

# COMBATING THE DEVADASI PRACTICE & CHILD SEXUAL ABUSE

A HANDBOOK FOR  
LAW ENFORCEMENT AGENCIES & SERVICE PROVIDERS



Published By



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Foreword – Director, Arz (anyay rahit zindagi), NGO

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# QUOTES FROM DEVADASIS

- *“I am grateful to the police and the NGO for rescuing me from commercial sexual exploitation. If not rescued, my situation would have been similar to my grandmother, mother and aunt who were dedicated and commercially sexually exploited. Unfortunately, they were not rescued and rehabilitated, and they in turn dedicated me and sold me for commercial sexual activity. With my rescue the chain – of dedicating daughters, selling them for commercial sexual activity and surviving on their earnings – has been broken.”*
- *“Dedication is a tool used by the family members to prevent the marriage of the girls and survive on their earnings.”*
- *“The family, caste and community are expected to protect the girls and women from abuse and exploitation. However, when they themselves become the exploiters, then it is the external agencies which have to intervene and protect the girls and women from exploitation. In this regard, the law enforcement agencies and NGOs need to play a greater role.”*
- *“The practice of dedication cannot be eradicated unless and until all those involved in permitting, performing and abetting the performance of the dedication ceremony are prosecuted.”*

# FOREWORD

The essence of the Devadasi practice is nothing but exploitation of women on the basis of caste, class and gender. A large number of girls who are dedicated become victims of child sexual abuse and commercial sexual exploitation.

The special law Karnataka Devadasi (Prohibition of Dedication) Act, 1982, whose prime objective is abolition of devadasi practice, under sec 5, provides for the prosecution of the “dedicated girl”, thus further victimising the “victim” and preventing her to activate criminal justice system, if she is dedicated.

A research study commissioned and supported by WeWorld and conducted by the Centre for Child and the Law, National Law School of India University, Bengaluru, in 2018 confirmed that in Bellary district of Karnataka, girls from socio-economically marginalized communities are still falling prey to the Devadasi practice, after which these girls end up being sexually abused. However, there has been not even one case registered since 2011 in Bellary District under the Karnataka Devadasi (Prohibition of Dedication) Act, 1982 and the amendment Act, 2010 – KDPD Act. Nor has there been even one case, under POCSO Act, 2012, in the cases of dedication of minor girls and subsequent sexual abuse.

The research study highlighted that there are multiple reasons for the continuance of Devadasi practice and non-registration of cases.

## **Some of the reasons include –**

- Service providers have no understanding of the provisions under the KDPD Act or any knowledge of how to use POCSO Act, JJ Act or IPC in cases of dedication.
- The law enforcement agencies are not familiar with the provisions of

KDPD Act. They have failed to make a connection between dedication, Child Sexual Abuse (CSA) and Commercial Sexual Exploitation (CSE).

- There are several provisions under different laws (POCSO, ITPA, JJ Act, IPC) that would be relevant in a case of dedication of a girl. However, all these laws are not sufficiently invoked and used.

One of the ways to address the challenges and gaps highlighted in the research study is to improve the knowledge and skills of the members of the law enforcement agencies and service providers about the legal provisions, rules and procedures laid down in the various state and national legislations.

This handbook, Combating The Devadasi Practice, is an effort to compile in one handy manual, for easy reference of the law enforcement agencies and service providers, all the important legal provisions and information about handling of victims of child sexual abuse.

I am hopeful that the handbook will be useful for the law enforcement agencies and service providers, such as police, magistrate, CWC, NGOs, etc in preventing and protecting girls and women from being dedicated as Devadasis, and in preventing their sexual abuse and exploitation after being dedicated.

I thank WeWorld for their support to publish this handbook.

I dedicate this handbook to the members of the law enforcement agencies and service providers who have been sincerely involved in prevention of dedication, protection and rehabilitation of the Devadasis, and prosecution of the offenders.

Arunendra Pandey  
DIRECTOR,  
Arz (anyay rahit zindagi)



# About the Devadasi Practice

## BACKGROUND

*'Devadasi'* – means female servant of God (deva meaning god and dasi implying female servant). Other terms used to describe women dedicated to religious figures are basavi, jogini, etc. Dedications are generally undertaken when girls are children or adolescents. After their dedication to the devadasi practice, these girls are not allowed to marry, and the dedication is considered irreversible.

*'Devadasi'*, are theoretically free to choose partners, from among married and unmarried men alike. However, they are nothing more than sex slaves. The existing practice spans Bellary, Raichur, Gadag, Gulbarga, Raichur, Haveri and Dharward – ie, the whole of north interior Karnataka. Most of these areas are drought-prone, the villages are remote, and economic opportunities and literacy levels are low.

The Devadasi practice is against the provisions of the Indian Constitution. In Karnataka, there is a specific legislation that makes it illegal for anyone to dedicate girls and women to God in the State [Karnataka Devadasi (Prohibition of Dedication) Act, 1982 and the amendment Act, 2010 – KDPD Act].

The KDPD Act has by and large not been able to eradicate the practice of dedication in Karnataka. Girls continue to get dedicated in many talukas of the districts of North Karnataka.

Justices Madan B Lokur & U U Lalit (the Social Justice Bench of Supreme Court), while hearing a PIL on Devadasis practice, observed, “The practice of Devadasis is a national shame and the tradition of Devadasis needs to be stopped.”

## MYTHS & FACTS ABOUT DEVADASI PRACTICE:

**MYTH: It is a religious practice so it should continue.**

**FACT:** Practices which results in exploitation women and children are against the provisions of Constitution of India.

**MYTH: Not all Devadasis get into prostitution.**

**FACT:** Most of the dedicated girls become victims of child sexual abuse and sex trafficking.

**MYTH: It is a religious matter so law enforcement agencies should not get involved.**

**FACT:** Dedicating a child and selling her for sexual purposes are serious violations of child rights. Under the Indian law, these acts are defined as serious criminal offences. The law enforcement agencies are duty-bound to act against those involved in dedication and sexual exploitation.

**MYTH: It is in the interest of the girl and family.**

**FACT:** Dedication, preventing her from marriage, sexual abuse, and commercial sexual exploitation can never be in the interest of the girl. It may be in the interest of the family, if they live off the proceeds of selling the girl. But the girl is a victim who suffers physically, psychologically, socially and economically.

**MYTH: Devadasi should not get married?**

**FACT:** The law provides for Devadasis to get married and anyone who prevents a Devadasi from getting married is committing an offence. Marriage of a Devadasi is not invalid and no issue of such marriage is considered as illegitimate.

**MYTH: Devadasi practice is due to poverty.**

**FACT:** In Karnataka, there are girls who are from poor families and belong to non-Dalit castes. Why are the girls from these castes not dedicated? The Devadasi practice is nothing but sexual exploitation of girls and women from lower castes.

## VULNERABLE GIRLS

The girls at particular risk of being dedicated as Devadasis include:

- Girls from Dalit communities
- Girls from Devadasi families
- Girls who are physically handicapped
- Girls who have only female siblings, ie, the parents of the girl have no sons
- Girls from geographical areas where the law enforcement agencies have failed to act against those involved in dedication
- Geographical areas where superstitious beliefs still hold sway



# Legal Provision: Offence

## IF A GIRL OR WOMEN IS DEDICATED:

In Karnataka, there is a specific legislation that makes it illegal for anyone to dedicate girls and women to God in the state [Karnataka Devadasi (Prohibition of Dedication) Act, 1982 and the amendment Act, 2010 – KDPD Act].

### **Definitions as per the [Karnataka Devadasi (Prohibition of Dedication) Act, 1982 :**

- 2 (a) "dedication" means the performance of any act or ceremony, by whatever name called, by which a woman is dedicated to the service of any deity, idol, object of worship, temple, other religious institutions or places of worship;
- 2 (b) "devadasi" means a woman so dedicated;
- 2 (d) "woman" means a female of any age.

### **KARNATAKA DEVADASI (PROHIBITION OF DEDICATION) ACT, 1982**

**Section 5:** Any person who, performs, permits, takes part in, or abets the performance of, any ceremony or act for dedicating a woman as a Devadasi or any ceremony or act is considered to have committed an offence.

**Explanation:** A person referred to in this section shall include the woman in respect of whom such ceremony or act is performed.

**THE SCHEDULED CASTES AND THE SCHEDULED TRIBES**  
**(PREVENTION OF ATROCITIES) ACT, 1989**

**Section 3 (1):** Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe — (k) performs, or promotes dedicating a Scheduled Caste or a Scheduled Tribe woman to a deity, idol, object of worship, temple, or other religious institution as a Devadasi or any other similar practice or permits aforementioned acts.

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## IF A GIRL (MINOR) IS DEDICATED & SEXUALLY ABUSED

As per the study conducted by the Centre for Child and the Law, National Law School of India University, titled, “A qualitative study of the legal dimensions of ‘Devadasi’ dedication phenomenon” in the district of Bellary, Karnataka in 2018, “the children after dedication are sexually abused”.

In cases where a child after being dedicated is sexually abused, the offence needs to be also registered under The Protection of Children from Sexual Offences Act, 2012 (POCSO) and other relevant legislations.

### OFFENCE UNDER POCSO, 2012

**Section 4:** Penetrative sexual assault.

**Section 6:** Aggravated penetrative sexual assault.

**Section 8:** Sexual assault

**Section 10:** Aggravated sexual assault.

**Section 12:** Sexual harassment.

**Section 17:** Abetment of an offence.

## IF A GIRL OR WOMEN IS DEDICATED & COMMERCIALY SEXUALLY EXPLOITED

A large number of girls who are dedicated are usually trafficked for commercial sexual exploitation. In most of the cases, the family members are actively involved in selling the girl to brothel keeper/trafficker and surviving on her earnings.

In cases where the girl or the women after being dedicated are commercially sexually exploited, the offence has to be registered under the relevant sections of the Immoral Trafficking Prevention Act, 1956 and other legislations.

### IMMORAL TRAFFICKING PREVENTION ACT, 1956 {ITPA}

- Sec 3 of ITPA:** Keeping or managing a brothel or allowing premises to be used as brothel.
- Sec 4 of ITPA:** Living on earnings of prostitution.
- Sec 5 of ITPA:** Procuring, Inducing, trafficking a or taking a person for the sake of prostitution.
- Sec 6 of ITPA:** Detaining a person in any premise where prostitution is carried out.

### INDIAN PENAL CODE

#### SECTION 370 Trafficking of persons

- 1. Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—**

- using threats, or
- using force, or any other form of coercion, or
- by abduction, or
- by practising fraud, or deception, or
- by abuse of power, or
- by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking



## SECTION 370 A

### **IF THE VICTIM IS A MINOR:**

Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.

### **IF THE VICTIM IS AN ADULT:**

Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.





# **OTHER LEGAL PROVISIONS IN THE CASES OF DEDICATION, CHILD SEXUAL ABUSE AND COMMERCIAL SEXUAL EXPLOITATION:**

## **INDIAN PENAL CODE:**

1. Displaced from her community, which tantamount to kidnapping/abduction – Sec 361, 362, 365, 366.
2. Procured illegally – Sec 366 A
3. Selling minor for prostitution – Sec 372
4. Buying minor for prostitution – Sec 373
5. Wrongfully restrained – Sec 339
6. Wrongfully Confined – Sec 340
7. Physically tortured/injured – Sec 327, 329
8. Subjected to Criminal force – Sec 350
9. Mentally tortured/harassed/assaulted – Sec 506
10. Outraged modesty – Sec 354
11. Raped – Sec 375
12. Perverse sexual exploitation (unnatural offences) – Sec 377
13. Criminal Conspiracy – Sec 120 B

**THE JUVENILE JUSTICE**  
**(CARE AND PROTECTION OF CHILDREN) ACT, 2015**

**IF THE VICTIM IS A MINOR**

**Section 75:** Punishment for cruelty to child.

**Section 81:** Sale and procurement of child for any purpose.

**Section 84:** Kidnapping and abduction of child.

**THE SCHEDULED CASTES AND THE SCHEDULED TRIBES**  
**(PREVENTION OF ATROCITIES) ACT, 1989**

**If the victim is a Scheduled Caste or a Scheduled Tribe (SC&ST) and the accused is not SC/ST.**

**SECTION 3 (1)** Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe — (w) (i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent; (ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.

**SECTION 3 (2)** Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe — (v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property [knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member], shall be punishable with imprisonment for life and with fine.

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# Devadasi Practice - Rescue, Protection & Rehabilitation

## 1. RESCUE

### KARNATAKA DEVADASI (PROHIBITION OF DEDICATION) ACT, 1982 AND THE AMENDMENT ACT, 2010 – KDPD ACT

#### **DISTRICT MAGISTRATE:**

As per Sec 3A. of KDPD, Act – The district magistrate or executive magistrate has the power to issue injunction prohibiting dedication.

*Sec 3A (1): Notwithstanding anything to the contrary contained in this Act, if on an application of the Devadasi Prohibition Officer or on receipt of information through a complaint or otherwise from any person, a District Magistrate or an Executive Magistrate is satisfied that a dedication in contravention of this Act, has been arranged or is about to be solemnised, such Magistrate shall issue a prohibitory injunction against any person including a member of an organisation or an association of persons prohibiting or restraining from such dedication.*

#### **DEVADASI DEDICATION PROHIBITION OFFICER:**

**The Devadasi Dedication Prohibition Officer, as per Sec 3D (4):**

- A. To prevent dedication by making an application under sub-section (1) of section 3A and by taking such actions as he may deem fit.
- B. Collect evidences for the effective prosecution of persons contravening the provisions of the Act
- C. To take action to write the Panchanama report at the place of incident itself and obtain the signatures of witnesses.

## THE PROTECTION OF CHILDREN FROM SEXUAL OFFENSES ACT, 2012

1. **POLICE**
2. **ANY PERSON:** *Any person, who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to police. {Sec 19 (1) of POCSO, Act, 2012}.*



## THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

### **DISTRICT CHILD WELFARE COMMITTEE**

The child who is dedicated or is going to be dedicated as per Sec 2 (14) viii, ix, and x falls in the category of “Child in need for care and protection”.

As per Sec 29 & 30, the Child Welfare Committees have the power to deal exclusively with “Child in need for care and protection” for the care, protection, treatment, development and rehabilitation of the “Child in need for care and protection”.

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## **2. PREVENTION OF DEVADASI PRACTICE**

### **THE DEVADASI DEDICATION PROHIBITION OFFICER**

#### **SECTION 3D (4) of KDPD, Act:**

- A.** to advise either individual cases or counsel the residents of the locality generally not to indulge in promoting, helping, aiding or allowing the dedication of devadasi.
  - B.** to create awareness of the evil which results from dedication.
  - C.** to sensitize the community on the issue of dedication.
  - D.** to furnish such periodical returns and statistics as the State Government may direct.
-

### 3. PROTECTION & REHABILITATION OF DEVADASIS

The State Government shall rehabilitate the woman rescued from dedication, under the “Devadasi Rehabilitation Programme”, by providing counselling and awareness and shall economically empower by involving the said woman in income generating activities, if necessary by providing protection or shelter in remand home up to six months and see that the said woman shall become self-sustained by availing subsidy and loans through banks. {Sec 3 B of KDPD Act}.

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# CHILD SEXUAL ABUSE

## A Handbook for Care Givers



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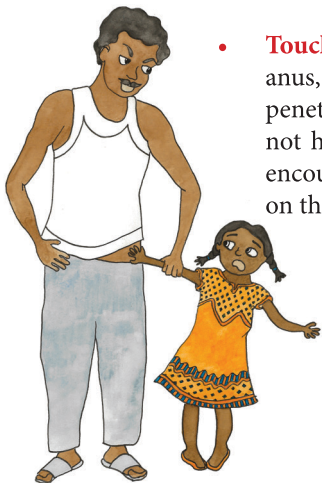


# What is Child Sexual Abuse?

Child sexual abuse is the assertion of power, through sexual acts, against children before the age of consent – that is, under 18 years of age.

A child under the age of 18, whether consented to or not, to sexual activity, is immaterial.

## Sexual abuse may include:



- **Touching sexual abuse:** fondling of genitals/anus, masturbation, oral sex, object/finger penetration of the anus/vagina if it does not have any valid medical purpose, or/and encouraging the child to perform such acts on the abuser.
- **Sexual Exploitation:** soliciting, engaging a child for prostitution, filming, photographing for pornography.
- **Non Touching sexual abuse:** exhibitionism, exposure to sexual activity, pornographic materials or producing visual depictions of such conduct, masturbating in front of a child.



# Myths and Facts

**MYTH: Sexual abuse is due to the behaviour or the way the child dresses.**

**FACT:** *Child is not to be blamed for the abuse. It is the abuser who needs to be blamed as he/she has misused his/her power, position with the child and broken the trust of the child.*

**MYTH: A known person cannot sexually abuse the child.**

**FACT:** *Abusers are usually known to the child and the family.*

**MYTH: Children who are sexually abused get HIV.**

**FACT:** *Child sexual abuse is not necessarily penetrative sexual abuse. All penetrative sexual abuse does not necessarily lead to HIV.*

**MYTH: Child Sexual Abuse happens only to poor and migrant families.**

**FACT:** *The abuser does not target the child based on class, region or financial status of the child.*

**MYTH: It is best if the child forgets the abuse.**

**FACT:** *Abuse causes emotional and psychological disturbances in the child. It can be healed with professional service and care.*

# Children at High Risk for Sexual Abuse

Sexual abuse can happen to a child of any age and gender. There is no particular reason for a child to be at risk. Some of the risk factors can be:

- Child who is an orphan
- Child with single parent
- Child with step-parent/s
- Child where there is addiction in the family
- Child who has emotionally unstable parents
- Child lacking love and care.
- Child in a dysfunctional family (conflict, misbehaviour, neglect)
- Child with poor parent child relationship
- Unsupervised child
- Child without shelter



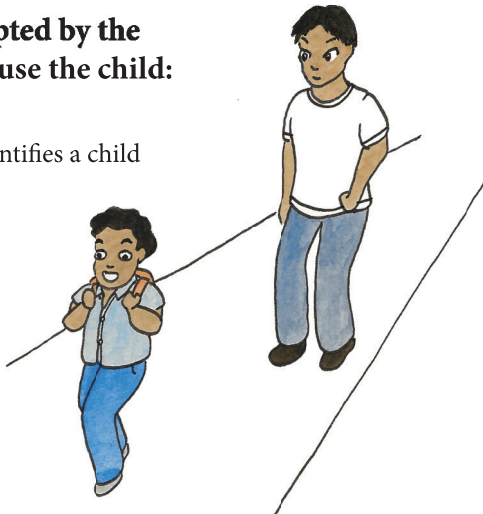
# Profile of Child Sex Abuser

**The vast majority of abusers do not get caught, and they have no criminal records.**

- Abusers are very friendly with children.
- Abuser gives extra attention to a child by treating them differently and giving gifts without reason.
- Abusers usually do not speak the truth.
- Abusers use their relationship with the child in a manipulative manner.
- Abusers spend most of their time with children or places where there are children ( playground, children park, outside schools)

## **Process adopted by the abuser to abuse the child:**

1. Abuser identifies a child





2. Befriends the child



3. Frightens the child

4. Threatens the child



5. Test / abuses for the first time

6. Repeatedly abuses

# Identifying Child Sexual Abuse

**Sexual abuse can happen to a child of any age.**

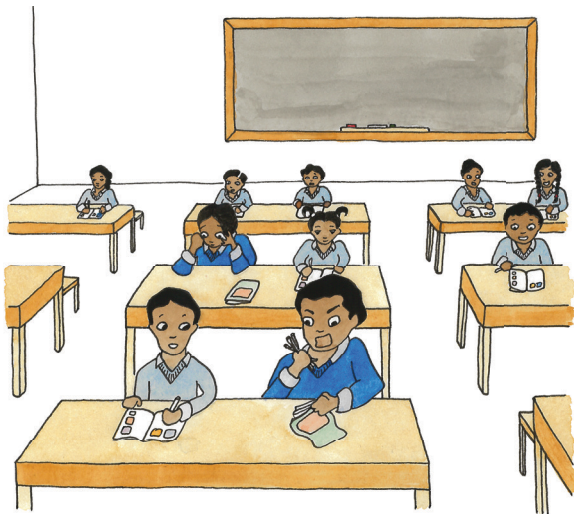
**Children who have been sexually abused for the first time may exhibit the following behaviour:**

- Silent.
- Fear of certain person, place, object.
- Lack of interest in things they like.
- Change in food habits.
- Change in sleep pattern – excessive sleep or less sleep.
- Sudden change in behaviour.
- Staying aloof.
- Lost in thoughts.
- Refusal to follow a routine.

**If the abuse is repetitive, the child may exhibit the following behaviour:**

- Aggression towards others – fights.
- Aggression- breaking things.
- Violence.
- Temper Tantrum and irritability.

- Uncontrollable temper.
- Sudden change in behaviour (withdrawal, disobedience towards adults, fear of being left alone, anxieties).
- Frustration with people around.
- Difficulties in day to day activities.
- Excessive crying.
- Nightmares.
- Sexualized language, behaviour, actions.
- Delinquency such as running away, lying, stealing.
- Harmful behaviour- cutting of wrist, suicidal attempts.



## Caregivers should be alert for the following signs:

### a) Physical signs

- Child walking in odd manner.
- Blood on underwear.
- In case of girls - missing periods, pregnancy.
- Sharing by child of pain in vaginal and anal area.
- Discharge, itching in the genital area.
- Injury in the vaginal/anal area.

### b) Emotional changes:

- Have negative feelings (rejection, unworthiness).
- Confused thoughts about themselves.
- Blame oneself for the abuse.
- Non acceptances of oneself.

**Any one sign doesn't mean that a child was or is being sexually abused, but if there are several signs present, it is time to be alert and caregiver should consider seeking help.**



# Disclosure of Abuse

Children sexually abused are told by the abuser not to share the “secrets” between the abuser and the child.

In case the abuser is a family member, friend, neighbour, teacher, then the chances of the child disclosing about the abuse is less.

**When a child discloses or shares about the abuse the response by the caregiver:**

Usual Response by an adult	Response expected by the child
Oh my god!	It's OK I am with you.
Really?	I believe what you say.
I can't believe it!	It's not your fault.
Is it so?	It is ok if you are angry with the abuser.
Are you sure it happened?	Don't worry the abuser will not harm you again.
I hope you are not lying.	If you want, we can see how he does not abuse other children.
What nonsense are you speaking?	Is there anything that you want me to do.
What rubbish! This person can't do it	I am there for you.
You should have told me earlier. Why you are telling me now?	Good you told me.
Now don't speak about it again.	You can share anything with me without any fear.

# What an adult can do when a child shares about sexual abuse

## **Respond with “CARE” and “URGENCY”:**

If you think a child is trying to tell you about a sexually abusive situation, respond immediately and with care.

## **Handle the situation “calmly”:**

When the abuser is known, adults must handle the situation calmly. Children should not be blamed for the abuse. The abuser should be held responsible for the abuse.

## **Do not make false promises to the child:**

No false promises should be made to the child, such as “will beat the abuser”, “will not disclose to anyone”.

## **Create a safe and protective environment for the child:**

Do what is necessary to protect the child from further harm, both emotionally and physically. If necessary, temporarily shift the child.

## **Get help:**

Get help from professionals who can guide you towards safety and healing.

# Reporting Child Sexual Abuse

- Any person, who has an apprehension that an offence is likely to be committed or has knowledge that an offence has been committed, has a mandatory obligation to report the matter to the police. This includes persons/staff from media, hotel/ lodges, hospitals, clubs, studios, teachers, social workers, photographic facilities, etc.
- Failure to report to the police attracts punishment with imprisonment of up to six months or fine or both.
- A child or parent or NGO can make a complaint of sexual abuse at any police station. If the complaint is lodged out of jurisdiction, then the FIR can be filed and then transferred to the relevant police station.
- It's not up to the police to decide whether or not to accept the case. The complainant has the right to lodge a complaint.
- It is mandatory for the police to register an FIR in all cases of child abuse. In case registration of FIR has been refused or not lodged, a complaint can be made to the Superintendent of Police, or one can file a private complaint in a court having jurisdiction.



# Recording of the statement of the victim

- Child who has been sexually abused will have to share about the abuse with the Investigating Officer.
- Inform the child that the police will ask many questions and if the child doesn't understand something, he/she can ask the police officer or parent/caregiver for clarification.
- The statement of the child should be recorded only when the child is ready and can give a detailed account of the incident.
- The statement of the child victim can be recorded at her/his home or at a place of her/his choice in presence of her parents or relatives.
- The statement should be preferably recorded by a woman police officer.
- The statement of the child is to be recorded by an officer not below the rank of police Sub-Inspector.
- The police officer should not to be in uniform while recording the statement of the child.
- Before recording the statement of the child, explain to the child that he/she is not a bad person for reporting the abuse.
- Police officer should ensure that the child should not in any way come in contact with the accused or exposed to the accused or his/her representative.

- The statement of the child is to be recorded as spoken by the child.
- Assistance of an interpreter or translator or an expert can be taken as per the need of the child.
- In case of a mentally challenged child the assistance of a special educator or any person familiar with the manner of communication of the child should be taken.
- Child should not be questioned unnecessarily or pressurized into giving details.
- Police and parents should ensure that the child does not have to repeat the incident on **multiple occasions**.

• While recording the statement the child should be given ample breaks.

- While recording the statement depending on the age of the child arrangement should be made for toys, colours, chocolates, food, water, etc.



# Evidence collection in cases of CSA

- The evidence in the CSA may include – clothes of the victim, clothes of accused, bed-sheet, mattress, injury marks on the body of the victim and accused, mobile phone, camera, pen drive, video recording device, any written document, statement of witnesses, medical examination reports, etc.
- Extra care needs to be taken to ensure that the evidence is not tampered with or destroyed.
- The victims should not be given bath or the clothes of the victim should not be washed as it may destroy crucial evidence.
- The police should conduct an investigation and gather evidence relevant to the case.
- The investigation may include examining the crime scene for evidence and talking to people or witnesses who may be able to give information about the incident.
- The police should use gloves while collecting evidence from the crime scene.
- The evidence collected from the crime scene should be packed properly to avoid any kind of damage to the evidence.
- Clothing containing dry biological stains (blood, semen or saliva) should be packed separately and in such a way that the stains are not broken or rubbed off.
- The victim and the accused clothing should be packed separately and should not come in contact with each other.
- Strands of hair on garments should not be allowed to come in contact with other garments that may contain hair.

# Medical Examination of victim of CSA

- The medical examination should be done within 24 hrs from the time of receiving the information relating to the sexual abuse.
- The examination is to be done in a government hospital.
- The medical examination is to be done after taking the consent of the victim or of the person competent to give such consent on his/her behalf.
- The examination to be done in the presence of a family member or a social worker with whom the child is comfortable.
- The medical examination is to be conducted by a female doctor if the victim is a girl child.
- The examination must be done privately in a comfortable and warm room.
- The child should be semi-dressed or covered by a blanket/sheet during the medical examination.
- The doctor should do a full examination on the child, checking from head to toe for physical injuries, especially in the hidden areas.
- Lack of signs of physical injury does not mean that the child was not abused.
- During the forensic examination, the doctor should collect any evidence that can be used in court against the abuser.
- This examination may be uncomfortable for the child, so the doctor needs to support the child and make him/her comfortable.
- Scientific method to be used for medical examination instead of 'two finger' tests.

# Court Proceeding

- Child friendly special courts to be setup for child sexual abuse cases.
- The Special Court should complete the trial within one year.
- The evidence of the child is to be recorded within a period of 30 days to ensure speedy trial.
- Child should not to be called repeatedly to testify.
- Frequent breaks should be given to the child during trial.
- The defence lawyer cannot directly ask questions to the child.
- The defence has to give the questions first to the court who will then ask questions to the child.
- Court not to permit aggressive questioning or character assassination of the child.
- The environment in the court should be child friendly.
- The trial should be in camera.
- During the child's deposition the parents or the family members or social worker whomever the child feels comfortable with, should be allowed to be present.
- The child should not be exposed to the accused while the child is deposing in the court.
- At the time of the deposition of the child in the court depending on the age of the child arrangement should be made for toys, colours, chocolates, food, water, etc.



# Handling victim post abuse

Sexual abuse is a traumatic experience that may interrupt the life of the victim and the family at home, at work, at school and in the neighbourhood

Many survivors of sexual abuse feel isolated in the aftermath of the assault.

**In order to reduce those feelings, the caregiver can work towards recovery of the victim in the following manner:**

1. Provide the victim with a “feeling” of safety, a feeling that the abuser will not harm her/him.
2. Enable her/him to get back to “routine life” at the earliest, such as attending school, playing with other children, watching TV, etc
3. Ensure that the victim is not isolated or feeling a “sense of isolation.”
4. Create an environment to make the victim feel “accepted.”
5. Enable the victim to feel “normal”. The victim should not start feeling that he/she is different from other children.
6. Do not make the victim feel “guilty” for sharing about the abuse and the legal action being taken against the abuser.
7. Provide “support and comfort” to the victim and the family.
8. Connect the child and family to professional services that can keep him/her safe, provide support and facilitate their recovery from trauma.

# Role of Stakeholders

## I. Counselor:

- **Listen:** What the child is sharing or intends to share.
- **Believe:** What the child shares.
- **Probe:** What the child shares.
- **Understand:** Child's mental and emotional state.
- **Encourage:** Child to share about the abuse and abuser.
- **Share/ Inform:** Parents, or Principal, or NGO.

**“The counselor should provide a space for the children to speak without fear, hesitation or discrimination”**

## II. Teacher:

- **Observe:** Children with externalizing behaviour (aggression, anger, difficulty concentrating on schoolwork, and sexualized behaviour), and internalizing behaviour (such as anxiety, depression, withdrawal, and post-traumatic stress disorder).
- **Build relationship with the child:** Provide children space and opportunity to express themselves.
- **Be Alert:** On the change in behaviour of children.
- **Share:** With senior staff, counselor, parents, NGO. It is important for the

teacher not to investigate the child's situation, as other authorities such as police and child welfare agencies have this role.

- **Report:** In case of abuse, report to the police.

**“The school should provide an environment which offers security and stability to a child facing or on the verge of facing sexual abuse”**

### III. Parents:

- **Be friendly with your child:** talk to your child about child's activities, feelings, good or bad, fun or sad, easy or difficult; about person, they are afraid, shy, angry or uncomfortable. Spend time with your child, doing activities, playing, discussing, sharing, and talking.
- **Be Observant and alert:** on change of behaviour of your child.
- **Create conducive environment:** to enable your child to share, communicate and feel safe.
- **Impart information knowledge to your child:** on private parts of the body; which no one can touch, see, show or click photos. Never to keep Bad secrets, secrets between two person, that are usually told to keep for a long time, lifelong and never to be disclosed.
- **Listen:** to what your child wants to communicate, inform you of fearful or uncomfortable experiences or person.
- **Trust:** Express to your child that you trust whatever he/she is sharing.
- **Take assistance:** Contact counselor or NGO working with children in case you find anything unusual in the behaviour of your child.

- **Report:** In case child shares about abuse, report to the police.
- **Refer for specialized services:** In case a child reports abuse, refer child for counseling, care, and support.

**“Child trust and fears his/her parents the most. His/her sharing about the abuse depends on the response he/she knows will get, when information about the abuse is, shared with parents.”**

#### **IV. Community:**

- **Be alert:** on any action, behaviour, person which can cause harm to children.
- **Create safety measures:** in the community for children such as ensuring streetlights, patrolling in deserted area in the community; check on outsiders, local anti social persons, addicts, etc.
- **Report:** to the police of any suspicious persons, incidents of sexual abuse.
- **Gain knowledge:** and information on laws and how to handle cases of child sexual abuse.
- **Reintegration:** Do not blame the victim or the family for the abuse. Provide support to the child and the family to reintegrate back to normal life.

**“Alertness and information sharing by the community can keep children safe”.**

## a) Video Conferencing:

### **State of Maharashtra v. Dr. Praful B Desai, [2003] 4 SCC 601.**

The whole inquiry before a Court being to elicit the truth, it is absolutely necessary that the victim or the witnesses are able to depose about the entire incident in a free atmosphere without any embarrassment. Section 273 Cr.P.C. merely requires the evidence to be taken in the presence of the accused. The Section, however, does not say that the evidence should be recorded in such a manner that the accused should have full view of the victim or the witnesses. Recording of evidence by way of video conferencing vis-a-vis Section 273 Cr.P.C. has been held to be permissible.

## b) In camera trial:

### **In State of Punjab v. Gurmit Singh, [1996] 2 SCC 384**

The Court had highlighted the importance of provisions of Section 327(2) and (3) Cr.P.C. and a direction was issued not to ignore the mandate of the aforesaid provisions and to hold the trial of rape cases in camera. It was also pointed out that such trial in camera would enable the victim of crime to be a little comfortable and answer the questions with greater ease and thereby improve the quality of evidence of a prosecutrix because there she would not be so hesitant or bashful to depose frankly as she may be in an open court, under the gaze of the public. It was further directed that as far as possible trial of such cases may be conducted by lady Judges wherever available so that the prosecutrix can make a statement with greater ease and assist the court to properly discharge their duties, without allowing the truth to be sacrificed at the altar of rigid technicalities.

### **c) Cross examination of victim:**

#### **Sakshi vs Union Of India AIR 2004 SC 3566**

In holding trial of child sex abuse or rape:

- (a) a screen or some such arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused;
- (ii) the questions put in cross-examination on behalf of the accused, in so far as they relate directly to the incident, should be given in writing to the President Officer of the Court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;
- (iii) the victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required.

### **d) Medical Examination of the victim & Recording of the statement:**

#### **Dilip vs State Of M.P 2013 STPL(Web) 343 SC**

It is an obligation on the part of the State authorities and particularly, the Director General of Police and Home Ministry of the State to issue proper guidelines and instructions to the other authorities as how to deal with such cases and what kind of treatment is to be given to the prosecutrix, as a victim of sexual assault requires a totally different kind of treatment not only from the society but also from the State authorities. Certain care has to be taken by the Doctor who medically examines the victim of rape. The victim of rape should generally be examined by a female doctor. Simultaneously, she should be provided the help of some psychiatric. The medical report should be prepared expeditiously and the Doctor should examine the victim of rape thoroughly and give his/her opinion with all possible angle e.g. opinion regarding the age taking into consideration the number of teeth, secondary sex characters, and radiological test, etc. The Investigating Officer must ensure that the victim of rape should be handled carefully by lady police official/officer, depending upon the availability of such official/officer. The victim should be sent for medical examination at the earliest and her statement should be recorded by the I.O. in the presence of her family members making the victim comfortable except in incest cases. Investigation should be completed at the earliest to avoid the bail to the accused on technicalities as provided under Section 167 Cr.P.C. and final report should be submitted under Section 173 Cr.P.C., at the earliest.

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