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COMPENDIUM ON PARALEGAL VOLUNTEERS TRAINING

Equipping People for Legal Service Excellence



Acknowledgement

This guidebook on the role of Para-Legal Volunteers (PLVs) is the outcome of a collective endeavor involving institutions, professionals, and practitioners committed to advancing access to justice in India.

We record our sincere appreciation to Prerana and its Anti-Trafficking Centre for their sustained engagement in strengthening the justice delivery system, particularly through their collaboration with the Dr. D. Y. Patil College of Law in designing and implementing capacity-building programmes for PLVs. Their field-based expertise has provided critical insights that shape the practical orientation of this work.

We also acknowledge the valuable support of the International Justice Mission, Mumbai Office, whose partnership has significantly contributed to the conceptualization and development of this resource. Their continued advocacy for the recognition and empowerment of PLVs has reinforced the relevance of this guide.

Special thanks are due to the contributing authors, legal professionals, and trainers who enriched this volume with their scholarship and professional experience across varied domains, including constitutional law, child protection, adoption, family law, and anti-trafficking frameworks. Their contributions ensure that the guide is both legally rigorous and practically applicable.

We are particularly grateful to Ms. Dipali Khavale for her dedication in ensuring the timely completion of this project, and to Ms. Rashmi Taylor for her meticulous work in collating, editing, and formatting the material into its present form.

Finally, we extend our gratitude to the Para-Legal Volunteers themselves, whose commitment to service at the grassroots embodies the objectives of the Legal Services Authorities Act, 1987. It is our hope that this guide will further equip them in their role as facilitators of justice, ensuring that legal rights and entitlements reach the most marginalized sections of society.

A GUIDEBOOK TO THE ROLE OF PARA- LEGAL VOLUNTEERS IN THE INDIAN LEGAL SYSTEM

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Foreword by Chancellor, D. Y. Patil University

It gives me immense pride to present the report of the “Paralegal Volunteer Training Programme”, a collaborative initiative of the District Legal Services Authority (DLSA), Thane, Prerana, International Justice Mission (IJM), and the School of Law, DY Patil (Deemed to be University). This initiative reflects a shared commitment to expanding access to justice by empowering paralegal volunteers who play a crucial role in supporting marginalized communities.

Paralegal volunteers are often the first point of contact for individuals seeking legal support. They act as a vital bridge between citizens and the justice delivery system, especially for vulnerable groups who remain excluded from formal protections due to barriers of awareness, accessibility, or social disadvantage. By equipping volunteers with the necessary knowledge, skills, and ethical grounding, this training programme seeks to ensure that justice is not merely a constitutional promise but a lived reality.

The significance of this programme lies in its collaborative and practical approach. It brings together legal institutions, academia, and civil society to combine their expertise and resources. The involvement of the Thane DLSA has been central to this endeavour, demonstrating the pivotal role that Legal Services Authorities can play in fostering innovation and community outreach. Prerana’s longstanding work with marginalized groups, coupled with IJM’s experience in grassroots justice interventions, has enriched the programme with insights grounded in field realities. The participation of DY Patil law students has further added value, offering them hands-on exposure that complements classroom learning and reinforces our University’s vision of socially responsive legal education.

This training programme stands as a model of how multi-stakeholder partnerships can create sustainable impact. By preparing a cadre of informed and compassionate paralegal volunteers, it strengthens the very foundation of legal aid delivery. It also demonstrates the potential for replication in other districts, contributing to the broader goal of building an inclusive and accessible legal system across the nation.

I extend my heartfelt appreciation to all our partners for their commitment to this cause and to the dedicated volunteers whose service embodies the spirit of justice. I am confident that the outcomes of this initiative will inspire many more such efforts in the years to come.

Dr. Vijay D. Patil,

Chancellor,

D.Y. Patil (Deemed to be University),

Nerul, Navi Mumbai.

Foreword by Prerana

Just as a victim of sexual offence needs rescue, protection, physical and mental healing, and economic rehabilitation her dignity cannot be restored and social reintegration cannot be complete unless she also gets justice. The social workers closely working with the victims at the ground level find themselves restless over a situation where justice becomes a commodity or service which can be purchased depending upon the resources one has. The leaders of the apex courts and high courts of this country together with some visionary legislators too have expressed serious discomfort over this situation and have sought to correct it. The Legal Service Authority Act – 1987 is their serious response to correct the situation and make justice available to the underserved population. The creation and deployment of Para Legal Volunteers (PLVs) is a precious gift of this Act. Recognizing its crucial role in making justice accessible we at Prerana have wherever possible consciously contributed our cent to this effort.

At Prerana, our commitment to justice and rule of law is unwavering. Through targeted sensitization, training, and capacity building initiatives aimed at enforcement agencies, public servants, civil society organizations, and the media, we strive to bridge the gap between law and underserved communities' access to justice. The current knowledge product is yet another contribution of the Anti-Trafficking Centre (ATC) of Prerana to strengthen the social movement against human trafficking, especially against the commercial sexual exploitation and trafficking of children

Networking is Prerana's middle name. We believe that a situation of apathy and not working on a problem must be changed into active social intervention through networking. Our collaboration with the esteemed Dr. D Y Patil University marks an important milestone in this direction.

The current Guide is an output of a training programme of PLVs jointly conducted by Prerana and Dr. D. Y. Patil College of Law. The training focussed on violence against children. A cursory glance at the Guide can reveal that it is enriched by contributions from a spectrum of seasoned professionals who have a vast experience in fieldwork and training both.

We gratefully acknowledge our partnership with the International Justice Mission, Mumbai Office and the Dr. D. Y. Patil College of Law. The ultimate test of the utility of this Guide is the appreciation it receives from the end users i.e. the PLVs themselves and those who are engaged in their training and capacity building all over the country. We are hopeful that the PLVs and other functionaries providing legal empowerment to the underserved victim systems will find this collection immensely useful.

Dr. Pravin Patkar,

Co- Founder of Prerana

Director- Anti Trafficking Center, Prerana

Foreword by International Justice Mission

Access to justice is not merely a constitutional promise—it is a moral imperative. In a country as vast and diverse as India, where millions remain unaware of their legal rights or lack the means to assert them, the role of Para-Legal Volunteers (PLVs) becomes very important. This guidebook is a tribute to those unsung heroes who, without formal legal degrees or titles, step in to provide access to justice.

PLVs are the bridge between the legal system and the people it is meant to serve. They operate in the shadows of courtrooms, in communities, villages and in the crowded lanes of urban slums—bringing legal awareness, support, and dignity to those who need it most. Whether assisting with documentation, guiding victims of domestic violence, or educating communities about child rights, PLVs embody the spirit of service and empowerment.

This guidebook offers more than just information—it offers inspiration. It outlines the legal frameworks within which PLVs operate, the challenges they face, and the immense potential they hold. It is both a manual and a manifesto for change, urging stakeholders to recognize, support, and strengthen the PLV movement.

As we move toward a more inclusive legal system, let this guide will serve the policymakers, legal professionals, and volunteers alike. Let it remind us that justice is not confined to courtrooms— but also in hands of PLVs who make it accessible.

Yesudas Naidu

State Program Director Maharashtra

INTERNATIONAL JUSTICE MISSION

Introduction

(by Adv. Siddharth Desai)

Para-legal volunteers (PLVs) are non-professional individuals who assist in legal matters under the training of legal professionals. Their role is vital in promoting access to justice, particularly in underserved communities across India. This guide aims to explore the significant contributions of PLVs within the Indian legal system, the challenges they face, and potential solutions to enhance their effectiveness.

Importance of Para-legal Volunteers

PLVs play a crucial role in bridging the gap between the legal system and marginalized communities. By providing essential legal services and support, they help ensure that justice is accessible to all, regardless of socio-economic status. Their involvement is particularly important in areas where resources, awareness, and legal representation are limited.

The Need for PLVs

The Legal Services Authorities Act of 1987 was enacted to provide free legal aid to those in need and to ensure justice for all. Despite this legislation, many communities still struggle with accessing justice due to a lack of resources, awareness, and adequate legal representation. PLVs help to mitigate these challenges by offering their services to those who would otherwise remain unserved.

Role of PLVs

PLVs assist legal professionals, non-governmental organizations (NGOs), and legal aid authorities in various capacities, including:

- Conducting awareness campaigns
- Providing legal counselling
- Assisting with documentation
- Offering court support
- Engaging in mediation and dispute resolution

Training and Supervision

To ensure their effectiveness, PLVs receive basic legal training and work under the guidance of legal professionals. This supervision helps maintain the quality and reliability of the services they provide.

Benefits of PLVs

The involvement of PLVs leads to increased access to justice by connecting marginalized communities with legal institutions. They empower individuals by raising legal awareness and offering guidance on rights and entitlements. Additionally, their contributions help make the legal system more efficient by alleviating some of the burdens on formal judicial processes through community-level dispute resolution.

Challenges Faced by PLVs

Despite their vital role, PLVs encounter several challenges that hinder their effectiveness. These include limited resources, inadequate training, a lack of recognition for their contributions, and issues related to the sustainability of their initiatives. These challenges can impede their ability to provide consistent and high-quality legal support to those in need.

Solutions to Enhance the Role of PLVs

To address these challenges and enhance the role of PLVs, several measures can be taken:

- **Strengthening Legal Aid Infrastructure:** Enhancing the resources and support available to PLVs can improve their capacity to assist communities effectively.
- **Enhancing Training Programs:** Comprehensive and ongoing training programs can equip PLVs with the necessary skills and knowledge to perform their duties effectively.
- **Promoting Collaboration:** Encouraging closer collaboration between legal professionals and PLVs can ensure better supervision, guidance, and integration of PLVs into the broader legal framework.
- **Creating a Supportive Ecosystem:** Establishing a supportive environment that recognizes and values the contributions of PLVs can enhance their motivation and sustain their initiatives.

<u>Difference between Lawyer and Paralegal¹</u>	
Lawyer is a person who is essentially to be graduated from Law School.	A paralegal is someone who may have minimum educational qualification, but not necessarily to be graduated from Law School
Legal education for lawyer is formal.	Legal education for paralegal can be either formal or informal.
Lawyer need to be registered under Bar Council for court practice.	Paralegal does not require registration under any statutory body to carry out his/her legal works.
Lawyer must have prior knowledge on law before entering into the legal profession.	Paralegal can gain legal knowledge thorough education, training or work experience which qualifies them to perform legal work
Lawyer can practice on his own in the court of law.	Paralegal can only work under the supervision of a registered lawyer for the purpose of the court work
Lawyer can not only prepare legal documents like petition, contract, will etc and make interaction with clients, but also appear in court of law for its execution or legal action.	Paralegal may write up legal document only
Lawyer conducts depositions in court of law	Paralegal can sit for deposition
Lawyer can give legal advice, sign legal documents, or appear in court on behalf of clients.	Any such attempt by paralegal is considered unauthorized practice of law and can have serious consequences.

¹ [aft Version \(clapindia.org\)](http://aft.Version(clapindia.org))

Conclusion

Para-legal volunteers are indispensable to the Indian legal system, particularly in promoting access to justice for underserved communities. By addressing the challenges, they face and implementing supportive measures, we can enhance their effectiveness and ensure that their valuable contributions continue to make a significant impact. This guide aims to shed light on the critical role of PLVs and provide insights into optimizing their involvement in the legal system for the betterment of society.

Empowering Communities through Para-Legal Volunteer Training: The Role of District Legal Services Authority under the Legal Services Authority Act 1987 in India

(by Ms Dipali Khavle)

Introduction:

The legal landscape in India is vast and complex, often posing a challenge for individuals, especially those from marginalized communities, to access justice. Recognizing the need for legal empowerment at the grassroots level, the Legal Services Authority Act of 1987 was enacted, ushering in a new era of legal aid and assistance. One pivotal aspect of this legislation is the establishment of District Legal Services Authorities (DLSA), entrusted with the responsibility of implementing various legal aid programs, including the Para-Legal Volunteer Training Programme. This essay focusses into the critical role played by DLSA in enhancing legal awareness, promoting access to justice, and fostering community engagement through the Para-Legal Volunteer Training Programme.

Legal Services Authority Act 1987:

The Legal Services Authority Act 1987 was a watershed moment in the Indian legal system, aiming to ensure that justice is not a privilege confined to a few but a right accessible to all. Enshrining the principles of equal justice and providing free legal aid, the Act laid the foundation for the establishment of National Legal Services Authority (NALSA), State Legal Services Authorities (SLSA), and District Legal Services Authorities (DLSA). Section 9 of the Act mandates the establishment of DLSAs to carry out its objectives at the district level.

Para-Legal Volunteer Training Programme:

One of the innovative initiatives introduced under the Legal Services Authority Act is the Para-Legal Volunteer Training Programme. Para-legal volunteers, often drawn from local communities, are individuals trained to provide basic legal aid, disseminate legal awareness, and act as a bridge between the legal system and the grassroots. The Programme empowers individuals who may not have formal legal education but possess a deep understanding of the socio-cultural dynamics of their communities.

Role of DLSA in Para-Legal Volunteer Training:

1. Identification and Recruitment:

DLSAs play a pivotal role in identifying and recruiting suitable candidates for the Para-Legal Volunteer Training Programme. Recognizing the importance of representation from diverse backgrounds, DLSAs ensure that volunteers reflect the socio-economic and cultural fabric of the community they serve.

2. Training and Capacity Building:

The training of para-legal volunteers is a key responsibility of DLSAs. They organize workshops, seminars, and training sessions to impart legal knowledge, communication skills, and an understanding

of the legal aid mechanisms. This training equips volunteers with the necessary tools to address legal issues prevalent in their communities.

3. Legal Awareness Campaigns:

DLSAs, in collaboration with para-legal volunteers, conduct legal awareness campaigns to educate communities about their rights, entitlements, and the avenues available for seeking legal redress. These campaigns contribute significantly to empowering individuals with the knowledge needed to navigate the legal system effectively.

4. Facilitating Dispute Resolution:

Para-legal volunteers, trained under the auspices of DLSAs, often serve as mediators and facilitators in resolving disputes at the community level. By encouraging alternative dispute resolution methods, DLSAs contribute to decongesting the formal judicial system while fostering a sense of community-driven justice.

5. Monitoring and Evaluation:

DLSAs monitor the performance and impact of para-legal volunteers, ensuring that they adhere to ethical standards and effectively serve the community. Regular evaluations help in identifying areas for improvement, leading to the continuous refinement of the Para-Legal Volunteer Training Programme.

6. Coordination with Legal Aid Clinics:

DLSAs collaborate with legal aid clinics and other legal service providers to create a comprehensive network for addressing legal needs. This collaborative approach ensures that para-legal volunteers have access to ongoing support and resources.

Benefits and Challenges:

The engagement of DLSAs in the Para-Legal Volunteer Training Programme brings about numerous benefits for both the volunteers and the communities they serve. Firstly, it creates a pool of individuals with grassroots understanding of legal issues, thereby enhancing access to justice. Secondly, it fosters a sense of community responsibility and empowerment, as individuals become active participants in the legal aid process. Thirdly, the Programme aids in the decongestion of the formal judicial system by resolving disputes at the local level.

However, the successful implementation of the Para-Legal Volunteer Training Programme is not without its challenges. Limited resources, both financial and human, often impede the scale and effectiveness of the training. Additionally, ensuring the sustained motivation and commitment of para-legal volunteers poses a continuous challenge, as they are usually engaged on a voluntary basis.

Conclusion:

In conclusion, the role of District Legal Services Authorities in the Para-Legal Volunteer Training Programme is indispensable for achieving the objectives laid out in the Legal Services Authority Act

1987. By empowering individuals at the grassroots level, DLSAs contribute significantly to the democratization of justice and the realization of equal access to legal remedies. Efforts should be made to address the challenges associated with the Programme, ensuring its continued growth and impact. Through the synergy of DLSAs, para-legal volunteers, and the wider legal aid infrastructure, India can strive towards a more inclusive and accessible legal system, ultimately strengthening the foundations of a just society.

The Constitution of India

(by Dr. Anand Mahadeo Kasle)

The Constitution of India, adopted on January 26, 1950, is the supreme law of the country, providing the framework for its governance. It is a comprehensive document that outlines the political principles, establishes the structure of the government, and guarantees fundamental rights to the citizens of India. The drafting of the Constitution was a momentous task, led by Dr. Babasaheb Ambedkar, who is known as "Father of the Indian Constitution."

Preamble: The Constitution begins with the Preamble, which sets forth the ideals and objectives of the Indian state. It emphasizes justice, liberty, equality, and fraternity, ensuring the dignity of the individual and unity of the nation.

Part I - The Union and its Territory: This part deals with the territory of India, the states and union territories, and the formation of new states and alteration of boundaries.

Part II - Citizenship: It defines who qualifies as a citizen of India and the acquisition and termination of citizenship.

Part III - Fundamental Rights: Fundamental Rights are enshrined in this part, guaranteeing essential liberties to the citizens. These include the right to equality, freedom of speech and expression, freedom of religion, and the right to constitutional remedies.

Part IV - Directive Principles of State Policy: This part contains guidelines for the government to strive towards achieving a just and egalitarian society. While not enforceable in court, these principles are considered fundamental to the governance of the country.

Part IVA - Fundamental Duties: Added by the 42nd Amendment in 1976, this part outlines the duties of citizens towards the nation, promoting a sense of responsibility and civic consciousness.

Part V - The President of India: It delineates the powers and functions of the President.

Part VI - The Union Executive: This part deals with the Council of Ministers, headed by the Prime Minister, and their responsibilities.

Part VIII - The Union Judiciary: This part outlines the structure and powers of the Supreme Court and other subordinate courts.

Part IX - The Panchayats: It provides for the establishment of Panchayats at the village, intermediate, and district levels, emphasizing local self-governance.

Part IXA - The Municipalities: Similar to Part IX, this part deals with the establishment and powers of urban local bodies.

Part X - The Scheduled and Tribal Areas: It outlines special provisions for the administration and governance of tribal areas.

Part XI - Relations between the Union and the States: This part delineates the distribution of powers between the central government and the states.

Part XII - Finance, Property, Contracts, and Suits: It deals with financial matters, taxation, and the distribution of resources between the center and the states.

Part XIII - Trade, Commerce, and Intercourse within the Territory of India: It regulates trade and commerce within the country.

Part XIV - Services under the Union and the States: This part deals with public services and the composition of civil services.

Part XIVA - Tribunals: Added by the 42nd Amendment in 1976, this part provides for the establishment of administrative tribunals for the adjudication of disputes relating to recruitment and conditions of service of persons appointed to public services.

Part XV - Elections: It outlines the conduct of elections for the Parliament and state legislatures.

Part XVI - Special Provisions Relating to Certain Classes: It contains special provisions for the representation of Scheduled Castes, Scheduled Tribes, and Anglo-Indians in the Parliament and state legislatures.

Part XVII - Official Language of the Republic of India: It declares Hindi as the official language of the Indian Union, with English as a subsidiary official language.

Part XVIII - Emergency Provisions: This part deals with the proclamation of emergencies and the suspension of fundamental rights during such periods.

Part XIX - Miscellaneous: It includes various provisions not covered under the previous parts.

Part XX - Amendment of the Constitution: It outlines the procedure for amending the Constitution.

Part XXI - Temporary, Transitional, and Special Provisions: It contains provisions for the transition from British India to independent India and temporary provisions for certain areas.

Part XXII - Short Title, Commencement, and Repeals: The concluding part contains details about the short title, commencement, and repeals of previous laws.

The Indian Constitution is often lauded for its commitment to democracy, secularism, and social justice. Its provisions have inspired constitutional frameworks in several other countries. The "Constitution Day" is celebrated on November 26th annually to honour the adoption of the Constitution in 1949.

The development of the Constitution of India is a testament to the visionary leadership and collective efforts of the diverse assembly members who navigated complex challenges to provide the nation with a robust and enduring framework for governance.

Challenges before constitution of India

- Socio-Economic Inequalities
- Federalism and State Autonomy
- Women's Rights
- Language and Linguistic Diversity
- Tribal and Indigenous Rights
- Emergency Provisions and Civil Liberties
- Economic Development and Poverty Alleviation
- Globalization and Technological Advancements
- Environmental Sustainability
- Political Instability and Corruption

Para legal volunteers' role with reference to Constitution of India-

Para- legal volunteers serve as crucial pillars in realizing the constitutional vision of justice, equality, and the rule of law. Their grassroots engagement helps bridge the gap between legal provisions and the people, making justice more accessible and the constitutional principles more tangible in the everyday lives of citizens.

- Para-legal volunteers contribute to the dissemination of legal knowledge and awareness among communities. This aligns with the constitutional commitment to justice, as informed citizens are better equipped to understand and assert their rights.
- Access to justice is a fundamental right guaranteed by the Constitution. Para-legal volunteers play a pivotal role in facilitating legal aid and assistance to those who cannot afford legal representation, ensuring that the principles of equality before the law are upheld.
- Upholding human rights is a constitutional imperative. Para-legal volunteers may engage in monitoring and reporting human rights violations, aligning their efforts with the constitutional commitment to protecting the dignity and liberty of every individual.
- Constitution of India emphasizes social justice, and para-legal volunteers contribute to ensuring that the benefits of various social welfare programs reach the intended beneficiaries.
- Para-legal volunteers can play a role in promoting local self-governance, aligning with constitutional principles of decentralization and empowering local communities to manage their affairs.

The Constitution encourages the resolution of disputes through fair and just means. Para-legal volunteers often assist in alternative dispute resolution mechanisms, promoting timely and efficient resolution of conflicts in line with constitutional ideals.

Conclusion -

The development of the Constitution was not without its challenges, from navigating the complexities of a multilingual and multicultural society to addressing socio-economic disparities and ensuring representation for all. Yet, the visionary leadership of Dr. B.R. Ambedkar, and the collective efforts of the Constituent Assembly resulted in a document that reflects the spirit of inclusivity and progress. In celebrating the 75th Amritmahostav of Constitution of India, it is imperative to recognize its role in fostering a sense of unity in diversity, safeguarding individual freedoms, and steering the nation towards the collective pursuit of Liberty, justice and equality.

Notes for PLVs in implementing:

Child Rights and The Juvenile Justice Act

(by Ms Priti Patkar and Ms Rashmi Taylor)

Understanding Child Rights

The UNCRC defines a child as anyone under 18, with UNICEF highlighting child rights as specific human rights for their protection, development, and participation. Established in 1989 and ratified by over 200 countries, the UNCRC details children's economic, social, cultural, and political rights in 45 articles. India ratified the UNCRC in 1992, committing to uphold these rights.

Four Pillars of Child Rights

The UNCRC is built on four foundational principles:

1. Right to Participation: Ensuring children have a say in matters affecting them.
2. Right to Survival: Guaranteeing access to essential services and a basic standard of living.
3. Right to Protection: Safeguarding children from all forms of abuse, neglect, and exploitation.
4. Right to Development: Ensuring access to education, cultural activities, and personal growth opportunities.

The Juvenile Justice Act

In 1986, India introduced legislation aimed at protecting juveniles, standardizing their treatment across states. However, this statute failed to bring significant improvements, prompting the need for a more robust framework following India's ratification of the UNCRC. This led to the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000, which was further amended in 2015.

Key Provisions of the Juvenile Justice Act, 2015

The JJ Act, 2015, fortifies provisions for both children in need of care and protection and those in conflict with the law. It introduces several new definitions, including:

- Orphaned, Abandoned, and Surrendered Children: Children without parental care.
- Offences Categories: Petty, serious, and heinous offences committed by children.

The Act also clarifies the roles and responsibilities of the Juvenile Justice Board (JJB) and the Child Welfare Committee (CWC).

Principles of the Juvenile Justice Act

The JJ Act is underpinned by several guiding principles:

- | | |
|---|--|
| - Principle of Presumption of Innocence | - Principle of Safety |
| - Principle of Dignity and Worth | - Positive Measures |
| - Principle of Participation | - Principle of Non-stigmatizing Semantics |
| - Principle of Best Interest | - Principle of Non-waiver of Rights |
| - Principle of Family Responsibility | - Principle of Equality and Non-discrimination |

- Principle of Right to Privacy and Confidentiality
- Principle of Institutionalization as a Last Resort
- Principle of Repatriation and Restoration
- Principle of Fresh Start
- Principle of Diversion
- Principles of Natural Justice

Definitions and Roles Under the JJ Act, 2015

- Child-Friendly Approach: Behavior and practices that are humane and, in the child's, best interest.
- Best Interest of the Child: Decisions ensuring fulfillment of a child's basic rights and overall well-being.

Categories of Children and Relevant Bodies

- Children in Conflict with Law: Addressed by the Juvenile Justice Board.
- Children in Need of Care and Protection (CNCP): Addressed by the Child Welfare Committee.

Identifying Children in Need of Care and Protection

Under Section 14 of the JJ Act, 2015, children in need of care and protection include those who are abused, neglected, abandoned, found working or begging, or surrendered for adoption. This also includes missing children, children with special needs, and those whose parents or guardians are deemed unfit or incapable of caring for them.

Section 2(14) of the JJ Act defines a Child in Need of Care and Protection as a child who is homeless and without means of subsistence, works in violation of labor laws, begs, or lives on the street. It includes children residing with abusive, neglectful, or exploitative individuals, those who are mentally or physically challenged or terminally ill without support, and those with unfit or incapacitated parents or guardians. This definition also covers children who are abandoned, surrendered, missing, runaway, or whose parents cannot be found. Additionally, it includes children who are abused, tortured, or exploited, vulnerable to drug abuse or trafficking, abused for financial gain, affected by armed conflict, civil unrest, or natural calamity, and those at imminent risk of child marriage.

Procedures under the Juvenile Justice Act for a Child in Need of Care and Protection

The State Government appoints a Child Welfare Committee (CWC) in every district through an Official Gazette notification. Each CWC, consisting of a Chairperson and four members (including at least one woman and one expert on the matters concerning children, is tasked with exercising powers and duties related to children in need of care and protection. The District Child Protection Unit provides secretarial support to the CWC. The CWC operates as a Bench with powers similar to those of a Metropolitan or Judicial Magistrate of First Class. The District Magistrate serves as the grievance redressal authority for issues related to the CWC's functioning. The CWC handles cases involving the care, protection, treatment, development, and rehabilitation of children, ensuring their basic needs and protection are met.

Production before the Child Welfare Committee:

Any person or organization, including police officers, public servants, Childline Services, NGOs, state-recognized agencies, Child Welfare Officers, probation officers, social workers, citizens, the child themselves, nurses, doctors, or hospital management, can present a child in need of care and protection to the CWC.

Inquiry and Orders:

The CWC conducts a thorough inquiry into the child's background, needs, and circumstances, completing a social investigation within fifteen days to issue a final order within four months. Considering the child's wishes if they are mature, and if the child lacks family support or needs continued care, the CWC may send them to a Specialized Adoption Agency (if under six), a children's home, or a fit facility, person, or foster family until suitable rehabilitation is found. The CWC periodically reviews the child's situation.

Rehabilitation and Social Reintegration:

- o The Act emphasizes individual care plans, including education, vocational training, and counselling.
- o Adoption, foster care, sponsorship, and aftercare are key rehabilitation measures.

Anyone who finds or takes charge of a child who appears or claims to be abandoned, lost, or an orphan without family support must report to Childline Services, the nearest police station, the Child Welfare Committee, the District Child Protection Unit, or a registered child care institution within twenty-four hours (excluding travel time).

The Act provides for various types of shelter facilities for children in need of care and protection. These facilities are designed to ensure the safety, well-being, and rehabilitation of such children. The primary types of shelter facilities mentioned in the Act are:

1. Children's Homes: These are established and maintained by the State Government, either directly or through voluntary or non-governmental organizations, and are meant for the care, protection, education, training, development, and rehabilitation of children in need of care and protection.
2. Open Shelters: These are intended for children in urgent need of care and protection, and provide a short-term refuge and supportive services. Open shelters are designed to cater to children in vulnerable situations, such as street children and child laborers.
3. Foster Care: The Act promotes the placement of children in foster families as a temporary measure for their care and protection, especially for those who cannot be immediately reunited with their families or adopted.
4. Specialized Adoption Agencies: These agencies are recognized under the Act to facilitate the adoption process and to provide care and protection to orphaned, abandoned, and surrendered children until they are legally adopted.
5. Fit Facility: A fit facility is any facility or institution recognized by the Juvenile Justice Board or the Child Welfare Committee to temporarily take care of a child who needs urgent care and protection.
6. Fit Person: The Act also allows for a fit person; designation, where an individual recognized by the Juvenile Justice Board or Child Welfare Committee can temporarily care for a child in need of care and protection.
7. Aftercare Organizations: These are established for the purpose of taking care of children after they leave institutional care, providing support for their reintegration into society.

Role and Responsibilities of Para-Legal Volunteers

Para-legal volunteers play a crucial role in the juvenile justice system, serving as a bridge between the community and the legal framework. Here are key responsibilities for volunteers working with CNCP:

1. Identification and Reporting:

- o Identify children in distress through community outreach, observation, and interaction.
- o Report cases to the Child Welfare Committee (CWC) or local authorities promptly.

2. Awareness and Education:

- o Educate communities about the rights of children and the provisions of the JJ Act.
- o Spread awareness about the services and support available for CNCP.

3. Support and Assistance:

- o Assist in the documentation and formalities required for presenting a case before the CWC.

4. Coordination with Authorities:

- o Work closely with CWCs, Juvenile Police Units, and other stakeholders.
- o Facilitate the child's access to healthcare, education, shelter, and legal aid.

5) Prevention;

Prevent unnecessary contact of children with the Juvenile Justice system and prevention of long-term separation of children from family and community

Conclusion

Para-legal volunteers play an indispensable role in the protection and rehabilitation of children in need of care and protection. By understanding the provisions of the JJ Act and working collaboratively with various stakeholders, and communities, volunteers can significantly contribute to safeguarding the rights and well-being of vulnerable children. Their efforts ensure that every child receives the care, protection, and support necessary to thrive and develop into a responsible citizen.

The Vital Role of Para Legal Volunteers in Adoption

(by Mr Sunil Arora)

Introduction:

Adoption is more than just a heartfelt decision; it's a legal process that ensures the rights of children and establishes the legal foundation for their new families. In this handbook for para-legal volunteers, we delve into the intricate yet impactful journey of adoption, emphasizing the crucial role of legal frameworks and community involvement in safeguarding children's welfare.

Understanding Adoption:

One must follow the process laid down under the Juvenile Justice Act and Adoption Regulations. This ensures that the child's rights are protected, but also that the family has the legal right to parent the child just like any other biological family.

There are two main categories of children who can be Adopted.

1. **Surrender Child** - A child who has been surrendered by his parent/s to a Licensed Specialized Adoption Agency (SAA) in front of the Child Welfare Committee (CWC) under section .35(3) of Juvenile Justice Act. This is an alternative to abandonment for parent/s or guardians who are unable to take care of their child. They can reclaim the child within 60 days of surrendering the child if they do not claim the child is made legally free for Adoption by the CWC and placed in Adoption under the Adoption Regulations 2022.
2. **Abandoned Child** - A child who is found to be abandoned in a public place and is brought before the Child Welfare Committee. The child is then placed in a SAA. The authorities try to trace the biological family of the child through various efforts like police investigations, and photo publication in newspapers or national television. organizations such as Bal Asha Trust have also made efforts through Aadhaar biometrics to find the biological homes of children. If through these efforts the family is found, the child is restored with the family, but if not then the child is legally made Free for Adoption and placed in Adoption under the Adoption Regulations 2022.

Adoption Process

A prospective adoptive person (PAPs) should be physically, mentally and emotionally stable, financially capable, and shall not have any life-threatening medical condition. They should not have been convicted in a criminal act of any nature or accused in any case of child rights violation. The consent of both the spouses for the Adoption shall be required.

A couple as well as a single person can Adopt a child up to the age of 18 years.

A couple with a biological child can adopt a child.

A single female can adopt a child of any gender, but a single male person can only adopt a male child.

The steps in Adoption

1. PAPs wishing to adopt a child can register at <https://cara.wcd.gov.in/>. They need to upload documents like identity proof, income, photo, medical etc.
2. They choose the nearest SAA which provides counselling if they are found to be prepared for Adoption. Their home study is uploaded on the portal.

3. The PAPs are referred to one child from the portal. They are given timelines for making the decision on the referral.
4. Once they reserve a referral the Adoption Committee scrutinizes the documents and ascertains the preparation of the PAPs.
5. The PAPs meet the child and can get a medical review. They sign documents like the Child Study Report and Medical Examination Report of the child to confirm their acceptance of the child.
6. They can take the child into pre-adoption foster Care.
7. It takes around 2 months for the Legal Adoption orders and birth certificate of the Adoption.
8. Post-placement follow-ups are conducted every 6 months for the next 2 years from foster care.

Inclusivity and Compassion in Adoption:

It is heartening to know that today many older and special needs children are getting Adopted. There are children who are HIV positive, Hep. B positive, TB, Albinism, CP, Autistic etc have found loving and caring families. Even older children up to the age of 15 years have been placed in amazing families.

Most importantly Adoptive parents must share about Adoption with the child. This should be done as early as possible. The information when shared by parents has made it easier for children to accept their story of Adoption.

The Role of Para Legal Volunteers:

- Para-legal volunteers serve as frontline advocates for vulnerable children in their communities. They have to first protect every child who could be at risk of abandonment. They need to promote safe surrender within the communities, health posts and clinics.
- They should also be vigilant about any child who could be trafficked for illegal Adoption and also families who may be looking to get a child “quickly”. Inform Child Welfare Committees or local police stations in case of information they have of any such illegal community.
- The legal Adoption process needs to be promoted among various stakeholders to ensure that children are not trafficked.
- Through the collective efforts of para-legal volunteers, communities can ensure that every child is protected, cherished, and given the opportunity to thrive in a loving family environment.

The Protection of Children from Sexual Offences Act

(By Priti Patkar, Kashina Kareem and Geetarani Lourembam)

The Protection of Children from Sexual Offences (POCSO) Act, 2012, aims to protect children from sexual offenses and introduces child-friendly procedures for investigation and prosecution. This comprehensive legislation covers various sexual offenses against children, mandates stringent punishments, and safeguards child victims' rights throughout the legal process. The Act was amended in 2013 and 2019 to broaden its scope and increase punishments. The Act also introduced procedures that are child friendly during investigation and prosecution of sexual offences.

Encompassing a comprehensive set of provisions, the salient features of POCSO Act, 2012 are as given below:

1. Child: Any person below the age of eighteen years of age. Consent is immaterial under the Act.
2. Gender Neutrality: Both victim & offender can be of any gender.
3. Calibrated offences: The Act classifies sexual offences against children into distinct categories, taking into account the severity of each crime and prescribing punishment accordingly.
4. Child friendly procedures: The cornerstone feature of the Act is the introduction of child friendly procedures which prioritizes the welfare of the child victim at every stage of the legal process to minimize trauma. The child friendly procedures are reinforced at the stage of investigation and trial such as recording the statement of child, medical examination, evidence recording etc.
5. Pornography: Using or involving children for pornography related activities including storing, sharing, receiving, distributing etc., is an offence under the Act.
6. Provision of aggravated offence: The Act states that the nature of offence becomes aggravated based on the person who is committing the crime or situation in which the crime occurs or the severity of the impact of the crime on the child victim. Punishment for aggravated offences under this Act is stricter.
7. Burden of proof is on the accused: This means that the Court presumes that the accused has committed an offence under the Act, and it is on the accused to prove that s/he has not committed the offence.
8. Mandatory reporting: The Act mandates the reporting of sexual offences involving children, compelling individuals, institutions, and medical professionals to report such incidents promptly and without fail. Failure of reporting of an offence is punishable under this Act. The Act states that no person shall incur civil or criminal liability for providing information (to the SJPU or police) about the commission on an offence in good faith.
9. Mandatory recording: The Special Juvenile Police Unit or the local police are bound to record the commission of sexual offence against a child. Failure of recording such a matter is a punishable offence.
10. Designation of Special Courts: The establishment of special courts dedicated to hearing POCSO cases is aimed at expediting the legal process, providing a more focused and time-bound approach to these cases (fast track trials). The special court is expected to complete the trial, as far as possible within a year from the date of taking cognizance of the offence.
11. No discretion to special court to reduce the term of imprisonment to a term less than the minimum period/ term stipulated under the Act.

12. In-camera trial: Trial must take place in the presence of only those who are related to the legal case.
13. Protection of Identity: The Act explicitly prohibits the disclosure of the personal identification information of the child victim in any media thereby protecting them from social stigma and potential harm. Violation of this provision is a punishable offence under the Act.
14. Provision of Support Person and assistance of experts, special educator, translators etc: The unique feature in the Rules of the Act includes a provision for a Support Person to render assistance to the child victim through the process of investigation and trial. The law also has provisions for assisting the child with experts, translator, special educators etc., in certain cases throughout the pre-trial and trial stage to assist the child wherever required.
15. Stringent Punishments: The Act prescribes stringent penalties for offenders, ensuring that those found guilty of committing sexual offences against children face severe consequences. It also calls for stricter punishment for offenders who are in a position of trust and authority and responsible for protection of children (aggravated offences) such as the police, armed forces personnel, management and staff of Child Care Institutions, etc.
16. Abetment and attempt to commit an Offence: Instigating any person to commit a sexual offence against children, engaging with one or more person to commit the offence, intentionally aiding in committing the offence is punishable under the Act.
17. Provision of legal aid: Child victim's family or guardian are entitled to legal representation and assistance of a legal counsel of their choice. If the family or guardian of the child are unable to afford, the DLSA is given the responsibility to provide a lawyer to them.
18. Special Relief: CWC may recommend immediate payment of special relief for emergencies such as food, clothing, transport etc to the child/child's family.
19. Medical Aid and Care: The POCSO Rules of the Act states that no medical practitioner, hospital etc., cannot demand for any legal document as pre-requisite to rendering emergency medical care.
20. Provision of Form A: The POCSO Rules of the Act mandates the local police or the SJPU to inform the child and child's parent or guardian or other person in whom the child has trust and confidence about their entitlements and services available to them under the Act through Form A of the Rules.

Following is the list² of offences under the POCSO Act:

Penetrative (Sections 3-6 define the offences and their punishment)	<p>A person is said to commit penetrative sexual assault in any of the following conditions:</p> <ul style="list-style-type: none"> → Penetration of the penis or any part of the body, or any other object to any extent, into the vagina, mouth, urethra or anus of the child or making the child to do so with such person or any other person; or → Manipulating any part of child's body to cause penetration into vagina, urethra, anus or any part of child's body or making the child do so with such person or any other person; or → Applying the mouth to penis, vagina, anus or urethra of child or making the child do so to such person or any other person.
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² This list has been taken from the Specialised Social Case Work (SSCW) compendium created by Prerana

	<p><u>Note:</u> Sexual intent is not necessary in cases of penetrative sexual assault. A penetrative sexual assault becomes aggravated penetrative sexual assault based on the conditions mentioned in Section 5 of POCSOA.</p>				
<p>Non-penetrative (Sections 7-10 define the offences and their punishment)</p>	<p>A person is said to commit sexual assault in any of the following conditions:</p> <ul style="list-style-type: none"> → With sexual intent, touching vagina, penis, anus, or breast of child or making child to do so with such person or any other person; or → Doing any other act with sexual intent involving physical contact without penetration. E.g., Kissing, masturbating on the child, etc. <p><u>Note:</u> Sexual intent and physical contact is necessary in cases of non-penetrative sexual assault.</p>				
<p>Under POCSOA, the nature of sexual assault becomes aggravated based on the position of the person who is committing the crime, special vulnerability of the child, impact the crime has on the child, and severity of the crime. Some examples are:</p> <table border="1"> <thead> <tr> <th><u>Position of the accused</u></th><th><u>Situation</u></th></tr> </thead> <tbody> <tr> <td> <ul style="list-style-type: none"> ▪ Owner or management or staff of any institution providing services to children - Hospitals, educational and religious institutions, shelter & observation homes etc. ▪ A person in position of trust/ authority of a child & commits the offence in an institution, home, anywhere else. ▪ Guardians, parents, person living in the shared household/ in a domestic relationship with the parent of the child. ▪ Police Officers, Armed forces, security forces, Public servants </td><td> <ul style="list-style-type: none"> ▪ Gang penetrative sexual assault & repeated sexual assault ▪ If the child is below 12 years ▪ Use of deadly weapons ▪ During communal or sectarian violence ▪ Knowing the child is pregnant or makes the child pregnant ▪ Attempt to murder the child, or to strip & parade naked in public ▪ If the person has been previously convicted under any other law that punishes sexual offence ▪ On a disabled child (or the assault makes the child disabled) ▪ Inflicts the child with HIV </td></tr> </tbody> </table>		<u>Position of the accused</u>	<u>Situation</u>	<ul style="list-style-type: none"> ▪ Owner or management or staff of any institution providing services to children - Hospitals, educational and religious institutions, shelter & observation homes etc. ▪ A person in position of trust/ authority of a child & commits the offence in an institution, home, anywhere else. ▪ Guardians, parents, person living in the shared household/ in a domestic relationship with the parent of the child. ▪ Police Officers, Armed forces, security forces, Public servants 	<ul style="list-style-type: none"> ▪ Gang penetrative sexual assault & repeated sexual assault ▪ If the child is below 12 years ▪ Use of deadly weapons ▪ During communal or sectarian violence ▪ Knowing the child is pregnant or makes the child pregnant ▪ Attempt to murder the child, or to strip & parade naked in public ▪ If the person has been previously convicted under any other law that punishes sexual offence ▪ On a disabled child (or the assault makes the child disabled) ▪ Inflicts the child with HIV
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<p>Non-touch (Sections 11 and 12 define the offences and their punishment)</p>	<p>A person is said to commit sexual harassment in any of the following conditions:</p> <ul style="list-style-type: none"> → Uttering any word or making any sound or gesture; → Exhibiting a part of the body with the intention that such word or sound shall be heard or such gestures or object or part of the body shall be seen by the child; or → Making a child exhibit his body or any part of his body so as it is seen by such person or any other person; or → Showing objects or media in the form of porn to the child → Enticing a child for pornography; or → Repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or → Threatens to use, in any form of media, a real or fabricated depiction through electronic film or digital or any other mode, of any part of the body of the child or involvement of child in sexual act. 				

	<i>Note: Sexual intent is necessary in cases of sexual harassment and physical touch is not necessary. The act may be directed towards the child, or the child may be made to do the act. Both are an offence.</i>
Pornographic purposes (Sections 2(da), 13-15 define the offences and their punishment)	<p>A person is said to use the child for pornographic purposes, and thus, is said to commit an offence in any of the following conditions:</p> <ul style="list-style-type: none"> → Using children in any form of media by showing the sexual organs of the child; or → Engaging children in real or stimulated sexual acts (with or without penetration); or → Indecent or obscene representation of a child; or → Also storing or possessing pornographic material involving a child, including failing to destroy or report it, and also for using it for commercial purposes. <p><i>Note: The POCSO Act 2019 amendment defines "child pornography" as any visual depiction of sexually explicit conduct involving a child which include photograph, video, digital or computer-generated image indistinguishable from an actual child and image created, adapted, or modified, but appear to depict a child³ and states punishment for using, storing, possessing, distributing, using it for commercial purpose, and not reporting child pornography.</i></p>
Abetment and attempt (Sections 16-18 define the offences and their punishment)	<p>→ Abetment refers to the act of engaging with, instigating, or intentionally aiding someone to commit an offence under this Act.</p> <p>→ Attempt, on the other hand, refers to the act of taking steps towards committing an offence under this Act, but not actually committing the offence.</p> <p>Both actions are punishable under the Act.</p>
Failure to report and record cases (Sections 19-20 define the offences and their punishment)	<p>→Mandatory reporting: If a person is aware of any offence committed under the Act or has the apprehension that such an offence is likely to be committed – they must report such instances to the Police.</p> <p>→Further, personnel attached to any media, hotel, lodge, hospital, club, studio, photographic facility are required to report any material or object found that is sexually exploitative of a child.</p> <p>→Mandatory recording: If information of an offence under this Act is brought to the notice of a Police official – they must record it in writing, ascribing an entry number</p>
False complaints (Section 22 defines the offences and their punishment)	<p>→ Making a false complaint or providing false information solely with an intent to humiliate, extort or defame a person is punishable.</p> <p>→ If a false complaint/information is by a child, no punishment shall be imposed.</p> <p><i>Note: No person shall incur any liability for giving information in good faith for the purpose of reporting⁴.</i></p>

Child-Friendly Procedures, as per the POCSO Act

Below are some child-friendly procedures for PLVs to consider, in accordance with the POCSO Act:

1. The statement of the child victim by the Police shall be recorded at the child's residence/place where the child usually lives/a place of the child's choice.

³ Section 2[(da)]

⁴ Section 19(7)

2. As far as possible, the statement should be taken by a woman police officer who is not below the rank of a Police Sub-Inspector. The officer shall not be in uniform while taking the statement of the child.
3. The statement shall be recorded in simple language so that the child is able to understand what is being recorded.
4. Wherever necessary, the Police may take the assistance of a translator or interpreter for recording of statement in case the child is able to communicate only in a specific language.
5. The Police may seek the assistance of a special educator or a person familiar with the child's way of communication if the child has any mental or physical disability.
6. The statement shall be recorded by the Police as spoken by the child in the presence of the parents or any other person in whom the child has confidence and trust.
7. At no point in time must the child come in contact with the accused.
8. Under no circumstances must the child be kept at the police station overnight.
9. The statement of the child victim shall be recorded by the Magistrate as spoken by the child in the presence of the parents or any other person in whom the child has confidence and trust.
10. The child must be allowed to take frequent breaks during the process of trial if found necessary by the Special Court.
11. The Special Court should ensure that the child should not be called repeatedly to testify in Court.
12. The Special Court shall not permit any aggressive questioning or character assassination. The child's dignity must be maintained throughout the trial.

Role of Para Legal Volunteers (PLV's) in cases filed under POCSO Act

PLVs act as a bridge between legal service institutions and the public, playing a crucial role in supporting child victims of sexual offenses under the POCSO Act. Their responsibilities include raising awareness about the Act, facilitating legal aid, and guiding legal proceedings. They must inform the child and their family of their limited capacity and provide appropriate referrals if further assistance is needed. Their roles in assisting child victims and support systems are varied, providing a starting point for understanding their potential impact.

Following are a few roles they can play in assisting child victims of sexual violence and their support systems. This list is not exhaustive and serves as a starting point for understanding PLV's potential roles in assisting child victims of sexual violence.

1. Raising legal awareness about the provisions of the Act: Para-legal volunteers (PLVs) play a crucial role in informing about the Act's provisions and child-friendly procedures for assisting young victims of sexual violence. They collaborate with authorities like the Police, DLSA, and CWC to ensure accurate information is provided to the child, their parents, or trusted individuals, refraining from misinformation.
2. Immediate assistance in filing FIR:
As filing an FIR can be overwhelming for the child and their family, PLVs, familiar with the legal system, can assist by explaining the process, accompanying them to the police station, and advocating for child-friendly procedures. This includes ensuring the child and their family

understand their entitlements and available services as per FORM A of POCSO Rules, and arranging for the statement to be recorded in a comfortable environment for the child.

3. Ensuring confidentiality: PLVs play a crucial role in maintaining the confidentiality of the victim's identity, preventing any unnecessary disclosure and also by educating the child and child's parents or guardian on necessary stages for disclosure.
4. Medical Aid and Care: PLVs can coordinate with the police to promptly provide emergency medical aid to the child by identifying the nearest medical facility for treatment and care. They can also invoke provisions of the POCSO Act and Rules as needed within the medical facility.
5. Explaining court proceedings: PLVs can simplify court proceedings for children and their families by explaining what to expect during trial and orienting them to available assistance and provisions they can access.
6. Coordinating with Authorities: PLVs may act as liaisons between the victim, their family, and the authorities/ stakeholders such as the Police, Special Public Prosecutor etc., facilitating effective communication, if required.
7. Facilitate free legal aid: PLVs can direct the family to the DLSA for free legal aid & support. PLVs can also help the family in filling out the relevant forms to access the required services. PLVs can further aid in keeping follow-up regarding the appointment of a legal counsel.
8. Facilitate compensation: PLVs can assist the child and child's family or guardian in identifying relevant schemes or compensation and help them in filing application for the same.
9. Linkages to government offices providing relevant social security documents: PLVs can assist the child's parents or guardians in obtaining necessary social security documents to access compensation and schemes like the Manodharyia and Bal Sangopan Schemes in Maharashtra.
10. Linkages with Child Welfare Committee, if required: If PLVs identify a child victim of sexual offenses as a Child in Need of Care and Protection under Section 2(14) of the JJ Act 2015, they can coordinate with the police to bring the child before the local CWC. PLVs can also assist the child, parents, or guardians in approaching the CWC for Special Relief under POCSO Rules.

The Immoral Traffic (Prevention) Act

(by Dr. Pravin Patkar)

This article familiarizes the trainees undergoing the PLV training programme with The Immoral Traffic (Prevention) Act 1956 (the ITPA or PITA) which is the main Indian law that addresses the issue of sex trafficking and organized sex trade (appropriately called 'Commercial Sexual Exploitation' (CSE&T). The law was passed in 1956 as the follow up of signing and ratifying the 1951 U. N. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others in 1949. The original name of the Indian law was The Suppression of Immoral Traffic in Women and Girls Act -1956. It was majorly revised in the year 1986 in the form of ITPA. In this article we shall focus on the ITPA i.e. the 1986 version of the law.

Internationally, it is one of the most progressive laws on sex trafficking and CSE. This is so because;

- I. It is gender neutral i.e. unlike its pre-1986 version (SITA) which was limited to women and girls the ITPA also covers men, transgender and people of other sexual identities.
- II. It defines prostitution essentially as exploiting other person/s for commercial sexual exploitation. Its previous version had defined prostitution under Sec2(f) as "prostitution" means the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind. The definition was changed in 1986 as Sec 2(f) "prostitution" means the sexual exploitation or abuse of persons for commercial purpose, and the expression "prostitute" shall be construed accordingly;
- III. It defines the term 'brothel' very comprehensively as any premise or conveyance or part thereof that is used for commercial sexual exploitation of any person. So, a part of a public park or a bogie of a train or a taxi or an aeroplane can also be a brothel if it is used to commercially sexually exploit anyone.
- IV. It defines the term 'detention' very comprehensively that appropriately reflects the Indian reality. Instead of limiting it to mere physical captivity with chains, lock ups or cages it also covers a variety of ways in which a victim is forced to stay in a place or situation of CSE against her will e.g. taking away from the victim and taking into one's possession her child, documents like passport, work permit, other important documents, apparels, valuable possessions like jewellery, cash savings, or by threatening with legal action etc.
- V. It is a victim friendly legislation which goes after the perpetrators of the offence and the sex traders and adopts a lenient stance when the victim women happen to violate certain provisions of the law thereby causing public nuisance.
- VI. It is against organised sex trade and hence penalizes procuring persons for the sex trade, taking or moving them for prostitution, detaining them for prostitution, making commission and living, even partly, on the earning by other person's commercial sexual exploitation, providing one's premises for someone to run a brothel or to use for selling sex, causing public nuisance by selling sex in 200 meters radius from certain places like places of worship, education or from hospitals or by soliciting in public places, seducing anyone under one's authority to join prostitution. In short, the ITPA is against sex trafficking and organised sex trade. It does not come in the way of a person's right to voluntarily and singularly sell one's own bodily sex in their private premises without causing public nuisance. At the same, it does not give a formal or positive recognition or license to selling sex.

- VII. It takes into consideration the highly fragile nature of the existence of a majority of women and children in India belonging to the marginalised strata and/ or facing dangerous situations and the high chances of their getting trafficked by the anti-social elements and hence considers it inappropriate to give any façade of positive recognition to the sex trade.
- VIII. If a woman is found soliciting in the banned/ restricted areas or found causing public nuisance the law advises the magistrate to look into her case and grant her an opportunity of reformation, and enable her to acquire alternate means of survival instead of making her suffer a punishment given in the text of the law.
- IX. Drawing from the wisdom that the existence and running of retail outlets is a critical factor in the running of any trade it provides for the closure of brothels the latter being the retail outset of commercial sex.

Sec 13 of ITPA provides for a Special Police Officer at every police station for the implementation of the ITPA. It also provides for the Trafficking Police Officers at the higher levels to crack down upon the crime of trafficking especially the extra territorial crime.

Children born into and living in brothels such as the children of the prostituted mothers who are themselves victims of trafficking and living in captivity are extremely vulnerable to getting trafficked themselves. While Sec 6 of the ITPA provides against detention of the victims in the place or situation of exploitation it gives special protection to their children and other which are detained there. During the search operation under the ITPA if the police find any adults with a child, then it is presumed that the child is detained by the persons kept there for the purpose of sexual exploitation. Upon medical examination if it is found that the child is sexually exploited then it presumes that the child has been sexually exploited for commercial purposes.

This is a crucial provision as it is not uncommon that the sex traffickers and sex traders traffic children and detain them in sub human condition in captivity and eventually induct them into the sex trade. Often the prostituted women have their own children living with them as dependents. While the trafficked children need to be removed from captivity and a dangerous situation, the children of the prostituted mothers need not be taken away from them unless it is urgently necessary to do so in the best interest of the child. The post rescue procedures laid down by the law bring these children into the fold of the juvenile justice system as they are produced before the Child Welfare Committee to ensure their protection, maintenance and to serve their best interest. The CWC working with civil society organizations in consultation with the mother and the child can decide whether the child and for how long the child may be kept in an institution or to be restored to the mother. However, one must remember that police action under Sec 15 (Search & Rescue), and Sec 6 (Detention) is an interface between ITPA and JJA. In the case of victims below 18 years of age it also brings in an interface with POCSOA. For the PLVs and for those working in the domain of CSE&T this is an area demanding proper understanding of the interface of various special laws with the JJA.

Sec 15 provides for and lays down the procedures to be followed by the SPO while conducting Search (popularly called “raid”) & Rescue where he has reasons to believe that the ITPA is being violated.

Sec 16 empowers a magistrate to send a police officer not below the rank of a Sub Inspector to a place where he has reasons to believe that a person is living, or is carrying on, or is being made to carry on, prostitution in a brothel and to produce that person before him.

The ITPA revised in 1986 provides that the magistrate can place in a children’s institute the child victims rescued and produced before him. However, since the provisions of the Juvenile Justice (Care and

Protection of Children) Act 2015 override the ITPA-1956 the magistrate is required to transfer the persons below 18 years to the competent authority under the JJA, i.e. the Child Welfare Committee and not proceed with such victims. The child is then a case in the respective CWC's jurisdiction.

ITPA provides for the inclusion of the civil society in the implementation of the Act. e.g.

- It provides for the constitution of an advisory body composed of civil society members esp. women, who are to be consulted by the SPO during the Search operation (raid) investigation and trial. ITPA Sec17 (5) provides for setting up of a committee of 5 civil society members under authorises a magistrate to summon a panel of five respectable persons, three of whom shall, wherever practicable, be women, to assist him; and may, for this purpose, keep a list of experienced social welfare workers, particularly women social welfare workers, in the field of suppression of immoral traffic to assist the magistrate.
- It provides that the Search team must have women constables who alone will handle the women taken into custody at the time of search. Similarly, it provides that a woman police officer alone can take the statement of a woman victim.

Salient penal and other provisions of ITPA

- a. Keeping or managing brothel is punishable U/Sec 3
- b. Providing premises for running a brothel is punishable U/Sec 3
- c. Pimping or living on the earnings of another person's prostitution is punishable U/Sec. 4. This Section makes the exception of person below 18 years as the victim woman's own child may be living on her earnings.
- d. Procuring a person for prostitution is punishable U/Sec 5
- e. Detaining a person for prostitution is punishable U/Sec. 6
- f. Prostituting within 200 meters from a hospital, place of worship or an educational institution is punishable U/Sec. 7 (i)
- g. Providing one's place to someone to sell sex is punishable U/Sec. 7 (ii)
- h. Causing public nuisance by soliciting for prostitution is punishable U/Sec. 8 (a) &(b)
- i. Seducing anyone under one's authority to join prostitution is punishable U/Sec. 9

Section 15 provides for conducting a Search operation (popularly called 'the raid') on brothels and for rescuing the victims (mostly women and children) as well as for arresting the offenders found there for which under Sec 13 an officer not below the rank of Inspector of Police is designated as a Special Police Officer. Section 15 makes provision for the presence of women officers and women witnesses from the civil society during the Search.

Section 16 authorises a magistrate to send an officer not below the rank of Sub Inspector of Police to a site when they have a reason to believe that the ITPA is being violated. Under. Section 21 provides for a Special Court for ITPA cases which are exclusively dedicated to try the cases under the ITPA.

The ITPA presumes guilt and places the burden of proof on the accused specifically in Sec 6 detention of a child or minor and Sec 18 the closure of a brothel.

Summing up, while the ITPA is a victim friendly and women friendly law that recognizes the sexual freedom of women (now 'persons') and does not aim at interfering in them, it is clearly against organized sex trade. It also involves the civil society in its implementation.

The limitations:

Although the ITPA uses the term Traffic in the title it neither defines the term Traffic nor uses the term even once in the entire text of the law.

The weaker elements of ITPA that require revision, streamlining, and strengthening:

1. The classification of persons below 18 years of age between two categories as minor (16 to 18 years) and child (below 16 years) is unnecessary. It should be made 18 years to maintain uniformity among various laws.
2. The provision U/Sec 18 to close the brothels is very weak and mild. It needs to be strengthened. Of course, the provisions under The Money Laundering Act (MLA) 2002 and the inclusion of the offences under ITPA in Paragraph 7 of the MLA is but is little known to the police or the prosecution and hence never invoked.
3. Sec 5 Procuring in ITPA may be renamed as Sex Trafficking. Currently, the offence of trafficking covered under Sec 370 IPC is complicated besides being little known to the police and the police do not invoke it. It should be integrated with the ITPA.
4. The POCSOA-2012 has calibrated sexual offences extremely well. More importantly, it has clearly spelt out many victim-friendly/ child friendly practices as a part of the Act which are elaborated and strengthened through the POCSOA Rules. In investigating and trying cases under POCSOA they come handy as they are a part of the text of the Act and the Rules. That is missing in ITPA. There is an additional disadvantage of ITPA. Unlike the POCSOA the ITPA is not limited to children and they need its own set of victim friendly provisions preferably in the text of the Act or in the Rules. Such absence adds to the preexisting treatment of stigma and discrimination meted out to the adult victims of sex trafficking and CSE.
5. Many CSOs working in the AHT domain have repeatedly demanded complete scrapping down of ITPA Sec. 8 to protect the victim women against harassment and extortion by the police. However, they fail to consider that ITPA Sec. 8 has two sub sections of which Sec. 8 (b) intends to punish the pimps who cause public nuisance and hence scrapping Sec. 8 entirely will be a feast to the pimps and the traffickers.
6. ITPA Sec. 20 gives undue and excessive powers to the magistrates to extort the woman selling her bodily sex on her own without violating any provisions of any criminal law. Either such disproportionately high powers given to the magistrate under Sec. 20 may be curtailed or the magistrate should be guided and closely supervised.
7. If a brothel is a place of CSE then no one other than the legally competent persons and the appropriately authorised social workers/helping professionals have a right to be found therein. Under Sec 15 the SPO is entitled to take into custody all persons found therein. It is suggested that instead of leaving it to the discretion of the SPO he should be obligated to take everyone into custody and produce them before the appropriate competent authority /magistrate.

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| <ul style="list-style-type: none">• Wherever appropriate and applicable when used in combination with POCSOA, JJA, IPC and Cr. P.C the ITPA can prove to be a very effective legislation. |
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| <ul style="list-style-type: none">• Sec 16,18,20 of The Bonded Labour System (Abolition) Act, 1976 (19 of 1976)• Paragraph 14 of Prevention of Money Laundering Act 2002 covers Sec 14 which gives punishment for violation of Sec 3 of The Child Labour (Prohibition and Regulation) Act, 1986 (61 of 1986)• Paragraph 15 covers Sec 18,19,20 of The Transplantation of Human Organs Act, 1994• Paragraph 16 of the PML Act 2002 covers Sec. 23,24,25,26 of The Juvenile Justice (Care and Protection of Children) Act,2000 (56 of 2000) |
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Role of PLVs:

- Raise awareness among the vulnerable populations and other stake holders through mass communication, training programmes and community outreach
- Network and work in convergence with the enforcement agencies to identify and reach out early to the vulnerable cases of HT
- Facilitate early reporting and assure confidentiality
- Collaborate with Legal Aid Clinics functional in Protective Homes and provide legal guidance to the client system
- Mobilise rightful assistance and other help to the victims
- Help rehabilitation and social reintegration of the victims
- Refer victims to victim assistance through the DLSA
- Accompany the victims to court hearings and provide support through the trial process.
- Facilitate communication between victim, lawyers, and judiciary

The Child Marriage Prohibition Act

(by Ms Pooja Yadav)

Prohibition of Child Marriage Act 2006

Child marriage is a complex issue deeply rooted in gender discrimination, the vulnerability of girls, and indifference toward children's education. Contributing factors include the lack of schools beyond the primary level, poor transportation options, entrenched traditions, socio-economic challenges, migration, legal ignorance, and insufficient government coordination under the Prohibition of Child Marriage Act 2006. Despite a decline in child marriage rates in Maharashtra from 26.3% in 1998-1999 to 25.1% in 2019-2020, 6% of child marriages in India still occur in the state, highlighting the urgent need for attention. Child marriage violates child rights, leading to early motherhood, premature family responsibilities, domestic violence, and higher maternal mortality rates. This longstanding societal issue demands serious and immediate action.

Key Milestones in Preventing Child Marriage and Defining Legal Marriage Ages in India:

Over the past century, India has made significant strides in preventing child marriage through evolving legislation. In 1860, the Indian Penal Code prohibited sexual intercourse with girls under 10 years. The Mysore government's 1893 Child Marriage Act set the minimum marriage age for girls at 8 years, which was increased by the Baroda government in 1904 to 12 for girls and 16 for boys. By 1927, the Indore government further adjusted these ages to 12 for girls and 14 for boys.

The 1929 Child Marriage Restraint Act was a landmark national law setting the marriage age at 14 for girls and 18 for boys. The 1955 Hindu Marriage Act initially set the minimum marriage age at 15 for girls and 18 for boys, later amended in 1978 to 18 for girls and 21 for boys. The 2006 Child Marriage Prohibition Act maintains these ages, reinforcing efforts to prevent child marriage and promote gender equality.

The Prohibition of Child Marriage Act of 2006:

The Prohibition of Child Marriage Act of 2006, enacted in India on November 1, 2007, expressly prohibits the practice of child marriages and offers safeguards and support to those affected by such unions. Under this Act, a child is delineated as a male under 21 years and a female under 18 years. It characterizes child marriage as any union wherein one of the parties is considered a child according to the provisions of the PCMA. The PCMA operates under the principles of Prevention, Protection, and Prohibition, commonly referred to as the "3 Ps."

1) Prevention – Child Marriage Prohibition officers (CMPO) appointment:

1. Appointment of Child Marriage Prevention Officers: Maharashtra Government Resolution (June 3, 2013) appointed officers in rural and urban areas to prevent child marriages: Gram Sevak and Anganwadi Sevika in rural areas; Child Development Project Officer and Anganwadi Supervisor in urban areas.

2. Preventive Measures:

- Facilitate discussions in Gram Sabha or Women's Gram Sabha to pass resolutions against child marriage.
- Encourage collaboration between School Management Committees and Child Protection Committees.

- Promote marriage registration and issue age eligibility certificates for newlyweds.
- Engage with families through Gram Panchayat to prevent child marriages. If persisted, issue written notices and file complaints with police.

3. Legal Actions:

- Collect evidence for legal action and present it to the authorities.
- Judicial magistrates can issue injunctions against child marriages based on complaints or Suo motu.
- Any child marriage against injunction orders is void.

4. District Magistrate's Powers:

- Empowered to stop and prevent mass child marriages using appropriate measures and minimum police force.
- Possesses all powers of the Child Marriage Prohibition Officer.

2) Protection: Nullification and Rehabilitation: PCMA- Section 4 (1-2-3-4) and Section 5 (1-2-3-4) and Section 6)

1. Voidable Marriages: Section 3 of the Act permits child marriages to be voided upon the request of the party who was a child at the time of marriage, within two years of attaining majority.
2. Null and Void Marriages: Sections 12 and 13 declare marriages null and void for reasons such as coercion, deceit, force, or if the marriage is conducted for illegal purposes like trafficking. Violation of a District Magistrate's order against marriage also renders it null and void.
3. Maintenance and Residence: The Act ensures maintenance and residence for the girl until her remarriage, provided by the male contracting party or his parents. It also empowers the court to issue appropriate custody orders for any children born from such marriages.

3) Punishment/prosecution:

1. Punishment for male adult: If an adult male who is above 21 years of age contracts child marriage, he shall be punishable with imprisonment for 2 years or with fine which may extend to one lakh rupees or both.
2. Punishment for solemnizing marriage: If a person performs, conducts, directs or abets any child marriage, he shall be punishable with rigorous imprisonment up to 2 years or with fine which may extend to one lakh rupees or both.
3. Punishment for promoting / permitting solemnization of marriage: Any person having charge of the child whether parent or guardian or any other person including member of organization or association of persons who does any act to promote the passing or permit child marriage or negligently fails to prevent it from being solemnized, including attending or participating such marriage, shall be punishable with rigorous imprisonment up to 2 years or with fine which may extend to one lakh rupees or both. Females are exempt from imprisonment.

The Maharashtra rules on CMPA

Reporting

- Any person can report information about impending, ongoing, or occurred child marriages to the Child Marriage Prevention Officer through a helpline.
- Teachers or principals must report if a child has been absent from school for 15 consecutive days to the Child Marriage Prevention Officer using a prescribed format.
- It should be reported to the Chief Judicial Magistrate and the Metropolitan Magistrate, along with informing the relevant police officer.
- The Child Marriage Prevention Officer should share information about child marriages with concerned authorities, even if it falls outside their jurisdiction.
- Information about domestic violence should be shared with the concerned Child Protection Officer under the Protection of Women from Domestic Violence Act, 2005.
- The identity of the person reporting child marriage incidents will be kept confidential by the Child Marriage Prevention Officer, except in cases where the person is at risk, then the name can be revealed only to a police officer.
- Child Marriage Officers will provide information under Section 19 of the POCSO Act about child marriages involving sexual abuse to relevant police officers at the police station.

Investigation by CMPO:

Investigations into child marriage can be conducted at the location or anticipated venue. Documents such as birth certificates, school records, and medical certificates verifying the child's age will be scrutinized. Statements from willing witnesses will be recorded, with investigations aimed to conclude within three months. A dedicated case file will document all evidence and details. If any offenses under the Indian Penal Code are discovered, the relevant information will be shared with the appropriate police authorities.

Role of Police:

Upon receiving information about child marriage, record details and document witness statements. File an FIR if the marriage has occurred based on evidence. Initiate legal actions under the Prohibition of Child Marriage Act with support from the Child Marriage Prevention Officer. Provide emergency support by meeting with the Officer at suspected marriage locations. Adhere to court orders and take action under the POCSO Act if there is evidence of sexual abuse related to or during the child marriage.

Age verification:

Proof of age can be established through documents such as Transfer Certificate (TC) from school or any examination, or a birth certificate issued by the Gram Panchayat or Municipal Corporation. In cases where such proofs are absent, the matter should be presented to the Child Welfare Committee for further assessment and action. These documents play a crucial role in verifying the age of the child and determining whether they are at risk of or have been subjected to child marriage.

The role of Paralegal Volunteer:

The role of a paralegal volunteer in the implementation of the Child Marriage Prohibition Act (CMPA) in India is crucial in various ways. Their involvement can significantly contribute to the effective enforcement of the law and protection of children's rights. Here are some roles they can play:

Awareness and education: PLV's can conduct awareness campaigns in the communities about the CMPA. They can train volunteers, community members, school teachers, ASHA workers , volunteers, and local leaders on the legal aspects of child marriage, ways to prevent it, and how to support victims.

Develop Informational materials: Create and distribute pamphlets, brochures, and posters highlighting the legal age of marriage and the penalties for violating the law

Legal Aid and Assistance: PLV's can provide legal assistance to those affected by child marriage. This includes helping victims file complaints, guiding them through the legal process, and connecting them with legal professionals for further action

Liaison with Authorities: PLV's can serve as a bridge between the community and law enforcement agencies. They can facilitate communication and coordination, ensuring that the authorities are informed about child marriage cases and that appropriate actions are taken.

Family Laws, DV Act, 498A, PCPNDT, 304 B

(by Adv. Aileen Marques)

“No man is above the law and no man is below it; nor do we ask any man's permission when we ask him to obey it. Obedience to the law is demanded as a right; not asked as a favor.” **Theodore Roosevelt**⁵.

Human behavior is conditioned by societal norms and very often the laws of the land are conveniently overlooked. When we discuss family laws, we gather that the notions about marriage, expenses towards the marriage, streedhan, custody, divorce, maintenance etc. are understood as they have been over the years. The laws governing marriage, divorce, maintenance etc are seldom understood.

Some issues that need immediate consideration in the arena of family laws are:

1. **KYC in marriage:** It is very important to gather relevant information to **Know Your Candidate** before you agree to marry. The societal norm is that marriages are arranged on the basis of the oral information gathered and the information is considered authentic as TRUST is the most overplayed word during weddings. In this age when we understand the importance of Right to Information, it is pertinent that we assert our right to be informed about the education, income, debt-status, family background, employment, health concerns, genetic abnormalities etc. of the person we may marry.
2. **Consent:** Our notions of consent are influenced by media and maybe novels. Consent as required by law must be valid, written, expressed, without undue force or coercion. Consent that is implied may affect the relationship and its status.
3. **Dowry:** During the session, there was a consensus that dowry is still prevalent. Giving and taking dowry continues to this day, inspite of the Dowry Prohibition Act. As changemakers, we must strive to unlearn the practice of giving/receiving dowry and uphold the legal and constitutional mandate that upholds dowry prohibition.
4. **Wedding kharcha (expenses) & charcha (rituals):** The expenses incurred towards the wedding, the pre-wedding rituals and the post wedding rituals can well be sufficient to buy a flat/house. Young students feel entitled to these marriage expenses because they say that weddings are once in a lifetime affair and such luxury is needed. That the wedding must reflect the social status of the family and exhibit extravagant exuberance is a practice that makes the elders in the family debt-ridden, burdened and vulnerable to a life of poverty. Hence instead of focusing on the *taam-jhaam* (elaborate arrangements) of the *shaadi* (marriage) the focus as I see must be on understanding the responsibilities that marriage entails and the fulfillment of duties as spouses. The increasing cases of elder abuse, may see a decline if the parents and grandparents are allowed to enjoy their savings and their peaceful existence in their houses. The right to life and dignity of senior citizens today gets overshadowed by the expectation that children have a share in the wealth and properties of their living parents.
5. **Court marriage:** The marriage governed by the Special marriage act is generally referred to as court marriage. Court marriage does not most often get solemnized in court, rather it takes place in the Office of the Registrar of Marriages. The notice to marriage is required to be given and after 30 days of the notice, the marriage is solemnized in the presence of three witnesses and a certificate of marriage is issued by the Marriage Registrar.

⁵ <https://millercenter.org/the-presidency/presidential-speeches/december-7-1903-third-annual-message>

6. **Zero-tolerance to violence:** Cruelty, harassment, torture, domestic violence, etc should not be tolerated in any relationship. Power and authority within the family most often sanction violence. The constitutional mandate of equality, freedom of speech and expression, life and personal liberty, non-discrimination should be upheld within the family as the family is the nucleus of society.
7. **A balance of rights and duties:** Within the family, most members assert their rights and few perform their duties. It is the duty of parents to provide for their children and in the same way it is the duty of adult children to provide for their aged parents. The household chores should be shared equally by all members of the family so that one person is not burdened. The women in the family should be encouraged to emphasize on nutrition, rest, income, career etc. and not just sacrifice themselves for the family.

We may provide our services as Para-Legal Volunteers but we are human persons and we are an integral part of the family and the society. As PLV we may be required to

- Unlearn our societal conditioning and re-learn the constitutional mandate, when we address cases of domestic violence, cruelty, senior abuse etc.
- Gather information on the support system around your area of work. Note the contact details of the local police station, Protection Officer, mahila cell, Mohalla committee, NGOs, CWC, One stop centre, shelter homes etc.
- Acquaint yourself with the law books and carry copies of relevant bare acts, if possible, for easy reference.
- Document every case you engage with. The facts of the case, the contact details of the parties, the details of the incidents, the consequences/ impact of the incident, the action/reliefs sought, the steps taken etc.
- Report the activities undertaken as PLVs. The awareness programs conducted, the camps organized, the assistance provided at the Lok-Adalat, etc. must be recorded and regularly reported.
- Self-care: As PLV you may encounter cases of extreme violence, you may be required to work under difficult conditions, etc. Hence you may need to allocate some time for self-care to rejuvenate yourself and continue with the tasks assigned. While serving the society, remember to serve yourself and your family too.
- Upgrade/ capacity building: Learning sign language, Braille, another language, reading case-laws, books, blogs etc. may be some ways to upgrade your skills as a PLV. Participate in programs concerning your area of work and note the recent developments.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

(by Prof. Dr. Karuna Akshay Malviya)

Introduction

Sexual harassment at the workplace is a significant issue that affects employees' safety, dignity, and productivity. In India, the issue gained substantial attention following the landmark case of Vishaka v. State of Rajasthan (1997), which led to the formulation of guidelines to prevent workplace sexual harassment. These guidelines were eventually codified into law with the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, commonly referred to as the POSH Act.

Background and Need for the Act

The POSH Act was a response to the increasing awareness and reports of sexual harassment faced by women in various work environments. The Vishaka guidelines, laid down by the Supreme Court of India in 1997, served as the foundation for this law. These guidelines were the result of a public interest litigation filed by women's rights activists, highlighting the lack of a legislative framework to address sexual harassment at the workplace.

The primary objectives of the POSH Act are to:

- Provide protection against sexual harassment of women at the workplace.
- Prevent and prohibit sexual harassment.
- Provide a redressal mechanism for complaints.

Key Legal Provisions

Definition of Sexual Harassment

The POSH Act defines sexual harassment in broad terms, encompassing various unwelcome acts or behaviour, whether directly or by implication, such as:

- Physical contact and advances.
- A demand or request for sexual favours.
- Making sexually coloured remarks.
- Showing pornography.
- Any other unwelcome physical, verbal, or non-verbal conduct of sexual nature.

Internal Complaints Committee (ICC)

The Act mandates the establishment of an Internal Complaints Committee (ICC) at every workplace with ten or more employees. The ICC is responsible for addressing complaints of sexual harassment and ensuring a fair and timely resolution.

Composition of ICC:

- A presiding officer who is a woman employed at a senior level at the workplace.

- Not less than two members from among the employees, committed to the cause of women or having experience in social work or legal knowledge.
- One member from a non-governmental organization or association committed to the cause of women.

Complaint Mechanism

The Act provides a clear procedure for lodging complaints:

- Any aggrieved woman can make a complaint in writing to the ICC within three months from the date of the incident.
- The ICC can extend the time limit by another three months if there are valid reasons.

Inquiry Process

Upon receiving a complaint, the ICC must conduct an inquiry as per the principles of natural justice:

- Both parties must be given an opportunity to be heard.
- Interim relief can be provided to the complainant during the inquiry, such as transfer of the complainant or the respondent, leave for the complainant, etc.
- The inquiry must be completed within 90 days.

Action during Pendency of Inquiry

During the inquiry, the ICC can recommend interim measures such as:

- Transfer of the complainant or the respondent to another workplace.
- Granting leave to the aggrieved woman up to three months.
- Restraining the respondent from reporting on the complainant's work performance.

Punishment for False or Malicious Complaints

The Act also includes provisions to handle false or malicious complaints:

- If the ICC finds that the complaint was made with malicious intent or the complainant produced any forged or misleading document, the ICC may recommend to the employer to take action against the complainant as per the service rules or other applicable rules.

Employer's Duties

The POSH Act places significant responsibilities on employers to ensure a safe working environment:

- Employers must provide a safe working environment free from sexual harassment.
- Display conspicuous notices at the workplace about the penal consequences of sexual harassment.
- Organize workshops and awareness programs at regular intervals for sensitizing employees regarding the provisions of the Act.
- Assist in securing the attendance of the respondent and witnesses before the ICC.

Case Study: The Vishaka Case

Background:

The Vishaka case is a landmark judgment in the history of Indian jurisprudence related to sexual harassment at the workplace. Bhanwari Devi, a social worker from Rajasthan, was gang-raped for trying to prevent a child marriage. When her complaints were not adequately addressed by the local authorities, the Vishaka group, along with other women's rights organizations, filed a public interest litigation in the Supreme Court.

Judgment:

In 1997, the Supreme Court of India laid down the Vishaka guidelines, recognizing sexual harassment as a violation of fundamental rights. These guidelines mandated employers to create mechanisms to address complaints of sexual harassment, thus filling a significant legislative gap until the enactment of the POSH Act in 2013.

Impact:

The Vishaka guidelines formed the basis for the POSH Act. They highlighted the need for a comprehensive legal framework to prevent and address sexual harassment, ensuring a safer work environment for women across India.

Impact and Effectiveness of the Act

Since its enactment, the POSH Act has played a crucial role in raising awareness and providing a legal framework to address sexual harassment at the workplace. It has led to the establishment of ICCs across various organizations, ensuring that complaints are handled professionally and with sensitivity.

Challenges:

- Awareness and Implementation: Despite the Act's provisions, many organizations still lack awareness or fail to implement the requirements effectively.
- Cultural Barriers: In some workplaces, especially in smaller towns or traditional sectors, cultural barriers hinder the effective enforcement of the Act.
- Fear of Retaliation: Many women still fear retaliation or damage to their reputation, which discourages them from coming forward with complaints.

Positive Outcomes:

- Increased Reporting: There has been an increase in the reporting of sexual harassment cases, reflecting growing awareness and trust in the redressal mechanisms.
- Workplace Policies: Many organizations have adopted clear policies and training programs to educate employees about sexual harassment and its consequences.
- Legal Precedents: Several high-profile cases have set important legal precedents, reinforcing the Act's provisions and encouraging other victims to seek justice.

Conclusion

The Prevention of Sexual Harassment at Workplace Act, 2013, is a significant step towards ensuring a safe and respectful work environment for women in India. While the Act has made considerable progress in addressing sexual harassment, continuous efforts are needed to overcome implementation

challenges and cultural barriers. Organizations must proactively foster a culture of respect and equality, ensuring that every employee feels safe and valued at their workplace.

The journey towards completely eradicating sexual harassment is ongoing, but with robust legal provisions like the POSH Act, India is moving in the right direction, paving the way for a safer and more inclusive work environment for all.

About the Authors

(in chronological order of articles)

- **Adv. Siddharth Desai**

Adv. Siddharth Desai, an alumnus of ILS Law College in Pune, holds BSL, LLB, and LLM degrees from the University of Pune. He has served as a Special Public Prosecutor for the CBI, handling cases under the Prevention of Corruption Act and other legal matters. As a panel lawyer for numerous nationalized and cooperative banks, he also consulted for British Petroleum on Trademarks and Copyrights. Currently, he collaborates with DLSA, dedicating time to pro bono cases for undertrial inmates. He is an expert coach for JMFC entrance exams and provides guidance for LLM (CLAT/MH CET) and LLB (CLAT/MH CET) entrance exams. Additionally, he is a regular columnist in a national daily newspaper and the legal website Verdictum, sharing insights on various legal topics. Adv. Desai has delivered guest lectures at several law colleges, focusing on criminal law subjects.

- **Ms Dipali Khavle**

Ms. Dipali Khavle, an assistant professor at the D. Y. Patil deemed to be University, School of Law, committed to legal education, research and social justice, actively contributing to academia and community welfare through her expertise and outreach initiatives. Her education includes pursuing Ph.D. in Law at the D. Y. Patil deemed to be University, Bachelor of Commerce (B.Com) achieved at the University of Mumbai and a Bachelor of Laws (LL.B) from MGM College of Law, University of Mumbai. Additionally, a Master of Laws (LL.M) – Specialization in Constitutional & Administrative Law, University of Mumbai. Other achievements encompasses teaching & research experience of 10 Years of Academic Experience as an Assistant Professor in law colleges affiliated with Mumbai University and SNDT Women’s University. She also did 3 Years of Court Practice, Specializing in criminal and family law matters. Lastly she has Authored multiple Research work on Human Rights and Criminal Law. Conducted and participated in legal awareness drives, faculty development programs, and symposia.

- **Dr. Anand Mahadeo Kasle**

Dr. Anand Kasle is an academic and legal professional with a Ph.D. in Criminal Law, specializing in organized crime in India. With over 16 years of teaching experience, he serves as an Assistant Professor at G. J Advani Law College and is a recognized LL.M. teacher at the University of Mumbai. His expertise includes constitutional law, criminal law, jurisprudence, intellectual property rights, human rights, banking laws, international commercial arbitration, company laws, and land laws. Dr. Kasle has authored the book “Thoughts of Dr. Babasaheb Ambedkar and Constitution of India” and published twenty-five research papers. He has served as a panel member for the National Lok Adalat and as a resource person for the Azadi ka Amrit Mahotsav lecture series by the District Legal Services Authority, Mumbai. Dr. Kasle has organized the Youth Parliament and is a member of the syllabus drafting committee for M.Com. at the University of Mumbai.

- **Ms Priti Patkar**

Ms. Priti Patkar has worked for over 30 years to protect children from human trafficking and exploitation. As the co-founder of Prerana NGO, she has pioneered initiatives for the welfare

of children born in brothels and those rescued from the sex trade. With a distinguished academic record from TISS, she has also taught at Amrita University and served as a guest speaker at institutions such as Johns Hopkins University. Recognized by the Indian government and the United Nations, she has received awards like the Nari Shakti Puraskar and the Vital Voices Human Rights Award. Ms. Patkar is a member of the Central Authority (NALSA) and the Mumbai District Board to implement the Manodhairya Scheme for victims of sexual abuse, rape, and acid attacks.

- **Ms Rashmi Taylor**

Ms. Rashmi Taylor has nearly six years of experience in social development, focusing on empowering women and children. At Prerana, she has led efforts to rehabilitate victims of sexual violence and trained government and non-government stakeholders in child-friendly systems. With a background in Development Management from SP Jain Institute of Management & Research and a Master's in Social Work, she excels in project management and organizational leadership. She has contributed to publications on social work practices and COVID-19 responses and currently works as a Consultant at Prerana, focusing on grant management and monitoring. She also serves as an external member of Internal Committees for institutions, improving workplace environments.

- **Mr Sunil Arora**

Mr. Sunil Arora is the Executive Director of Bal Asha Trust and has been working in the field of adoption for 28 years, focusing on improving the lives of children in homes and early rehabilitation measures. He has helped place many children with special needs, including those with HIV, physical, and mental challenges. Mr. Arora has worked on various committees, including Maharashtra JJ rules 2018 and Adoption Regulations 2022.

- **Ms Kashina Kareem**

Ms. Kashina Kareem has been with Prerana for over 8 years. As the Assistant Director, she supports program teams in operations, management, and finance. She also facilitates capacity-building programs for various child protection stakeholders across districts in Maharashtra.

- **Ms Geetarani Lourembam**

With over five years of experience working within the juvenile justice system in Maharashtra, Bihar, and Telangana, Ms. Geetarani Lourembam is a child-centered social worker with a Master's in Social Work from TISS. She is committed to strengthening the child protection system from an intersectional feminist perspective. At Prerana, she has worked extensively with child victims rescued from commercial sexual exploitation and trafficking, facilitating their rehabilitation and reintegration. She has contributed to the Support Person Handbook in collaboration with Enfold and UNICEF and currently leads Project Unnati: Redefining Care at Prerana, focusing on deinstitutionalization and family strengthening.

- **Dr Pravin Patkar**

Prof. (Dr.) Pravin Patkar, a distinguished figure in combating human trafficking and child exploitation, is the Co-Founder & Director of Prerana in Mumbai. He was a Professor at the Tata Institute for Social Sciences and is currently a Visiting Professor at Amrita Vishwa Vidyapeetham. Dr. Patkar has been a Fulbright Nehru Academic and Professional Excellence Fellow and was the US government's nominee for UN Special Rapporteur on Human

Trafficking. Notably, he played a pivotal role as the Global Vice Chairperson of ECPAT International, co-hosting three World Congresses against Commercial Sexual Exploitation of Children (2002-2005). He has authored 20 books on human trafficking and child exploitation and his podcasts were recognized among the Top 10 social issue podcasts globally. Dr. Patkar has drafted child protection laws, created TV fillers, and earned accolades at film festivals. Dr. Patkar's contributions also extend to strengthening protection systems through extensive sensitization and training programs for the police, judicial officers, elected representatives, prosecutors, and service providers. He continues to contribute to the field with his latest endeavour, "Jagaran: A Knowledge Resource for Community Frontline Workers," launched in 2023.

- **Ms Pooja Yadav**

Ms. Pooja Yadav has a decade of experience in the development sector, focusing on urban poverty alleviation, child rights advocacy, youth empowerment, and labor rights. She has a Master's degree in social work from the College of Social Work Nirmala Niketan. Currently, she is a Program Manager at Prerana, managing the Aashiyana Project, dedicated to community-level gatekeeping and family strengthening.

- **Adv. Aileen Marques**

Adv. Aileen Marques is a legal professional with over 16 years of experience, specializing in matrimonial and family law. She completed her LLB from KC Law College and is a practicing member of the Bar Council of Maharashtra and Goa. Adv. Marques blends social activism with justice advocacy, conducting capacity-building sessions for various stakeholders on laws related to sexual harassment, domestic violence, marriage, and divorce. She collaborates with NGOs to raise legal awareness and has been nominated as an External member of Internal Committees under the Sexual Harassment of Women at Workplace Act. Her work with law enforcement agencies, DLSA, and TISS highlights her commitment to capacity building for various stakeholders.

- **Prof. Dr. Karuna Akshay Malviya**

Prof. Dr. Karuna Akshay Malviya is a distinguished legal scholar and practitioner with over a decade of dedicated service in the legal profession. Currently serving as the Director of the School of Law at D. Y. Patil deemed to be University, School of Law, she brings a wealth of experience and expertise to her role. Dr. Malviya holds a Ph.D. in Law with distinction and has been recognized with a Senior Research Fellowship by the University Grants Commission (UGC), reflecting her profound contributions to the field of law. Dr. Malviya's academic journey includes a Certificate Course in Child Care and Protection from Harvard Law School and advanced training in mediation from Maharashtra National Law University (MNLU), Mumbai. Her doctoral research, which garnered her the Senior Research Fellowship, focused on child abuse and juvenile delinquency, underscoring her commitment to addressing critical social issues. Her career spans several prestigious roles, including her tenure as Director at Maharashtra National Law University Mumbai, where she also served as the Director for the Centre for Advanced Training in Taxation Laws, Coordinator of the Centre for Women, Law and Gender Justice, and Chairperson of the Board of Examination. Additionally, she has actively engaged in conferences and debates on contemporary legal issues, including maritime disputes and arbitration.

PARA-LEGAL VOLUNTEERS TRAINING PROGRAMME 2023-2024



5XXJ+JMX, Jail Rd, Behind Thane Central Jail, Thane West, Thane, Maharashtra 400601, India

Latitude 19.19906402° Longitude 72.98183403°

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Altitude 9 meters

GMT 07:36:10 AM

Date Sat. 11 Jan 2025



22VF+RGF, Sector 7, Nerul, Navi Mumbai, Maharashtra 400706, India

Latitude 19.0446689°

Longitude 73.0241041°



