

*“While we try to teach our children all about life,
our children teach us what life is all about.”*

- Angela Schwindt



CHILDREN ARE THE WORLD'S MOST VALUABLE RESOURCE AND BEST HOPE FOR THE FUTURE

- The magic, the wonder, the mystery and the innocence of a child's heart ARE THE SEEDS of creativity that WILL heal the world
- Child can teach an adult three things
 - to be happy for NO REASON
 - to always be curious
 - to fight tirelessly for something

On Children

Kahlil Gibran

Your children are not your children.
They are the sons and daughters of Life's longing for itself.
They come through you but not from you,
And though they are with you yet they belong not to you.

You may give them your love but not your thoughts,
For they have their own thoughts.
You may house their bodies but not their souls,
For their souls dwell in the house of tomorrow,
which you cannot visit, not even in your dreams.
You may strive to be like them,
but seek not to make them like you.
For life goes not backward nor tarries with yesterday.

You are the bows from which your children
as living arrows are sent forth.
The archer sees the mark upon the path of the infinite,
and He bends you with His might
that His arrows may go swift and far.
Let your bending in the archer's hand be for gladness;
For even as He loves the arrow that flies,
so He loves also the bow that is stable.

Rights of children-UNCRC

- **Universal**- everyone has the same rights- all need food, education etc
 - **Intrinsic**- rights belong to you, they are inside of you, no matter what circumstances you are in- whether you live in an apartment or a house or in a hut, you have the same rights.
 - **Essential**- no one can/should have to do without rights. Our rights help us live full lives.
 - **Interrelated to each other**- e.g. right to food is related to education. The more educated you are the better your chances of earning enough to always have plenty of food.
 - **Linked to responsibilities**- adults are responsible for giving children our rights- our parents, neighbors, relatives, society, government, etc
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- **Right to Survival**-food health name and nationality
 - **Right of protection** -family
 - **Right to development** -EDUCATION REST LEISURE AND RECREATION
 - **Right to participation** -To express yourself freely,To choose your own set of beliefsTo know about things related to your life,To be a member of associations,To enjoy your own culture

“MANKIND owes to the Child the best it has to give”

Unique question and universal answer

- Throughout my childhood I struggled to find the answer to " what do you want to be when you grow up"?
- Now that I am grown up, I have finally found the answer- I want to be a child again”
- The Universal Declaration of Human Rights (UDHR) (1948),- special rights of the child for the first time
- “Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.”

Section 2(12) of juvenile justice care and protection 2015
"child" means a person who has not completed eighteen years of age;

- (13) "child" in conflict with law means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence;
- (14) "child in need of care and protection" means a child—
 - (i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or
 - (ii) who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street; or
 - (iii) who resides with a person (whether a guardian of the child or not) and such person—
 - (a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or
 - (b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or
 - (c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or
 - (iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or
 - (v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or
 - (vi) who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or
 - (vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or
 - (viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or
 - (ix) who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or
 - (x) who is being or is likely to be abused for unconscionable gains; or
 - (xi) who is victim of or affected by any armed conflict, civil unrest or natural calamity; or
 - (xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage;

Sheela Barse v. Union of India 1986 SCALE (2)230

- “The nation's children are a supremely important asset.
- Their nurture and solicitude are our responsibility.
- Children's programme should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skill and motivations needed by society.
- Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our large purpose of reducing inequality and ensuring social justice.”

Geneva Declaration-five-point declaration

- (i) child must be given the means needed for its normal development, both materially and spiritually;
- (ii) hungry child should be fed; sick child should be helped; erring child should be reclaimed; and the orphan and the homeless child should be sheltered and succored;
- (iii) **child must be the first to receive relief in times of distress;**
- (iv) child must be put in a position to earn a livelihood and must be protected against every form of exploitation;
- (v) child must be brought up in the consciousness that its best qualities are to be used in the service of its fellow men.

UN conventions and optional protocols

- 1. Convention on the rights of child 1989
- 2. The convention on the elimination of all forms of discrimination against women- also applicable to girls under 18 years of age
- 3. The SAARC convention on the prevention and combating trafficking in women and children for prostitution.
- **Optional protocols**
- general assembly of the United Nations adopted two optional protocol to the United Nations convention on the rights of child
- Optional Protocol to the Convention on the Rights of the child on the Involvement of Children in Armed Conflict, 2000,
- **Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, 2000**

Convention on the rights of child

- “...ensure to the maximum extent possible child survival and development” (Article 6),
- “...render appropriate assistance to parents and legal guardians in the performance of their child rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children (Article 18.2)
- and “...children of working parents have the right to benefit from child care services and facilities for which they are eligible” (Article 18.3).

General Principles of Care and Protection of Children

Section 3 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015)

- Principle of presumption of innocence
- Principle of dignity and worth
- Principle of participation
- Principle of best interest
- Principle of family responsibility
- Principle of safety
- Positive measures
- Principle of non-stigmatizing semantics .
- Principle of non-waiver of rights
- Principle of equality and non-discrimination
- Principle of right to privacy and confidentiality
- Principle of institutionalization as a measure of last resort
- Principle of repatriation and restoration
- Principle of fresh start
- Principle of diversion
- Principles of natural justice

1. Pre natal Diagnostic techniques Regulation and prevention of misuse act 1994
2. Medical termination of pregnancy ACT 1971
2. Child labor prohibition and Regulation Act 1986
3. Prohibition of Child Marriage Act 2006
4. The child and adolescent labour prohibition and Regulation Act 1986
5. Protection of children from sexual offences act 2012
6. Juvenile justice care and protection act 2015
7. Commission for protection of child rights act 2005
8. Rights of children to free and compulsory Education Act 2009
9. immoral Traffic Prevention Act 1956
- 10 Guardians and wards ACT 1890
11. National Food Security Act, 2013

Crimes against children UNDER INDIA PENAL CODE

Crime against a foetus; known as Foeticides: Section 315 & 316 IPC

Crime against a new-born child under the age of 0-1 year; known as Infanticides:
Section 315 IPC

Abetment to Suicide by children: Section 305 IPC

Crime against children by their parents or others to expose or leave them with a
clear

intention of abandonment: Section 317 IPC

Procuration of minor girls for inducement to force or engage in illicit intercourse:
Section 366-A IPC

Selling of girls for prostitution: Section 372 IPC

Buying of girls for prostitution: Section 373 IPC

Rape: Section 376 IPC

Kidnapping and Abduction of child: Sections 360, 361, 363, 366, 367, 369 of IPC

Finland

- In Finland, after the enactment of the Act on Children's Day Care of 1973, the obligation to organise day care for children under school age rests with the local authorities.
- The local authorities may provide day care either in day care centres or in the form of family day care.
- Since 1990, parents have enjoyed an unconditional right to day care for children under three years of age either in municipal day care or by receiving child home care allowance in order to care for their children at home.
- Since August 1997, it has been possible for families to receive private child-care allowance for providing their children with private care.
- The introduction of statutory right to childcare provides equal opportunity for all young children to be in an institutional system of care by the state.

National Food Security Act (NFSA), 2013

- Under Section 5 of the Act, the entitlements for nutritional needs include the following:
- “(a) in the **case of children in the age group of six months to six years**, age appropriate meal, free of charge, through the local Anganwadi so as to meet the nutritional standards specified in Schedule II: Provided that for children below the age of six months, exclusive breast feeding shall be promoted”.
- Section 6 provides that “The State Government shall, through the local Anganwadi, identify and provide meals, free of charge, to **children who suffer from malnutrition**, so as to meet the nutritional standards specified in Schedule II.”

RIGHT TO FREE AND COMPULSORY EDUCATION ACT

Section 4 of the National Food Security Act, 2013 has made provisions entitling pregnant women to “meal, free of charge during pregnancy and six months after the child-birth, through local Anganwadi, so as to meet the nutritional standards specified in Schedule II of the Act.”

CUBA-Education to all, children or adults

9(b) of the Constitution of the Republic of Cuba creates a wide obligation on the State. It provides that the state will makes provisions to ensure that no child lacks schooling, food and clothing.

Article 44 makes it a state responsibility to provide day-care services to the children
and

Article 51 requires the state to provide free education to all, children or adults.

Philippines ECCD Act, 2009

Early Childhood Care and Development (ECCD) System

- “(a) To achieve improved infant and child **survival rates** by ensuring that **adequate health and nutrition programs are accessible to young children and their mothers from the prenatal period throughout the early childhood years**;
- (b) To enhance the physical, social, emotional, cognitive, psychological, spiritual and language development of young children;
- (c) **To enhance the role of parents** and other caregivers as the primary caregivers and educators of their children from birth onwards;
- *d)* To **facilitate a smooth transition from care and education** provided at home to community or school-based setting and to primary school
- (e) To enhance the capabilities of service providers and their supervisors to comply with quality standards for various ECCD programs;
- (f) To enhance and sustain the efforts of communities to promote ECCD programs and ensure that special support is provided for poor and disadvantaged communities;
- (g) To ensure that **young children are adequately prepared for the formal learning system** and that both public and private schools are responsive to the developmental needs of these children;
- (h) To establish an **efficient system for early identification, prevention, referral and intervention for developmental disorders and disabilities in early childhood**; and
- (i) To improve the quality standards of public and private ECCD programs through, but not limited to, a registration and credential system for ECCD service providers.”

National policies

- 1. National policy for children 2013
- 2. National policy on education 1986
- 3. National policy on child labour 1987
- 4. National nutrition policy 1993
- 5. National policy on health 2002
- 7. National charter for children 2004
- 8. National plan of action for children 2005

- CONSTITUTION OF INDIA

- Article 14: The state shall not deny any person **equality before the law** or the equal protection of the laws within the territory of India.
- Article 15: The State **shall not discriminate** against any citizen on grounds only of religion, race, caste, sex, Place of birth or any of them.
- Article 15(3): Nothing in this article shall prevent the state from making any **special provision for women and children**.
- Article 19(1) (a): All the citizens shall have the right to **freedom of speech and expression**.
- Article 21: **Protection of life and personal liberty**-No person shall be deprived of his life or personal liberty except according to procedure established by law.
- Article 21 A: **Free and compulsory education for all children** of the age of 6 to 14 years.
- Article 23: **Prohibition of traffic in human beings** and forced labour-Traffic in human being and beggars and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
- Article 24: Prohibition of employment of children in factories etc –**No child below the age of fourteen years** shall be employed to work in any factory or mine or engaged in any other hazardous employment.
- Article 39: The State shall, in particular, direct its policy towards securing.
- Article 39(e): that the health and strength of workers, men and women, and **the tender age of children are not abused** and that citizens are not forced by economic necessity to enter vocations unsuited to their age of strength.
- Article 39 (f): that **children are given opportunities and facilities to develop in a healthy manner** and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.
- Article 45: The State shall **endeavour to provide early childhood care and education for all children until they complete the age of six years**.
- Article 46: Right of weaker sections of the people **to be protected from social injustice and all forms of exploitation**.
- Article 47: **Right to nutrition and standard of living and improved public health**.

Features of Child Sexual Abuse

Extracted from: World Health Organisation, *Guidelines for medico-legal care for victims of sexual violence*, 2003⁵¹ –

Features that characterize child sexual abuse include:

- Physical force/violence is very rarely used; rather the perpetrator tries to manipulate the child's trust and hide the abuse.
- The perpetrator is typically a known and trusted caregiver.
- Child sexual abuse often occurs over many weeks or even years.
- The sexual abuse of children frequently occurs as repeated episodes that become more invasive with time. Perpetrators usually engage the child in a gradual process of sexualizing the relationship over time (i.e. grooming).
- Incest/intra-familial abuse accounts for about one third of all child sexual abuse cases.

Physical and Behavioural Indicators of Child Sexual Abuse

Physical Indicators

Unexplained genital injury
Recurrent vulvo-vaginitis
Vaginal or penile discharge
Bedwetting and faecal soiling beyond the usual age
Anal complaints (e.g. fissures, pain, bleeding)
Pain on urination
Urinary tract infection
STI (a)
Pregnancy (b)
Presence of sperm (b)

Behavioural Indicators

Regression in behaviour, school performance or attaining developmental milestones
Acute traumatic response such as clingy behaviour and irritability in young children
Sleep disturbances
Eating disorders
Problems at school
Social problems
Depression
Poor self-esteem

Inappropriate sexualized behaviours (c)

- (a) Considered diagnostic if perinatal and iatrogenic transmission can be ruled out.
- (b) Diagnostic in a child below the age of consent.
- (c) No one behaviour can be considered as evidence of sexual abuse; however, a pattern of behaviours is of concern. Children can display a broad range of sexual behaviours even in the absence of any reason to believe they have been sexually abused.

Children in need of care and protection

Children living in abusive conditions

- children found working in contravention of labour laws
- child found begging
- child victim of or affected by any armed conflict, civil unrest or natural calamity
- child living with a person who has injured, exploited or abused or neglected the child or violated any law passed for protection of children.

Children in danger of abuse

- child living with a person who has threatened to kill, injure, exploit or abuse the child with reasonable likelihood of the threat being carried out.
- child living with a person who has killed, abused, neglected or exploited some other child and there is likelihood that the child in question may be killed, abused, exploited or neglected
- child who is likely to be abused, tortured or exploited for sexual abuse or any illegal acts
- child who is found to be vulnerable and likely to be inducted into drug abuse or trafficking
- child who is likely to be abused for unconscionable gains
- child who is at imminent risk of marriage before attaining the age of marriage and the child's parents, guardians, family members, etc. are likely to be responsible for solemnisation of such marriage.

Children without support

- child without parents or anyone to take care of her/him
- Abandoned or surrendered child
- Missing or runaway child whose parents cannot be found after reasonable enquiry
- child found living in the street
- child found without any home or any residence
- child found without any means of sustenance
- child with unfit or incapacitated parents or guardians
- child who is mentally ill, mentally or physically challenged, suffering from terminal or incurable disease without fit parents or guardians or anyone to support or look after them.

Supreme Court: Sex between man and minor wife is rape

- The purposive reading down was done to bring it in line with the Protection of Children from Sexual Offences Act (POCSO), 2012, in the spirit of other pro-child legislation and the human rights of a married girl child.
- The earlier age of 15 years has now been modified to 18 years for claiming exemption under the amended rape provisions.
- Accordingly, the exemption clause now reads—“sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.”
- It was also clarified that the court had not gone into the issue of marital rape since it did not form the subject matter of the case before it. Rights advocates welcomed the ruling.
- “It is a landmark ruling which comes as a win for all those fighting for child rights, violence against children, etc. It will definitely help to reduce child marriage and exploitation of young girls. But I cannot say how it will be implemented. Since the implementation will have to be done by the police, they should be adequately trained so that they cannot use a lacunae in the ruling for not implementing it in the right spirit,” said Rishi Kant, social activist at anti-trafficking non-government organization (NGO) Shakti Vahini.
- He added that the need of the hour was to create awareness at the panchayat level about the consequences that a man would face if he marries a minor girl.
- The court was ruling on a public interest litigation (PIL) by an NGO, Independent Thought, challenging the exception made out under provisions of the Indian Penal Code, which exempted marital rape of girls between 15 and 18 years of age by their husbands on the pretext of marriage.

In re: Exploitation of Children in the State of Tamil Nadu 2020 WP 102/2007 [Supreme Court]

- In this case, the Supreme Court took *suo motu* cognizance of a newspaper article that exposed the poor state of orphanages in Mahabalipuram (Tamil Nadu) with several incidences of child sexual abuse within the institutions as well as incidences of children being used to provide sexual services to tourists. The article also exposed sexual abuse against children in educational institutions including government schools.
- While assessing who a ‘child in need of care and protection’ included, the court observed that the definition in the JJ Act, 2015 excluded certain categories of children. The court in this regard opined that the definition must not be treated as an exhaustive list and be the basis of excluding certain children. In this regard the court stated:
- “[W]e are of the view that since the JJ Act is intended for the benefit of children and is intended to protect and foster their rights, the definition of a child in need of care and protection must be given a **broad interpretation**. It would be unfortunate if certain categories of children are left out of the definition, even though they need as much care and protection as categories of children specifically enlisted in the definition. Beneficial legislations of the kind that we are dealing with demand an **expansive view** to be taken by the Courts and all concerned.”
- Observing the above the court concluded that:
- “[T]he definition of a child in need of care and protection given in Section 2(14) of the JJ Act should be given a broad and purposeful interpretation – it ought not to be treated as exhaustive but illustrative and furthering the requirements of social justice...[I]t must also include victims of sexual abuse or sexual assault or sexual harassment under the POCSO Act as also victims of child trafficking. Such children must also be given protection under the provisions of the JJ Act being victims of crime under the POCSO Act and the Immoral Traffic (Prevention) Act, 1956.”

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**Supreme Court's direction in *Sampurna Behura v. Union of India*,
(2018) 2 SCALE 209**

“It is important for the police to appreciate their role as the first responder on issues pertaining to offences allegedly committed by children as well as offences committed against children. There is therefore a need to set up meaningful Special Juvenile Police Units and appoint Child Welfare Police Officers in terms of the JJ Act at the earliest and not only on paper. In this context, it is necessary to clearly identify the duties and responsibilities of such Units and Officers and wherever necessary, guidance from the available expertise, either the National Police Academy or the Bureau of Police Research and Development or NGOs must be taken for the benefit of children.”

- Supreme Court Women Lawyers Association (scwla)v.Union Of India & Another(Supreme Court Of India)Writ Petition (Civil) No. 4 Of 2016 | 11-01-2016
- Supreme Court Women Lawyers Association (SCWLA) v. Union of India & Another The Petitioner, Supreme Court Women Lawyers Association (SCWLA), being immensely sensitively ignited by the atrocious, inconceivable and brutal sexual offence where certain psychologically and possibly psychographically **perverted culprits have not even spared 28 days old baby girl** and also in certain situations have monstrously behaved with other small girls who come within two to ten years of age as if they are totally trivial commodities, has invoked the jurisdiction of this Court Under Article 32 of the Constitution of **India for considering imposition of "chemical castration" as an additional punishment for such child abusers.**
- Held, while disposing off the petition (1) Courts neither create offences nor do they introduce or legislate punishments. It is the duty of the Legislature. In the case at hand, the Legislature has enacted the law and provided the punishment and, therefore, we cannot take recourse to the Vishaka principle. There is no constitutional silence or abeyance.[5] and[7]
- (2) In the case at hand, we are concerned with the rape committed on a girl child. As has been urged before us **that such crimes are rampant for unfathomable reasons** and it is the obligation of the law and law makers to cultivate respect for the children and especially the girl children who are treated with such barbarity and savageness as indicated earlier.[10]
- (3) When a society moves in this way, there has to be instillation of fear of law and the punishment has to be definitive in a different way. In fact, this is a crime which is a shameless demonstration and total insensitive exposition of attitude to a victim. It is a gross violation of the social values and a failure of an individual. It is an act of extreme depravity. Therefore, the situation that has emerged compels one to rethink.[13]

- Child-friendly Police Stations

- In addition to the above mandates, **the NCPCR has also issued Guidelines in respect of Child Friendly Police Stations.**
- These Guidelines offer guidance in respect of setting up child-friendly police stations, procedure to be followed in respect of children in conflict with the law, and the procedure to be followed in respect of children in need of care and protection (CNCP).
- In respect of CNCP, the guidelines provide the following protocols to be observed:
 - Behaviour and Conduct
 - The police officers interacting with the child should take care of their body language, gestures, eye movements, expressions and tone of speaking should be aimed at making the child feel comfortable and secure and not intimidate the child in any way.
 - The police officer interacting with the child should behave at all times as a well wisher of the child and keep the best interest of the child uppermost as the basis of all their actions.
 - In no circumstances should bad, abusive or negative language be used with the child.
 - The police officer interacting with the child should not violate the personal space of the child and should not have physical contact with the child, as far as possible.
 - The police officer should not cause any physical or mental suffering to the child.
 - The police officer interacting with the child should not consume any form of tobacco or any other addictive substance while interacting with the child.
 - The police officer should not talk on the mobile phone or check it for other communication during interaction with the child.
 - The police officer should not act in aggressive manner in the presence of child.
 - The police officer interacting with the child should have requisite knowledge of child related legislations.

Practice and Processes-child friendly police station

- All procedures should be followed keeping in mind the child's self-respect and dignity.
- The Child Welfare Police Officer (CWPO) should be in civil dress during interactions with the child.
- It should be ensured that the child is not kept at the police station overnight under any circumstances.
- The child's privacy and confidentiality of personal details should be maintained at all times.
- An F.I.R should be filed within 24 hours in case of a child found missing. In cases of children missing for more than 15 days, a case of trafficking should be registered.
- Timely and dedicated inquiry should be made to trace the parents or families of children found lost.
- The police officer interacting with the child should listen carefully and respectfully to everything the child says and should consider it carefully

- section 21 of Pocso Act 2012 –

- Punishment for failure to report or record a case 22 Punishment for false complaint or false information
- Section 21 of Protection of Children from Sexual Offences Act, 2012 : Punishment for failure to report or record a case
- (1) Any person, who fails to report the commission of an offence under sub-section (1) of section 19 or section 20 or who fails to record such offence under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.
- (2) Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.
- (3) The provisions of sub-section (1) shall not apply to a child under this Act.

Consequence of failure of the police to record a complaint

- • Failure of the police to record the alleged commission of an offence under the POCSO Act is an offence punishable with imprisonment which can extend to six months or fine or both under Section 21(1), POCSO Act.
- • Failure of the police to record information in relation to cognizable offences under Sections 326-A, 326-B, 354, 354-B, 370 370-A, 376, 376-A, 376-B, 376-C, 376-D, 376-E, or 509, IPC is an offence under Section 166-A(c), IPC punishable with rigorous imprisonment for a minimum term of six months which can extend to two years and also attracts fine.

Bombay High Court judge -hat was the case about

- In December 2016, a 39-year-old man was accused of groping a 12-year-old girl. The child's mother had alleged that he had lured her daughter to his home where he pressed her breast and tried to remove her pyjama bottom.
- A trial court had convicted him for sexually assaulting a child under the stringent Pocso (Protection of Children from Sexual Offences) Act and handed him a three-year jail sentence.
- But on 12 January, Bombay High Court judge ruled that pressing the girl's breast without removing her top was not sexual assault since there was no skin-to-skin contact and it would only invite the lesser charge of molestation.

- New Delhi: The Supreme Court today ruled that "skin to skin" contact is not necessary for a crime to be considered under the Protection of Children from Sexual Offences (POCSO) Act. Calling it a "narrow interpretation of the law", the court set aside a Bombay High Court judgement that had acquitted a man saying, "groping a minor's breast without 'skin to skin contact' can't be termed as sexual assault under POCSO".
- Pointing out that the objective of POCSO is to protect children from sexual abuse, the court said that physical contact made with sexual intent comes under POCSO, and "skin to skin" contact is not the criteria.
- Attorney General KK Venugopal had opposed the Bombay HC verdict arguing that the court's interpretation would mean that "someone can wear a surgical glove and exploit a child and get away scot-free". He had added that it will be treated as precedent and the result will be "devastating".
- Senior Advocate Sidharth Luthra had argued for the accused and said, "sexual intent requires physical contact but, in this case, the clothing was touched not the skin."
- The POCSO Act defines sexual assault as when someone "with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault".

- The SC had questioned the interpretation of touch during the hearings. "What does touch mean, simply a touch? **Even if you're wearing a piece of clothing, they're not trying to touch clothing. We must see touch in the meaning that Parliament intended,**" the Court noted.
- "We have held that when the legislature has expressed clear intention, the **courts cannot create ambiguity in the provision. It is right that courts cannot be overzealous in creating ambiguity,**" the bench, comprising of Justices UU Lalit, SR Bhat, and Bela M Trivedi said.
- "The most important ingredient for constituting the offence of sexual assault is sexual intent and not skin-to-skin contact with the child. **The construction of a rule should give effect to the rule rather than destroy** it. Any narrow interpretation of the provision which would defeat its object cannot be accepted. The intention of the legislature cannot be given effect unless the wider interpretation is given," the bench said. The court said this is the first time that the Attorney General had filed an appeal on the criminal side.

ABSTRACT

School Education - COVID-19 Pandemic - Guidelines for students safety and protection during online classes - orders issued.

School Education (ERT) Department

G.O.(1D) No.83

Dated: 17.06.2021

Read:-

1. G.O.(1D) No.71, School Education (ERT) Department, dated 31.05.2021.
2. From the Commissioner of School Education, Chennai-6, letter Na.Ka.No.00229/M/E1/2021, dated 12.06.2021.

ORDER:

In the Government Order first read above, based on the announcement of Hon'ble Chief Minister on 26.05.2021, orders were issued granting permission to the Commissioner of School Education to form a committee for issuing guidelines regarding online classes during the pandemic situation, with the following members:



1.	ஆணையர், பள்ளிக் கல்வித்துறை	-	குழுத் தலைவர்
2.	இயக்குநர், கல்லூரி கல்வித்துறை	-	உறுப்பினர்
3.	கணினி குற்றத் தடுப்புப் பிரிவு (Cyber Crime)	-	காவல் துறை அலுவலர் உறுப்பினர்
4.	பெண்கள் மற்றும் குழந்தைகளுக்கு எதிரான குற்றங்கள் தொடர்புடைய	-	காவல் துறை அலுவலர் உறுப்பினர்
5.	இரு கல்வியாளர்கள்	-	உறுப்பினர்கள்
6.	இரு உளவியல் நிபுணர்கள் / those who are engaged in creating social awareness about <u>child sexual</u> abuse/selfless	-	உறுப்பினர்கள்

- For prevention and management -All schools in Tamil Nadu

- The Protection Of Children from Sexual Offences(POCSO) Act, 2012 and accompanying rules comprehensively address sexual offences against children through the criminal justice system.
- However, further specific guidance is essential **for prevention and management of response to sexual offences associated with schools.**
- This guidance aims to bridge that gap, taking into account the unique contexts, roles and responsibilities of schools and the different stakeholders involved in ensuring that all complaints are reported to police as per POCSO.
- Notable is the liability of schools if the authorities do not fulfill their obligation to the Act by omitting to report a complaint or concern.
- All schools in Tamil Nadu, irrespective of the educational Board which oversees their functioning should follow these guidelines. The guidelines cover everyone associated with the school, including but not limited to students, parents, teaching, non-teaching staff, contractual staff, personnel engaged for an extra curricular activity, management, volunteers, NGOs associated with the school, etc..

- Central Complaint Centre DCCCI

- • The School Education Department will set up a state level CCC with a hotline facility as well as and a dedicated e-mail.id to enable receipt of all school based complaints of sexual abuse against students, from anyone.
- • With regards to complaints received at school, the Student Safeguarding Advisory Committee, upon receipt or knowledge of a sexual abuse will immediately inform CCC.
- • A trained multidisciplinary team drawn from different fields will guide callers/ complainants with clarifications/queries regarding the protocol to be followed on receipt of an allegation. All interaction between CCC and callers will be documented and kept strictly confidential.
- • The purpose of the CCC is to offer an alternate complaint mechanism and provide guidance on the protocol to be observed so all complaints received are addressed appropriately.

- **Student Safeguarding Advisory Committee:**

- Creating a conducive environment where students are safe and enabled to report sexual misconduct by any member of the school body is very important.
- Every school should constitute a Committee that will continually review, monitor and recommend measures at the institutional level on all aspects of student safety.
- • The school level committee should comprise of:
 - - Principal
 - - Teachers - 2 (preferably from different levels)
 - - PTA/ Parent members - 2
 - - Management representative - 1
 - - Non-teaching staff — 1
 - - External member (optional) - 1
- The principal will be a permanent member; 50% of members in the committee should be replaced annually and no member should continue beyond 2 years.

Compliance obligations

All members of the teaching and non-teaching staff and management have to mandatorily complete an annual orientation on sexual offences defined under POCSO Act 2012 and a compliance report sent to the School Education Department. A model guide for this orientation, which will advance an understanding of issues specific to child sexual abuse such as the dynamics, recognizing concerning behaviors of students and adults, understanding disclosure of abuse as well as the relevant legal mechanisms and protocol of response to follow, will be developed and made available by the School Education Department.

A standard safety self audit tool (check list) will be developed by the Department of School Education. This audit will have to be completed mandatorily by School management along with the administration annually and a compliance report sent to the Department.

e All online classes should be recorded and a random audit by a quorum of the Student Safeguarding Advisory Committee should be periodically undertaken. During online classes, both faculty and students should observe dress code suitable for classroom settings.

“Safety Boxes ” to receive complaints and feedback will be strategically placed around the school. The feedback will be reviewed periodically by the Student Safeguarding Advisory Committee for suitable action as per the protocol.

A register will be maintained by the Student Safeguarding Advisory Committee to document all complaints and concerns of sexual misconduct received by the School Management or Administration (including those complaints routed from the Central Complaint Centre (CCC)) through whichever modes of communication, including oral communication.

It is mandatory for all schools to observe a Child Abuse Prevention Week (November 15 - November 22) annually through awareness programs for all members of the school body. A compliance report with supporting documentation should be sent to the School Education Department.

All compliances to the School Education Department will be enabled through the EPIIS system.

20 NOV 21

NEWS

7
TAMIL

**பாலியல் தொல்லையால் பறிபோன உயிர்
கரூர் தனியார் பள்ளியில் பயின்ற 12ஆம் வகுப்பு
மாணவி வீட்டில் தூக்கிட்டு தற்கொலை; பாலியல்
தொல்லையால் சாகுர கடைசி பொண்ணு நானாதா
இருக்கணும் என உருக்கமாக கடிதம்
எழுதிவைத்துவிட்டு உயிரை மாய்த்த சோகம்**

19.11.21
சாகுர கடைசி பொண்ணு நானாதா
மாணவி நான் அருள் கிடைக்கவும்
யார் இந்த மூலம் எந்தக் வச்சாச்சு
சொல்ல பயமா இருக்கு. திந்த யூலி
கூச பச்சின். அனா இப்போ பாதிக்க
கொண்டிருக்கிறேன் இந்த உலகத்துல
அவம்பு வச்சா நல்லா இருக்கும். உய
கொண்டிருக்கிறேன் அப்ப மாணவியும்
கொண்டிருக்கிறேன்.
I love you Amma
chirappa, manimama, அனாமா
சொல்லாரையும் என்னை ரொம்ப புடி
கொண்டிருக்கிறேன் உங்க கிட்டலாம் சொ
பொருள். மன்னிச்சிருங்க.
கிணி எந்த ஒரு பொண்ணும்
மாணவியாகக் கூடாது.
Sorry.
மச்சான் Sorry. ♡



- Disrobing POCSO Act: Satish versus State of Maharashtra
- It is widely accepted that most of the cases of child abuse are not reported, probably due to the wide acceptance of the fact itself, among other reasons. Experts believe that the **criminal penalty is not the only solution for compliance with the reporting mandate**, especially when little is done on creating an appropriate and conducive atmosphere. The question of social dignity compels one to stay silent and erase the unwanted memory.
- In another account, a victim caged her voice during her childhood out of the immense fear built by the neighbour. Still collecting her pieces at the age of 30, she revealed it for the first time to her partner, with whom she was struggling in her relationship due to her past.
- “I could never come to terms with my family for never understanding my **unsaid words**.”
- **A permanent scar is engraved on my body and mind. Although expressing it again today is like releasing a long-held breath, yet at the same time the feeling of loneliness never fades, not even in crowd”.**

- Helplessness due to inevitable compulsion can't be considered as consent: Kerala HC
- **Helplessness in the face of inevitable compulsion cannot be considered as consent, Kerala High Court has said while considering an appeal filed by a rape convict.**
- Justice R. Narayana Pisharadi, in his order said merely because the victim was in love with the accused, it cannot be presumed that she had given consent for sexual intercourse.
- Court said there is a gulf of difference between consent and submission and every consent involves a submission, but the converse does not follow.
- “Helplessness in the face of inevitable compulsion cannot be considered to be consent as understood in law. Exercise of intelligence based on the knowledge of the significance and the moral effect of the act is required for consent. Merely for the reason that the victim was in love with the accused, it cannot be presumed that she had given consent for sexual intercourse,” the court said in its order dated October 31.
- The court was hearing an appeal by 26-year-old Syam Sivan, against his conviction and subsequent sentencing by trial court under various sections of the Indian Penal Code (IPC) including Section 376, which deals with rape.
- The accused had in 2013 taken a girl, with whom he had a relation, to Mysore and had sexual intercourse with her without her consent, the court noted in its judgement. It also noted that the accused sold all her gold ornaments and then took her to Goa where he raped her again.
- “Her evidence shows that he made a threat that if she did not go with him, he would commit suicide in front of her house,” the court noted.
- The court said even if it is assumed that, on subsequent occasions, she did not resist the act of the accused, it cannot be found that it was with her consent that the accused had sexual intercourse with her.
- “It can only be found that it was a passive submission made by the victim girl under unavoidable circumstances as she had no other option,” the court said in the judgement. The court, however, set aside the conviction under the POCSO act as the age of the victim was not proved.
- Meanwhile, it said the act of the accused clearly constitutes the offences punishable under Sections 366 and 376 of the IPC (Abduction and rape).

Physical relationship with minor wife is rape: Madhya Pradesh High Court

- Physical relationship with a minor wife (i.e. below the age of 18 years) will amount to rape, the Madhya Pradesh High Court observed while denying bail to a man accused of rape and offences under the Protection of Children from Sexual Offences Act (POCSO Act) [Ajay Jatav v. State of Madhya Pradesh and Another].
- Justice GS Ahluwalia, of the High Court's Gwalior Bench, was hearing the bail application of one Ajay Jatav, who had been booked for offences under Section 363 (punishment for kidnapping), Section 366 (kidnapping, abducting or inducing women to compel her marriage) Section 376 (punishment for rape) of the Indian Penal Code (IPC), and Sections 5 and 6 of the POCSO Act. the prosecutrix at the time of commission of the offence was aged about 17 years and 6 months.
- During the hearing of the fourth bail application, the applicant had submitted that the prosecutrix was examined and had stated that physical relationship had developed only after she became an adult and was married to the applicant.
- she became pregnant in the month of December 2019 itself. Given that the date of birth of the prosecutrix was February 1, 2002, it was clear that she had become pregnant when she was a minor, the State submitted.
- The Court, relying on the Supreme Court decision in Independent Thought vs. Union of India and Another (2017) 10 SCC 800 refused to grant bail to the applicant. It observed that in that judgment, the apex court had "read down the provision of exception 2 to Section 375 of IPC and has held that physical relationship with a minor wife, i.e., below the age of 18 years would also come within the category of rape."
- Considering these circumstances, the Court had on July 31, 2021, denied bail to the applicant.

Bachpan Bachao Andolan vs Union Of India & Ors on 18 April, 2011 WRIT PETITION (C) No.51 OF 2006

- The petitioner submitted that this Court in the case of N.R. Nair & Others v. Union of India & Others (2001) 6 SCC 84 **upheld the rights of animals** who are being made to perform in these circuses after understanding their plight.
- The situation of children in circuses is no different if not worse.
- The employment of the children in circus involves many legal complications and in that respect major complications are as under:
 - 1. Deprivation of the children from getting educated thereby violates their fundamental right for education enshrined under [Article 21A](#) of the Constitution.
 - 2. Deprivation of the child from playing and expression of thoughts and feelings, thereby violating the fundamental right to freedom of expression.
 - 3. Competency to enter into contract for working in circus.
 - 4. Violation of statutory provisions of law like Employment of Children's Act, 1938, The Children (Placing of Labour) Act, 1933, The Child Labour (Prohibition and [Regulation](#)) Act, 1986, [Minimum Wages Act](#), 1976, [The Prevention of Immoral Traffic Act](#), [Equal Remuneration Act](#), 1976 and Rules made
 - In order to implement the fundamental right of the children under [Article 21A](#) it is imperative that the Central Government must issue suitable notifications prohibiting the employment of children in circuses within two months from today.

. 2021 SCC OnLine SC 427

- In Re Contagion of Covid 19 Virus in Children Protection Homes
- directed all the district authorities to upload the information of children who have become orphans after March, 2020 on the portal of National Commission for Protection of Child Rights 'Bal Swaraj' before the evening of 29.05.2021
- . The district authorities were directed to take immediate steps to attend to the basic needs of the children who have become orphans after 1.04.2020
 - scheme 'PM Cares for Children' which was announced by the Prime Minister on 29.05.2021.
- children who have lost both the parents or surviving parent or legal guardian/adopted parents during Covid-19 shall be the beneficiaries of aid from the Central Government

Nipun Saxena vs Union of India Ministry of home affairs & ors

- The Honorable Supreme Court had asked NALSA to comprise a board to outline the Model Rules for Victim Compensation for sexual offenses and corrosive assaults. NALSA in like manner concluded the 'Pay Scheme for Women Victims/Survivors of Sexual Assault/other Crime' which got the Supreme Court's endorsement in 2018. This was a wonderful move since it established the framework for an addendum to a previously existing state remuneration conspiracy which is extraordinarily intended for survivors of rape and corrosive assaults. This plan accommodates both the base and most extreme quantum of pay for the offenses recorded in the plan.
- It commands the police to report the offenses secured under this plan by sharing the hard and delicate duplicate of the FIR with the SLSA/DLSA. It additionally permits SLSA/DLSA to suo moto start starter confirmation of realities for award of an interval remuneration to the people in question. It additionally gives arrangements to moment remuneration in meriting cases which may run between Rs. 5,000-10,000. It has additionally expanded the base pay quantum for assault cases as chose by the Central Victim Compensation Fund Scheme Guidelines. The base pay in assault cases is Rs. 4 lakhs while for assault it is Rs. 5 lakhs

Child Marriage

- In India although there exist a law barring the marriages of children at primitive age, but it is still being practised in different parts of India. Child Marriage Act 2006 prohibits child marriage and declares 18 years and 21 years as the marriageable age for the girls and boys. According to the National Population Policy, “over 50% of the girls marry below the age of 18, resulting in a typical reproductive pattern of ‘too early, too frequent, too many’, resulting in a high IMR
- .” Child marriage takes away from a girl child the innocence of her formative years of life necessary for physical, emotional and psychological development.
- Spousal violence especially sexual violence perpetrated by husbands has severe effect on the innocent mind and body of the child.

Seven strategies for ending violence against children —INSPIRE—WHO response-

Globally, it is estimated that up to 1 billion children aged 2–17 years, have experienced physical, sexual, or emotional violence or neglect in the past year

- Implementation and enforcement of laws (for example, banning violent discipline and restricting access to alcohol and firearms);
- Norms and values change (for example, altering norms that condone the sexual abuse of girls or aggressive behaviour among boys);
- Safe environments (such as identifying neighbourhood “hot spots” for violence and then addressing the local causes through problem-oriented policing and other interventions);
- Parental and caregiver support (for example, providing parent training to young, first time parents);
- Income and economic strengthening (such as microfinance and gender equity training);
- Response services provision (for example, ensuring that children who are exposed to violence can access effective emergency care and receive appropriate psychosocial support); and
- Education and life skills (such as ensuring that children attend school, and providing life and social skills training).

A large crowd of diverse people, seen from above, forms the number 168 on a light blue background. The number is composed of many small figures, each representing a child. The background is a solid light blue, and the number 168 is the central focus, with its strokes made of a dense collection of people. The text is overlaid on the upper part of the image.

Ending all forms of violence against children by 2030:

The Council of Europe's contribution
to the 2030 Agenda and the
Sustainable Development Goals

Let the children be in the heaven of freedom
I am the child
All the world waits for my coming
All the earth watches with interest to see
what I shall become
Civilization hangs in the balance
For what I am, the world of tomorrow will be
I am the child
You hold in your hand my destiny
You determine, largely, whether I shall succeed
or fail
Give me, I pray you these things that make for
happiness
Train, I beg you that I may be a blessing to the
world