

The training was well received by that Participants and SLIC reiterated on the protection of a child and to develop a favourable environment of child within the family and at home.