

“Refresher Course for POCSO Courts [P-1044]”

MANDATORY REPORTING OF CHILD ABUSE



Presented by :

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➤ POCSO Act – Unique, progressive, path-breaking and radical in many ways.

➤ For the first time, it has incorporated one whole Chapter 'V' on “Mandatory Reporting”.

Why Mandatory Reporting ?

- Nature of offence.
- Unique vulnerabilities of child.

Nature of Offence

- Sex – a taboo subject.
- C.S.A. – shrouded in secrecy and mystery.
- Conspiracy of silence surrounding it.
- 80% of C.S.A. takes place within confines of the house.
- 90% of C.S.A. is by someone known, close, trusted relative or a friend.

Vulnerabilities of Child

- Too tender, young and innocent.
- Unable to express – limited vocabulary
- Inherent inhibitions.
- Mental trauma.
- Internal conflicts – shame, guilt, fear, apprehension of himself being held responsible.
- Not sure about reaction of family.

Some of the Responses of Victims in Arpan's Survey

For most survivors, it took time to make sense of what had happened, to figure out the vocabulary to describe the event and to work up the courage to talk to someone. Disclosure, then, becomes a factor of much consideration and deliberation in the life of a survivor.

“Guilt and shame were two very common determinants that were obstructions to disclosure.”

“I felt dirty, thought I was wrong mostly, thought people will scold me and beat me up.”

- *Respondent 17*

“When I grew up, I was so filled with shame as the victim is always blamed. So this agony has always chased me.”

- *Respondent 25*

“I was ashamed and afraid to tell anyone ... I am now of 18 and I think it is useless to tell it now. If I will tell my parents now, it would be me who will be blamed.”

- Respondent 25

For some, there was an innate lack of a trusted support system. They didn't believe that they could get help if they asked for it.

“I was at hostel ... alone .. Crying ..
broken. I never told to anyone ...
because, I believed 'No one will
believe me' and remained in dark.”

- Respondent 2

“They wouldn't want to understand, and hold me equally guilty, may be even more guilty than the person abusing me.”

- Respondent 8

“[I didn't tell my parents]
because of their bigotry.”

- Respondent 10

“Some respondents felt they couldn't disclose at the time of abuse simply because they were oblivious to the significance of the abuse, or, enjoyed the abuse at the time of its occurrence. Some of these respondents used words like “*guilty*” and “*stupid*” to express their perception of themselves after the abuse.”

“I did not know the gravity of what had happened to me. I only knew that I was really uncomfortable and wanted to get as far away from there as I could. I did not know what and how to tell my mother or my father, the kind of language I could use to describe what had actually happened.”

- *Respondent 9*

“I just didn't realise that I was being exploited.”

- Respondent 24

“Actually, I feel guilty, because I haven't resisted to it. In fact, I think I have somehow helped him in doing so.”

- Respondent 30

“Initially I was in sort of denial, I never realized what it was.”

- Respondent 18

“I wasn't able to tell anybody else because I had decided that if I didn't talk or think about it, it almost never happened, it was just a theory. If you were the only person present (and one other person), then, at any point in your life, you can decide it was just something you imagined.”

- Respondent 27

“He was my 1st cousin brother who was well trusted by entire family and if I said anything, no one would have believed me.”

- Respondent 3

“I was frustrated and angry of the high status that bastard enjoys in my extended family. Finally, this anger grew to such limits that I burst out.”

- Respondent 18

“Because abuser was my cousin
and I did not feel ruining family
relations.”

- Respondent 21

“I told my mother. She listened. And she told me to never go back to that neighbour's house again, to which I agreed. It made me feel it will be taken care of.”

- Respondent 4

“My girl-friend is also a survivor of child sex abuse, and she helped me to trust my brother and mother. They believed me, my girl-friend understands me and help me cope with it.”

- Respondent 18

“My Mom and my sisters are really trustworthy, as they care for me a lot and my family is very liberal. They were very supportive and they hugged me and we broke all ties with the abuser. Their reaction was a boon for me, finally I consider myself a survivor rather than a victim. I now have moved on from the depression attached with the traumatic experience.”

- Respondent 38

“I knew she (mother) wouldn't think I did something wrong. She was shocked and asked me many questions about it. She told me not to talk to the family again. But also told me not to tell anyone else about it. I felt really scared, I do not know why.”

- Respondent 7

“I assumed they (parents) would protect me from it. They brushed it off by explaining how I was misunderstanding what was happening and it was nothing serious. The reaction made me feel desperate and helpless. I had no more hope from anyone else.”

- Respondent 31

“The reaction was not comforting at all. She said I shouldn't disclose this to anyone because it would stigmatize my future prospects. The effect was she instilled fear in me so that I wouldn't disclose it to anyone. I lived with the trauma for a long time and couldn't muster my courage to reveal it to anyone until I reached 22. My reading helped me disclose it to people.”

- Respondent 44

“She went and spoke in private to my abuser, who was also my elder brother, who stopped. She considered the matter over and done with. I blocked the memories thereafter. When I started getting flashbacks, she would continually minimize the enormity of what happened in hopes that I would keep quiet and stop thinking or talking about it, even though my brother was around and I was getting triggered. To date, she lives in denial.”

- Respondent 60

“She wanted me to say it again in front of my abuser. Whether it was because she did not believe me or because she wanted to judge from the reaction of my abuser, I do not know. It made me feel traumatised.”

- Respondent 61

Offender's Manipulative Techniques

- Offender's manipulative techniques – like 'grooming' to evade detection.
- Grooming is premeditated behaviour aimed at manipulating children into complying with the abuse.
- The offender wins :
 - (i) the trust of child and adult around him;
 - (ii) gains free access to child and lures him into sexual activity;
 - (iii) desensitizes the child into sexual activity by gradually introducing sexual elements in the relationship;

- (iv) lowers the child's defenses, so that child accepts sexual acts as normal rather than abusive;
- (v) grooms child with gifts, offers of care and friendship, emotional manipulation, verbal coercion, physical threats etc.;
- (vi) making child feel trapped by a situation he believes he is responsible for;

(vii) helplessness of child, who tends to defer to adults and obey demands for secrecy (*Child Sexual Abuse Accommodation Syndrome*), where offender takes advantage of child's helplessness and where child may withdraw allegation that are not believed.

Even if child discloses, family not sure
what action to take;

Or

Whether any action to be taken or not.

Honor of family, stigma, publicity.

Even if child discloses, family members reluctant to go to Police, because they fear that ;

(i) child will face stigma, ostracism or retaliation, if the abuse becomes public;

(ii)the trauma of undergoing a dispassionate, almost hostile Criminal Justice System, from which they expect apathy and blame.

C.S.A. - the least reported offence

- 72% of child victims do not report the abuse to any one.
- Only 3% report it to the Police.
- 80% C.S.A. takes place within confines of house and that too by close, trusted relative or friend.

C.S.A. - the least reported offence

Children do not report mainly because of two reasons :-

- (i) Internal Conflicts;
- (ii) Offender's Manipulative Techniques.

Internal Conflicts

Internal Conflicts – Shame, Guilt or Fear.

Even when children gather courage to report, family may greet the accusation with anger or disbelief, causing the child to retract the accusation and continue to suffer the abuse.

◆ 'Mandatory Reporting' is, therefore, a welcome step towards breaking the *“conspiracy of silence”*.

◆ It not only protects the children, but also deters the abuser from inflicting further harm on the child or other children.

Many countries now have 'mandatory reporting laws' – 3 early Adopters are U.S.A., Canada and Australia.

Results in identification of many cases, than would otherwise have been revealed.

Section 19 – casts a duty (shall) on any person, including the child, *who has apprehension that an offence under this Act is likely to be committed;*

Or

Has knowledge that such an offence has been committed;

to report it to the Police.

Section 20

➤Obligation on any personnel of the media, hotel, lodge, hospital, club, studio, photographic facilities; by whatever name called, irrespective of the number of persons employed, on coming across any material or object which is sexually exploitative of child, pornographic, sexually related or obscene representation through the use of any medium.

➤To (shall) provide such information to the Police.

Section 21

- Punishment upto six months and / or fine for failure to report or record such case – for non-reporting.
- Upto one year and fine – for person in-charge of Company or Institution.
- No liability – Civil or Criminal – for giving information in good-faith [Section 19(7)].

Section 22

Punishment for false complaint

Or

False information

Solely with an intention to humiliate, export, threaten or defame a person.

Exception - Child

How the victims / survivors perceives 'mandatory reporting' ?

Of the 64 participants, 24(37.5%) said, they agreed with mandatory reporting. The reasons for wanting reporting to be mandatory was primarily to regain a sense of control by shifting the shame, guilt and blame on to the abuser when these feelings had been projected on to them instead by a culture of victim blaming.

“The day I can c the abuser behind the lock-up..punished by a law...that day may be I would achieve “my smile and confidence” back.”

- *Respondent 2*

“If my abuse had been reported to the authorities at the time it was happening, it may have prevented the systematic abuse of other young girls by the same man, who, I might add, has NEVER been held to account for his actions.”

- *Respondent 21*

“The abuser was a family member. So I would have been scared to get them reported. It would be better if the report was done without my consent, as at that age, I wasn't capable of making the right decisions and was fear driven. I would not report even if the abuser was someone I didn't have any family relation with, because I was very scared and had no one to support me. If my family would have understood me and stood by me, I would probably report the abuse.”

- *Respondent 32*

- ◆ However, protection of children through 'mandatory reporting' must be accompanied by protection of children in the Criminal Justice System.
- ◆ A law that mandates reporting must ensure that children are protected in the process or at-least not damaged.

“It is mandatory, because a child has very little knowledge of right and wrong. And not everyone has the courage to speak up. Mandatory reporting may cause embarrassment to victim in the short run specially if its a family member, but in the longer run, it will of benefit.”

- *Respondent 52*

“The reason these things need to be reported is to primarily prevent the abuser from abusing another little one and giving them a sore and jilting experience that could haunt and harm them their entire life the way it does me.”

- Respondent 9

“A majority of 40 (62.5%) respondents strongly stated that they would never be okay with mandatory reporting. Most participants described their social environments as being “*patriarchal*”, “*misogynistic*” or “*insensitive*” and were wary of the stigma and blame that they would have to deal with if their abuse is exposed.”

- *Respondent 9*

“I don't think it should be forced upon the victim to report their abuse. The reason most of them don't come out is because of poor availability of social support once they do, fear of being stigmatized and possibly losing even existing supportive relations that ze^5 might not afford to lose. So unless a better conducive environment is created for victims to confidently pursue justice on their abuse, making it mandatory for them to report, it is not helpful.”

- Respondent 13

“I'm a male, and its almost impossible to make anyone believe that I had been abused by another man. They don't really believe even if I try to say it, instead they make fun of it. I once told someone about my experience and she laughed at it telling me that I probably would have enjoyed it.”

- Respondent 15

“For some others, it was more important to move on and focus on healing themselves, rather than putting their abusers behind bars.”

“I would've hated anybody who reported it to the police, because it would make it too real, too much a part of my life. Instead of just being in my head, it would be a physical manifestation of my problem with the police and some one getting into trouble, I prefer it to be something I can lose through my memory.”

- Respondent 27

“Now the person is of 80 and also paralyzed. Now no need to report against him. Id rather move on”

- Respondent 47

“I do not think it should be made compulsory to report the incident of an abuse to the police. There are many ways of dealing with such experiences. While I may confront the abuser later in life, I have forgiven him and do not wish that he should be reported to the police.”

- *Respondent 62*

“I feel this is an absolutely problematic clause. Children confide in you trusting it would remain with you. Strategies of negotiation can be non legal in nature. One cannot reduce something so complex to such difficult conditions.”

- Respondent 10

“Child Sexual Abuse involves breaking of trust. To have someone you confided in to do the same without ones consent is worse. It cannot be incumbent upon those providing care to report and violate the foremost principle of confidentiality.”

- Respondent 34

“When we come out to a person about our abuse a lot of trust is involved in it. The clause of mandatory reporting looks at the whole issue in a very narrow perspective. Our society hasn't evolved into one where there is a lot of awareness of sexual abuse and how sensitive the issue is.”

- Respondent 38

“If some other child reported such an incident to me, I am not sure if I would report it to the police, but I would do all in my power to ensure that the child is not molested again. I am not comfortable about the ideal of mandatory reporting, because, I believe the police is not equipped to even understand, let alone deal with, the nuances of child sexual abuse. In such a case, I, with the limited power that adulthood gives me, would want to tackle the issue on my own or involve a few people I can trust.”

- Respondent 11

“If I know about another child being abused, I will do everything in my power to prevent that from happening (confronting the abuser, speaking to the child). But, I will not report it to the police unless the child himself/herself feels that the incident should be reported.”

- Respondent 62

“In 2013, Human Rights Watch published a report, which documented cases of child sexual abuse across different contexts. The report found that the way the justice system functions is a major impediment to reporting.”

“The report also establishes that most police officers lack the skill, training and sensitivity to handle cases of sexual violence.”

“Considering the current police system, I don't feel any child would be comfortable reporting it. Now that I am old enough and a little confident, I could face them now but can't even imagine interacting with a hostile person as a kid who has been molested for so long.”

- Respondent 17

“The issue of child sexual abuse is a multi-faceted, multi-layered and systemic one that cannot be addressed with a one-dimensional approach such as mandatory reporting. While we encourage reporting and hope that the rate of reporting and convictions will rise in the near future, we cannot have a system in place that does so at the cost of the survivors themselves.”

- Respondent 17

“Each case of abuse takes place in its own specific context. Therefore, reporting cannot be made mandatory as a blanket law without taking into account these specificities.”

“The decision to report is contextual and almost entirely based on the environment, both immediate and social, of the survivor. If the primary concern is to reduce incidents of child sexual abuse, then the approach cannot stop at legal redress and has to extend to a more holistic.”

“If a child is made to “disclose” when they are not ready, or to people they do not want to talk to, or when they are still coping with and carrying forward the impact of the first level disclosure, the process can have adverse effects on the child.”

“On a personal level, it means the child has to revisit the trauma and deal with the consequences of the revelation.”

- ◆ Nothing would be more cruel than to mandatorily force children into a Criminal Justice System that ignores their needs.
- ◆ Without an effective, holistic child-friendly procedure and system, a law of mandatory reporting designed to protect the vulnerable children will prove counter-productive, as it will cause them irrevocable harm.
- ◆ Whether 'mandatory reporting / prosecution' is in the best interest of child or not ?

“Ultimately, the key focus must be on the child and what is best for them. If the presence of a mandatory reporting clause prevents survivors from seeking help or makes it difficult for them to disclose to a trusted adult, then this form of reporting only becomes a problematic compromise.”

Whether word “*any person*” in Section 19 includes;

- Family,
- Psychotherapists,
- Doctors,
- Teachers,
- Judges, etc. ?

If so, what is the feasibility of such mandatory provision ?

Suppose, while recording evidence in D.V. case, wife deposes about sexual abuse of child by father, whether Judge is duty bound to report about it to Police ?

In Family Court matters, a 'mother', in her interview with Marriage Counsellor, states in confidence that one of the cause why she was seeking divorce was her husband's sexually abusing her daughter. But, does not want to put it on record.

➤ What is the duty of 'Marriage Counsellor/ Advocate' in this respect ?

➤ Whether it will affect the confidentiality clause?

- Whether putting child's best interest above the therapeutic relationship ?
- If the abuser himself discloses about it to the Therapist – privileged communication – Right to Privacy, what can be the side effects of 'mandatory reporting' ?
- Whether it will force unwilling child or unwilling family to undergo the trauma of Court proceedings ?
- Whether it will expose them to unwanted stigma, dishonour, humiliation ?
- Whether it will disrupt family system ?

- Whether benefits of 'mandatory reporting' outweigh the apprehended damages ?
- Whether 'mandatory reporting' is necessary, good, proper or not ?
- Whether it is a step in right direction ?
- Whether it will increase reporting ?
- Whether it provides confidentiality to a person reporting C.S.A. ?
- Whether it provides immunity from legal, penal action ?

