

**Training Manual on Protection of Children from Sexual Offences
(POCSO) Act & Rules, 2012 for Chairpersons/Members of
Child Welfare Committees (CWCs)**



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FOREWORD

Sexual offences against children are undoubtedly a violation of child's rights as these are the reflections of perverted, perpetuated and hatred feelings of adults who indulge in such acts driven by brutal and unsolicited gratification of their sexual needs. These harmful acts result in manifold effects on the lives of the child victims. Since each child victim develops his/her own coping mechanisms, the effects of sexual offences vary from child to child. Considering the serious nature of consequences of child sexual abuse, however, till recently, no single legislation was handling this aspect, other than certain provisions of IPC. As a result, there was no law to adequately penalize the perpetrators of such crimes. In order to deal with sexual offences against children, the Government has enacted a special law, i.e. The Protection of Children from Sexual Offences Act (POCSO), 2012 which came into force from 14 November 2012 along with Rules framed there under.

Some important features of this comprehensive gender-neutral Act, *inter-alia*, include child-friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts. The Act defines six types of sexual offences for which provisions for penalty have been clearly defined. These six types comprise preventive sexual assault, aggravated penetrative sexual assault, sexual assault, aggravated sexual assault, sexual harassment and using child for pornographic purposes. The Act also calls for mandatory reporting of sexual offences. The Act further provides for 'in-camera' trial and prohibits revelation of victim's identity.

The Act also calls for effective role of different stakeholders in its implementation. Each stakeholder has a unique and crucial role to play at different stages of dispensing justice to the victims. Viewing the essential and vital role each stakeholder has to play, the Ministry of Women and Child Development, Government of India requested the Institute to develop training manuals in order to sensitise these stakeholders on various aspects of child sexual abuse with specific reference to implementation of POCSO Act and Rules, 2012. In view of this, the Institute has developed training manuals in respect of eleven stakeholders. These stakeholders are: Police/ SJPU; Chairpersons/ Members of Child Welfare Committee (CWCs); Superintendents and Caregivers of Child Care Institutions; Medical/ Health Professionals; District Child Protection Units (DCPUs); Counsellors, Social Workers and Special Educators; Faculty of Educational Institutions; Judicial Officers; Media Professionals; NGOs/ Youth Clubs/ Youth Groups; Elected Representatives of Local Self Government. This training manual deals with one of these stakeholders.

I would like to place on record the efforts and services put in by Shri Subhasis Ray, Assistant Director and in charge of this project and his team comprising Ms. P. Saroja, Project Associate and Ms. Josmi Joseph Srampickal, Project Assistant in developing these training manuals under the overall guidance and supervision of Dr. (Ms.) Tejinder Kaur, Joint Director (PC). My sincere thanks go to all of them.


(Dr. Dinesh Paul)
Director 30/6/2015

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Abbreviations

| SI No. | Abbreviations | Explanation |
|--------|---------------|--|
| 1 | A.P. | Andhra Pradesh |
| 2 | ACP | Assistant Commissioner of Police |
| 3 | AIDS | Acquired Immuno Deficiency Syndrome |
| 4 | ASER | Annual Status of Education Report |
| 5 | CCIs | Child Care Institutions |
| 6 | CEDAW | The Convention on the Elimination of all forms of Discrimination Against Women |
| 7 | CES | Coverage Evaluation Survey |
| 8 | CPCR | Commission for Protection of Child Rights |
| 9 | Cr. PC | Criminal Procedure Code |
| 10 | CRIN | Child Rights Information Network |
| 11 | CWC | Child Welfare Committee |
| 12 | DCPU | District Child Protection Unit |
| 13 | FIR | First Information Report |
| 14 | FOGSI | Federation of Obstetric and Gynaecological Societies of India |
| 15 | GACFCA | Georgia Center for Child Advocacy |
| 16 | GDP | Gross Domestic Product |
| 17 | GOI | Government of India |
| 18 | HIV | Human Immunodeficiency Virus |
| 19 | ICDS | Integrated Child Development Services Scheme |
| 20 | ICPS | Integrated Child Protection Scheme |
| 21 | IIPS | Indian Institute for Population Sciences |
| 22 | ILO | International Labour Organisation |
| 23 | IMR | Infant Mortality Rate |
| 24 | IO | Investigation Officer |
| 25 | IPC | Indian Penal Code |
| 26 | JJ Act | Juvenile Justice (Care and Protection of Children) Act |
| 27 | LBW | Low Birth Weight |
| 28 | NCPCR | National Commission for Protection of Child Rights |
| 29 | NFHS | National Family Health Survey |
| 30 | NGO | Non Government Organisation |
| 31 | NSS | National Sample Survey |
| 32 | NSSO | National Sample Survey Organisation |
| 33 | OP3CRC | Third Optional Protocol to the Convention on the Rights of the Child on a communications procedure |
| 34 | OPs | Optional Protocols |
| 35 | POCSO | Protection of Children from Sexual Offences Act |
| 36 | PTSD | Post Traumatic Stress Disorder |
| 37 | RTE | Right to Education |
| 38 | SCPCR | State Commission for Protection of Child Rights |

| | | |
|----|--------|--|
| 39 | SES | Select Educational Statistics |
| 40 | SJPU | Special Juvenile Police Unit |
| 41 | SRS | Sample Registration System |
| 42 | STDs | Sexually Transmitted Diseases |
| 43 | T.N. | Tamil Nadu |
| 44 | U5MR | Under 5 Mortality Rate |
| 45 | UNCRC | United Nations Convention on the Rights of the Child |
| 46 | UNFPA | United Nations Fund for Population Activities |
| 47 | UNICEF | United Nations Children's Fund |
| 48 | UOI | Union of India |
| 49 | UTs | Union Territories |

A. Introduction to the Manual

I. Background

Caring and nurturing of children entails commitment, concentration and efforts in order that they grow into healthy citizens of the country. The State owes to itself, the responsibility for care, nurture and growth of its citizens. The State has mandate to proactively promote the well-being of its citizens by adopting measures for the welfare of its citizens. Children, who constitute almost 41 per cent of total population of the country, are an important entity for the State. The Preamble of Constitution of India declares "... JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity ...". The agenda is set in the Directive Principles of State Policy and rights of all citizens are guaranteed as Fundamental Rights.

Children and women constitute two vulnerable sections of our society. Vulnerability of women and children is multi-dimensional and multi-faceted. In social milieu, they strive to struggle against all odds, whenever faced with stigma and biases. This vulnerability primarily emanates from concocted gender misconception, authoritarian social roles, extreme disrespect towards individual's needs and rights. In a given situation, when children push themselves into taking risky action and resultantly face injury, stress, trauma and scar which may be a traumatic experience or a disability. Since children are a national asset, proactive planning and provision of services to children is an investment for the future of the country. Children have rights, and we, as adults, have duties and responsibilities towards them. Of late, child care and protection has emerged as a priority area for the Government. Recognition by the Government of this priority area is evident from the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000 and its Amendment Act, 2006 which focused specifically on child rights and rights-based approach. Following this, the Government launched the Integrated Child Protection Scheme (ICPS) in 2009 to provide structural, schematic and infrastructural support to child protection endeavour. Recognising the vulnerability of children, JJ legislation put in place provisions for ensuring a protective and caring environment under close supervision mechanism. The Act also departed from the judicial processes in place for adults and prescribed specialised procedures in order to address the 'best interest' of children in a consultative regime, with participation from a multitude of stakeholders, including children, to arrive at practical and meaningful solutions to the vulnerability of children.

The premise of adult jurisprudence emphasizes on punitive action and a reformative option for the individual to reflect and repent and reform as a consequence. The premise, on the other hand, in case of children, as enshrined in the child-specific statutes is to protect children, who have strayed, to counsel them and turn-around in order to gain understanding of the need to progress by providing ample opportunities to develop and advance into socially desirable and acceptable adult roles. Thus, the approach is contrasted between adults and children, in that, while, for the former, it is reformation, for the latter, it is a fresh start. This premise forms the basis for our work with children.

Sexual offences are a violation of human rights. They are condemnable, reprehensive and repugnant to what we stand for – human dignity and rights of individuals. These are acts of perversion, perpetuated with feelings of hatred, intended to hurt, brutal and unwilling and unsolicited gratification of personal needs. Child sexual abuse can result in both short term and long term harm, including psychopathology in later life. Physical and social effects, including depression, post traumatic stress disorder, poor self esteem, anxiety disorders, general psychological distress and disorder are instilled in them. In spite of the fact that not all victims of child abuse and neglected childhood experience behavioural consequences, studies have found abused and neglected children to be at least 25 per cent more likely to experience problems such as delinquency, teen pregnancy, drug use and mental health problems, etc.

Sexual offences like rape, hitherto, including sexual offences against children, were dealt under IPC till now. The Juvenile Justice (Care and Protection of Children) Act, 2000 provided some penal provisions for adults committing crimes against children under Sec. 23 to 28. However, offences of such serious nature against children were neither adequately addressed by the existing laws nor were they adequately penalized. Therefore, to deal with such sexual offences against children, the Government has brought in a special law “The Protection of Children from Sexual Offences Act, 2012”. The Act has come into force with effect from 14th November, 2012 along with the Rules framed there under.

An Overview of the Protection of Children from Sexual Offences (POCSO) Act, 2012:

The Act is a comprehensive law to provide for the protection of children from the offences of sexual assault, sexual harassment and pornography, while safeguarding the interests of the child at every stage of the judicial process by incorporating child-friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts.

The Act is gender neutral in nature and defines a child as any person below eighteen year of age and is gender-neutral. The Act identifies six types of sexual offences namely:

- Penetrative Sexual Assault (Sec. 3)
- Aggravated Penetrative Sexual Assault (Sec. 5)
- Sexual Assault (Sec. 7)
- Aggravated Sexual Assault (Sec. 9)
- Sexual Harassment (Sec. 11)
- Using child for Pornographic Purposes (Sec. 13)

The Act deems a sexual assault to be “aggravated” under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority vis-à-vis the child, a family member, police officer, teacher or doctor. People who traffic children for sexual purposes are also punishable under the provisions relating to abetment in the Act. The Act prescribes stringent punishment, graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life, and fine.

In keeping with the best international child protection standards, the Act also provides for mandatory reporting of sexual offences. This casts a legal duty upon a person who has knowledge that a child has been sexually abused to report the offence, if he fails to do so, he may be punished with six months’ imprisonment and/ or a fine.

The Act calls for a role of child protectors among others, for the police as well, during the investigative process, makes provision for the medical examination of the child in a manner designed to cause as little distress as possible and provides for Special Courts that conduct the “in-camera” trial and without revealing the identity of the child, in a child-friendly manner.

The achievement of these objectives requires a coordinated response of all the key players, specially the Chairpersons/Members of Child Welfare Committees (CWCs).

In short, the Act recognises almost every known form of sexual abuse against children as punishable offences, and makes the different agencies of the State as collaborators in securing justice for a sexually abused child.

Role of State Governments in Implementation of POCSO Act, 2012

The POCSO Act, 2012 envisages that the State Government shall:

- (i) in consultation with the Chief Justice of the High Court will designate for each district, by notification in the Official Gazette, a Court of Session to be a Special Court to try the offences under the Act (If a Court of Session is already notified as a Children's Court under the Commissions for Protection of Child Rights (CPCR) Act, 2005, then such Court shall be deemed to be a Special Court for cases under POCSO Act).
- (ii) set up the State Commission for Protection of Child Rights as per the CPCR Act, 2005.
- (iii) set up ICPS structures - DCPUs at the District Level to arrange training of all personnel for professional handling of cases and expand the non-institutional services under the JJ Act.
- (iv) pay the compensation awarded by the Special Court/Children's Court from the "Victim Compensation Fund" or JJ Fund or other Scheme or fund established for the purpose of compensating and rehabilitating child victims under Section 357 A of the CrPC or any other law for the time being in force.
- (v) training and awareness programmes for child protection functionaries.

Objectives

The main objectives of the Orientation Workshop are to:

- i. enhance the knowledge of the participants about salient features of POCSO Act, 2012;
- ii. sensitize the participants about the sexual offences being committed against children and consequent trauma faced by them;
- iii. develop an understanding of their role in implementation of the Act;
- iv. enable them to understand and contextualize the rights of children;
- v. orient them about different support and rehabilitation services available for victims of sexual offence under POCSO Act & Rules 2012; and
- vi. discuss about difficulties/problems encountered in the implementation of the Act and skills required in solving these problems.

Programme Contents

The contents of the Orientation Workshop would broadly include Child Rights: An Overview; Abuse and violence against children: A situational analysis; Understanding child sexual abuse, Children's consequential trauma and its impact on them; Salient features of Protection of Children from Sexual Offences (POCSO) Act and Rules, 2012; Role of CWCs in implementation of POCSO Act and Rules, 2012.

Participants

About 25-30 officials representing CWCs will take part in the Orientation Workshop.

Methodology

The participants would be exposed to deliberations mainly based on participatory methods which may include presentations, lecture cum discussions, group work, panel/open house discussions, information sharing on each other's experience, case studies, etc.

II. Training Module and Programme Schedule

The programme schedule sets the agenda for capacity building of CWCs. It describes the issues to be covered during the training programme delineating the inter-linkages of various stakeholders.

The three-day programme covers key subject of relevance to the roles and responsibilities of participants underlying the necessity and relevance of legal framework and the schematic content of POCSO for child sexual abuse. The programme is a mix of theoretical constructs, context of child rights, legislations for child protection, roles and responsibilities of the CWCs prescribed under the Act. Training techniques in the programme schedule include panel discussion/open house discussion, group work/role play/mock sessions, etc. The pre and post assessment of knowledge of participants is a hallmark of the programme.

The day-wise breakup of programme schedule is as under:

| Day 1 | |
|-------------------------|--|
| Time | Topic |
| 9:30 a.m. – 10.00 a.m. | Session I – Registration |
| 10.00 a.m. – 10.45 a.m. | Session II – Introductory/Inaugural Session |
| 10.45 a.m. – 11.00 a.m. | Tea Break |
| 11.00 a.m. – 11.45 a.m. | Session III – Rapport Building/Ice Breaking/Pre-Training Assessment |
| 11.45 a.m. – 1.00 p.m. | Technical Session I – Child Rights: An Overview |
| 1.00 p.m. – 2.00 p.m. | Lunch Break |
| 2.00 p.m. – 3.15 p.m. | Technical Session II – Abuse and Violence against Children: A Situational Analysis |
| 3.15 p.m. – 3.30 p.m. | Tea Break |
| 3.30 p.m. – 5.00 p.m. | Session II – Continued |
| Day 2 | |
| Time | Topic |
| 9.15 a.m. – 9.30 a.m. | Recap of the Previous Day |
| 9.30 a.m. – 10.45 a.m. | Technical Session III – Understanding Child Sexual Abuse, Children's Consequential Trauma and its Impact on them |
| 10.45 a.m. – 11.00 a.m. | Tea Break |
| 11.00 a.m. – 1.15 p.m. | Technical Session IV – Salient Features of Protection of Children from Sexual Offences (POCSO) Act and Rules, 2012 |
| 1.15 p.m. – 2.15 p.m. | Lunch Break |
| 2.15 p.m. – 3.30 p.m. | Technical Session V – Role of CWCs in Implementation of POCSO Act and Rules, 2012 |
| 3.30 p.m. – 3.45 p.m. | Tea Break |
| 3.45 p.m. – 5.00 p.m. | Technical Session V – Continued |
| Day 3 | |
| Time | Topic |

| | |
|-------------------------|--|
| 9.15 a.m. – 9.30 a.m. | Recap of the Previous Day |
| 9.30 a.m. – 10.45 a.m. | Technical Session VI – Group Work Based on Cases of Children Under POCSO Act, 2012 (using case studies/ mock trial/ role play) |
| 10.45 a.m. – 11.00 a.m. | Tea Break |
| 11.00 a.m. – 12.00 noon | Technical Session VI – Continued |
| 12.00 noon – 1.00 p.m. | Technical Session VII – Presentation of Group Work by Participants |
| 1.00 p.m. – 2.00 p.m. | Lunch Break |
| 2.00 p.m. – 4.00 p.m. | Technical Session VIII – Panel Discussion on Interface of CWCs with Other stakeholders/Open House Discussion |
| 4.00 p.m. – 4.15 p.m. | Tea Break |
| 4.15 p.m. – 4.30 p.m. | Post-Training Assessment |
| 4:30 p.m.- 5:00 p.m. | Valedictory Session |

III. Need of the Manual

A [training](#) manual is a [book](#) or [booklet](#) of instructions, designed to standardize and maintain the quality of a training imparted and tasks performed thereafter by the trainees. A training manual also contains necessary supportive reading/reference material relevant to various sessions of the training to help the facilitator supplement his/her knowledge-base. It also guides the facilitators, in the form of tips, as to how to handle a particular training session. A training material also helps the facilitators to decide about the training aids and training methodology they are supposed to apply/use in a particular training session. Keeping these in view, this training manual has been designed to cater to the Chairpersons/Members of CWCs, which has a crucial role to play in implementation of the POCSO Act, 2012.

Designing Training Manual

The Manual has been designed in such a manner that it can serve as a helpful training tool. It has been ensured that materials have been designed to provide the most learning opportunities as a support material for each session. Ultimately, the manual is an attempt to help the Chairpersons/Members of CWCs to achieve required competency in dealing with cases being dealt under POCSO Act, 2012.

Utility of the Training Manual

The manual is based on the interaction between trainers and participants. It emphasizes extensive use of participatory and interactive exercise to help participants in the learning process.

It is designed in the form of a reference document so as to assist the trainer to accomplish the task with tips for trainers and facilitators where necessary, games and exercise that can help facilitate the sessions and content specific information will help the trainers/facilitators/resource persons conduct training programmes successfully.

Trainers/facilitators in different States will have to look for State-specific information to assist the participants with tools that will help them perform their role suitably. These include State-specific situation of children, cases, issues and concern of children etc.

B. Role of the Facilitator

- I. Introduction**
- II. Training Innovations (Methods and Techniques)**
- III. Training Games/Energizers**
- IV. Facilitator's Check List: "Do's and Don'ts" for Facilitators**

Introduction

“A person who is acceptable to all group members, substantively neutral, and has no decision-making authority who helps a group improve the way it identifies and solves problems and makes decisions.” - Roger M. Schwarz

The definition of "facilitate" is "to make easy" or "ease a process". What a facilitator does is plan, guide and manage a group event to ensure that the group's objectives are met effectively, with clear thinking, good participation and full cooperation from everyone who is involved.

To facilitate effectively, you must be objective. This doesn't mean you have to come from outside the organization or team, though. It simply means that, for the purposes of this group process, you will take a neutral stance. You step back from the detailed content and from your own personal views, and focus purely on the group process. (The "group process" is the approach used to manage discussions, get the best from all members, and bring the event through to a successful conclusion. How you design this depends on many factors, and we'll explore this in a little more detail later in the article. The secret of great facilitation is a group process that flows – and with it will flow the group's ideas, solutions, and decisions too.)

Your key responsibility as a facilitator is to create this group process and an environment in which it can flourish, and so help the group reach a successful decision, solution or conclusion.

Guidelines for the facilitators: In order to promote experiential learning through optimum participation and interaction, the facilitators should pay attention to the following aspects:

Training Environment

The facilitator should promote a friendly and cooperative environment. It is important to:

- Welcome everyone and create an atmosphere where each participant feels at ease expressing ideas and responding to those of others.
- Respond positively to questions from participants.
- Pay attention to the responses of all participants to encourage their continued attention and participation. It can be done with an encouraging comment such as “thank you” or a nod.
- If a participant seem to miss a point, it is important to ask for clarification or ask another participant for a response or suggestion.
- Well-placed humour is always welcomed.

Setting Ground Rules

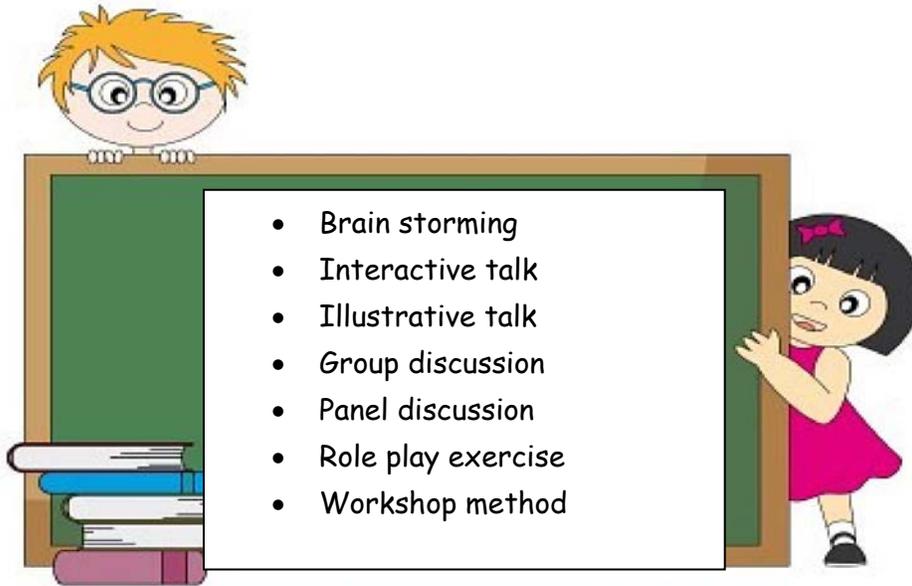
At the beginning of the training ask the participants to help you lay out the ground rules which are generally formed to guide the trainees on certain on certain behavioural pattern so that they treat others equally, support each other, communicate, participate, cooperate and coordinate joint activities. When the ground rules are set in consultation with the trainees, these need to be written on a chart paper. Thereafter, ask the trainees if they agree to them or want to add anything. After finalizing the content, keep the chart paper displayed in the classroom. Some typical ground rules are:

- Everyone is encouraged to participate - at their own comfort level.
- Fairness and sensitivity within the training.
- Allow everyone to be heard - no one person should dominate the discussion.
- Participants ask questions in a positive, open and accepting atmosphere.
- All views will be respected - everyone's input is valuable.
- Confidentiality will be maintained - this can be extremely important if people are to be comfortable revealing personal stories.
- Participants must respect each other's right to participate and share thoughts.

Appropriateness of the Training

- Although the contents and design of the training module are standardized for convenience, the facilitator should adapt ideas and concepts to suit local needs.
- Either summarize the discussion occasionally or encourage group members to do so.
- The medium of training and instructions should always be in the language best understood by the participants. Sometimes a mixed language approach may be followed if needed.

Training Innovations (Methods and Techniques)

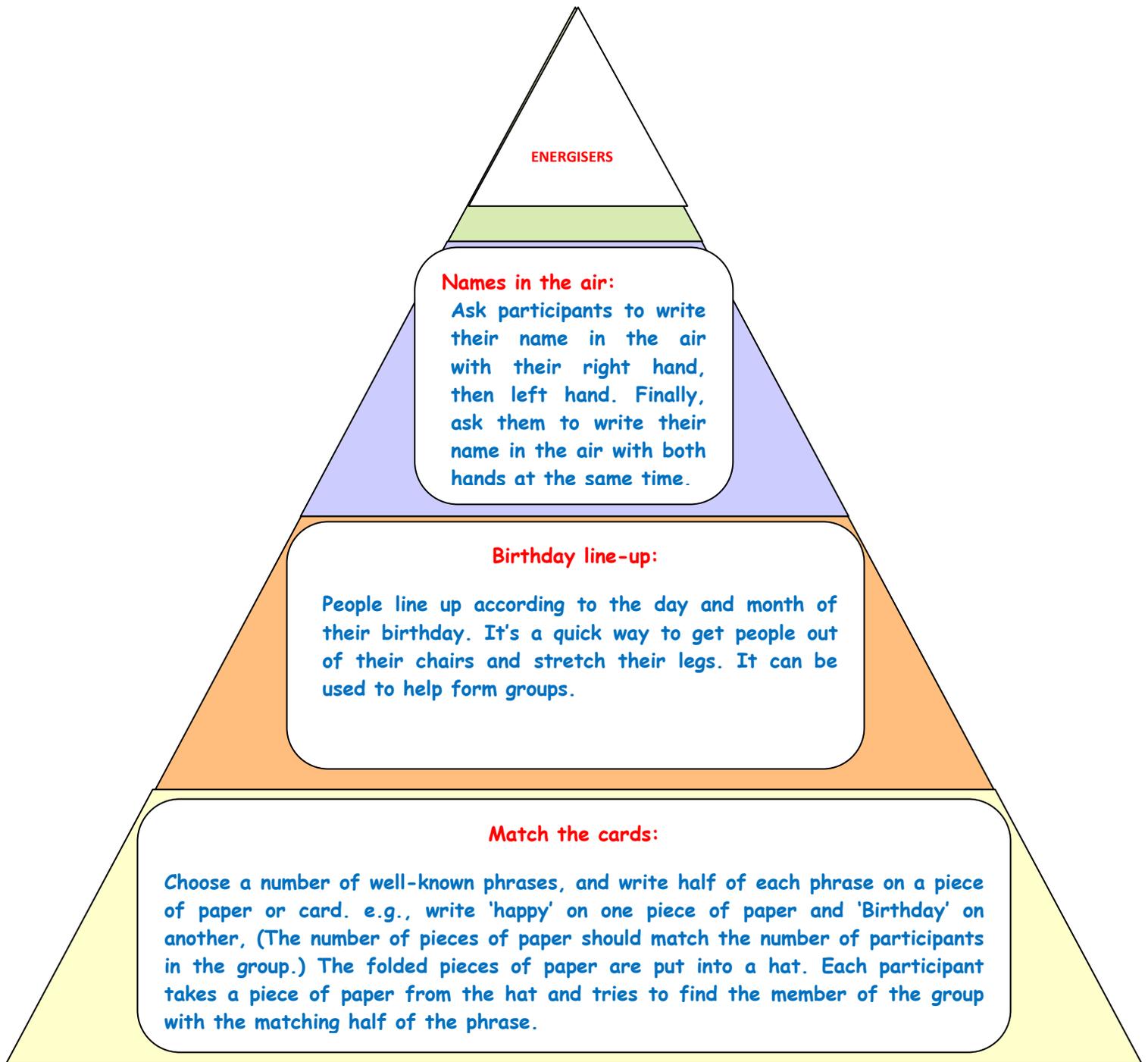


Training Glossary

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|--------------------------|--|
| Brain Storming | <ul style="list-style-type: none"> • This method is generally made as a first step to generate initial interest and essential involvement of the trainees in the training activity. • For this, the trainer asks the trainees to think of any ideas without evaluation or judgments. • The quantity, not the quality, is what matters. Ideas can be discussed later for practical consideration. • Sometimes 'unwanted' or seemingly ridiculous ideas lead to a more practical idea, which would otherwise not have been considered. |
| Interactive Talk | <ul style="list-style-type: none"> • This method is marked by encouraging the trainees to be quite active and analytical in their learning approach. • They are also motivated to be inquisitive and anxious to know new things by asking questions and exploring alternatives. |
| Illustrative Talk | <ul style="list-style-type: none"> • This is a lecture method supplemented by the use of proper illustration using training materials, including audio-visual aids. • Presentation of success stories and case studies is also one of the essential elements of this method. |
| Group Discussion | <ul style="list-style-type: none"> • Use of this method is based on the principle of the trainer taking on the role of a group promoter. • This method is also an effective instrument of participatory learning, whereby the trainer acts as a group adviser, a group facilitator and a group torch bearer. |
| Panel Discussion | <ul style="list-style-type: none"> • The use of this method is marked by greater involvement of trainees in promoting participatory learning. • In this situation the trainer's role is limited to be that of coordinator and |

| | |
|---------------------------|---|
| | <p>moderator of the discussion, in which the trainees as panelists act as catalyst agents of the learning process.</p> |
| Role Play Exercise | <ul style="list-style-type: none"> • This is one of the most effective training methods of participatory learning, in which the trainees are provided an opportunity to put into action the skills learnt through the training. • For this, an artificial situation is created, whereby every individual trainee is assigned a role which he/she enacts to demonstrate the skills learnt through the process of training. |
| Workshop Method | <ul style="list-style-type: none"> • This method is used not only to promote participatory learning, but also to make the best use of the mix of talent and skill of the individual trainees. • In the workshop method the trainees are arranged into a number of groups, keeping in view their interests and areas of learning. • In accordance to the leadership qualities demonstrated by some of the trainees during interactions with them, each group gets a leader to coordinate the discussions and present the decisions arrived at during the exercise. • Each group is assigned a theme of discussion relating to the topic being covered during the training session. |

Training Games/Energizers (Some example)



Facilitator's Check List: "Do's and Don'ts" for Facilitators

The Facilitators MUST.....

- Read the manual thoroughly before and work through the activities in each session to be familiar with the responses and explanations required.
- Be well prepared on the goals and structure of the training programme.
- Make the sessions simple and easy to understand.
- Demonstrate enthusiasm for the topics covered in the training and for the work that the participants are doing.
- Be receptive to each participant's questions and needs.
- Ensure each participant gets a chance to be heard.
- Ensure everyone takes part in the discussion and encourage participants to go beyond one-word responses.
- Practice mock sessions with colleagues before conducting the actual training.
- Be updated on the latest information on Trafficking of Women and Children and the counselling needs, initiatives and interventions.
- Be well versed in psychological concepts and theories related to approaches to counselling with children.
- Be available to the participants even after the sessions for answering questions/queries of the participants.
- Think of and be prepared with a lot of energizers to be conducted in between sessions.

The facilitators must ensure that they:-

- DON'T cut off discussion because it is uncomfortable to them.
- DON'T let participants ridicule or otherwise not listen to one another.
- DON'T skip any discussions and questions.
- DON'T dominate the discussion or lead them from their own reference point and perspective.
- DON'T be judgmental.
- DON'T make the participants feel targeted.
- DON'T raise voice or express negative emotions verbally and/or non-verbally (through facial expressions or any other gesture) to control the flow of discussions.

C. Inauguration and Introduction

- **Registration**
- **Introductory/Inaugural Session**
- **Rapport Building/Ice Breaking**
- **Pre-Training Assessment**
- **Reference Material**

Registration
Introductory/Inaugural Session
Pre-Training Assessment
Rapport Building/Ice Breaking

Learning Objectives:

- To make the participants aware about the objectives and contents of orientation programme.
- To help the participants to open up develop rapport with each other

Material Required: Flip Chart, Marker, Projector, Computer, Pre-Training Assessment Form, etc.

Duration:

Session I: 30 Minutes

Session II: 45 Minutes

Session III: 45 Minutes

Instructions for Sessions I, II & III:

Registration and Inauguration

- Distribute registration forms to the participants.
- Match the registration forms with the list of confirmed participants.
- Address issues of participants who may be attending the programme but their nomination papers are yet to be received. Sort out the issue in accordance with eligibility of the programme and regret letter for the participants. Final admission to the programme should be based on approval of the competent authority.
- Distribute training kit to the participants.
- Ensure that the training kit shall have copies of the following:
 - ✓ Programme Schedule
 - ✓ Registration Form
 - ✓ TA form, if applicable
 - ✓ Local Conveyance Form, if applicable
 - ✓ Note Pad and Pen
 - ✓ Copy of POCSO Act
 - ✓ Copy of POCSO Rules
 - ✓ Any other reading material relevant to the participants
- Welcoming the participants.
- Introductory remarks by the Head of the Institution.
- Ensure that the introductory session shall highlight the following:
 - ✓ Introduction to the training schedule, Briefing on running the programme, objectives, programme schedule, working hours, punctuality, leave rules, etc.

Rapport Building and Setting up of Ground Rules

- Carry out at least two activities to establish rapport among participants.
- Ask the participants whether they need to have ground rules for the training programme or not.
- Ask them why ground rules are important in training programme.
- Let the participants come up with their own set of rules for the training programme.
- Quickly write down the responses on the flip chart/ chart paper.
- Paste the flip chart at a place where it is visible to all the participants.

Pre-Training Assessment

- Explain why pre training assessment is important.
- Distribute the pre training assessment form to the participants.
- Instruct them to fill the form in 10 minutes.
- Collect the filled in form for analysis.

Rapport Building and Setting up of Ground Rules

Activity-I Who am I?

- Ask each participant to write his/her name on masking tape and stick it on his or her shirt or dress.
- Tell them to stand in a circle, with everyone wearing their nametag.
- Give them 2 minutes to look around the circle and try to get everyone's name.
- Then tell them to cover their name and ask for a volunteer to try and name everyone in the circle.
- Give three or four volunteers the chance to do this.

Activity-II What do I feel?

- Participants sit in a circle; each one of them takes turns acting out certain emotions.
- Others try to guess out what emotion is being acted, the one who guesses right acts out the next emotion.

Setting Ground Rules

What are Ground Rules?

- Ground rules are the minimum necessary conditions for smooth sailing of a training programme and these rules are set through consensus before the technical sessions actually begin. The ground rules must be clear, consistent, agreed-to, and followed.
- Ground rules are formed to bring home a normative behavioral pattern of the trainees to define as to how individual participants should treat and support each other, communicate, participate, cooperate, and coordinate joint activities.
- Where articulated ground rules are missing, natural behavior patterns often emerge spontaneously.
- A team should create and adopt written ground rules before the technical sessions start.

Why are ground rules important?

- Ground rules are essential in order to evolve a consistent acceptable behavioral pattern that applies to each and every participant.
- This helps maintain a positive learning environment throughout the training programme.
- It also helps trainees feel comfortable, safe and supported and encourages positive communication within the group.
- They further facilitate the participants to relate to each other in a positive way and to respect the ability and potential of fellow trainees.
- When broken, ground rules provide the facilitator/resource person, and others in the group, implied consent to intervene.

How to establish ground rules?

- It's important to spend necessary time to come to consensus (an essential precondition) on the specific rules for an ongoing group.

- Each trainee should be encouraged to give his/her suggestions, so as to what all should comprise the ground rules.
- Let the trainees come up with their own protocol/set of rules at the start of the training session. Do not dictate the rules to them. This process will help the participants to have a clear understanding of acceptable behaviour.
- The facilitator/resource person must engage all the trainees in the establishment of ground rules to build up required trust and confidence in them. If trainees have difficulty in developing these rules, the facilitator/resource person may like to guide the process of rule setting with some suggestions as given below:
 - Session will start promptly on time as scheduled. All trainees are expected to be on time. If, for extenuating circumstances, a trainee is late, he/she must catch up on his/her own
 - Switch off mobile phones – this could be addressed by asking, “Does anyone need to keep mobile on for family or 'on-call' reasons? OK, then could you put your mobile on silent mode please?” and “when you get a call, take the call after going out of the room”.
 - Never refer to someone by name when giving an example.
 - Do not interrupt while someone is talking.
 - Listen to different ideas without put-downs.
 - Everyone has the right to speak and therefore everyone must respect each other's right to participate and share thoughts.
 - Each person is responsible for his or her own behaviour.
 - Respect other's cultural and religious traditions, beliefs, values and languages.
 - Respect other people's contributions.
 - Only have one conversation at a time in the class.

Pre-Training Assessment

Pre-Training is carried out to assess the knowledge level of the participants prior to the training programme. The following questions can be used as a pre-training assessment tool:

Pre-Training Assessment Form

Note: Please read each question and answer the same as per your best knowledge and understanding. This is a group training exercise and not your individual assessment.

| S. No. | Question | (Tick the correct option) |
|--------|---|--|
| 1. | When did POCSO Act 2012 come into force? | (a) 14 November 2012 <input type="checkbox"/> (b) 12 May 2013 <input type="checkbox"/> (c) 30 March 2011 <input type="checkbox"/> |
| 2. | Who is a child under POCSO Act 2012? | (a) Any person below the age of 18 years <input type="checkbox"/> (b) Any person above the age of 18 years <input type="checkbox"/> |
| 3. | Match the punishments and fine for various offences in the POCSO Act 2012? Answer: Offence | Punishment there for i) 5 years and fine (Section 14) ii) 3 years and fine (Section 12) iii) 5-7 years and fine (Section 10) iv) 3-5 years and fine (Section 8) v) 10 years/imprisonment for life and fine (Section 6) vi) 7 years/imprisonment for life and fine (Section 4) |
| 4. | Where will the cases of the POCSO Act 2012 are tried? | a) Special Courts <input type="checkbox"/> b) High Courts <input type="checkbox"/> c) District Courts <input type="checkbox"/> |
| 5. | Tick mark some of the specifications of POCSO Act 2012 Answer: | |
| | 1. Recording the statement of the child at the residence of the child or at the place of his choice, preferably by a woman police officer not below the rank of sub-inspector 2. Child to be detained in the police station in the night for any reason. 3. Police officer to be in uniform while recording the statement of the child 4. The statement of the child to be recorded as spoken by the child 5. Assistance of an interpreter or translator or an expert as per the need of the child 6. Assistance of special educator or any person familiar with the manner of communication of the child in case child is disabled 7. Medical examination of the child to be conducted in the absence of the parent of the child or any other person in whom the child has trust or confidence. 8. In case the victim is a girl child, the medical examination shall be conducted by a woman doctor. 9. No frequent breaks for the child during trial 10. Child to be called repeatedly to testify 11. No aggressive questioning or character assassination of the child 12. In-camera trial of cases | |

| | | |
|-----|---|---|
| 6. | Where the cases under this Act reported? | a) Special Juvenile Police Unit (SJPU) <input type="checkbox"/> b) Local Police <input type="checkbox"/> c) Both <input type="checkbox"/> |
| 7. | What is the role of the SJPU or local police in the POCSO Act 2012? | a) Relief and rehabilitation of the child <input type="checkbox"/> b) Care and protection such as admitting the child into shelter home or to the nearest hospital <input type="checkbox"/> c) Report to the CWC within 24 hours of recording of complaint for long term rehabilitation <input type="checkbox"/> d) All <input type="checkbox"/> |
| 8. | Who will monitor the implementation of the Act? | a) NCPCR & SCPCR <input type="checkbox"/> b) NCW & SCW <input type="checkbox"/> |
| 9. | Which one of the following is the first legally binding international instrument to incorporate full range of human rights? | (a) UNCRC <input type="checkbox"/> (b) UNFPA <input type="checkbox"/> (c) UNICEF <input type="checkbox"/> (d) None of these <input type="checkbox"/> |
| 10. | Expand CPR. | |
| 11. | The GOI adopted National Policy for children, 1974 which was amended again in ----- | (a) 2001 <input type="checkbox"/> (b) 2005 <input type="checkbox"/> (c) 2013 <input type="checkbox"/> (d) 2014 <input type="checkbox"/> |
| 12. | When did the GOI ratified the Convention on the Rights of the Child? | (a) 5 April, 2001 <input type="checkbox"/> (b) 12 Novemeber, 1992 <input type="checkbox"/> (c) 8 December, 1978 <input type="checkbox"/> (d) None <input type="checkbox"/> |
| 13. | Which Ministry has the nodal responsibility of coordinating the implementation of the Convention? | (a) Ministy of Human Resource Development <input type="checkbox"/> (b) Ministy of Social Justice & Empowerment <input type="checkbox"/> (c) Ministy of Environment & Forests <input type="checkbox"/> (d) Ministy of Women & Child Development <input type="checkbox"/> |
| 14. | Article that prohibits employment of children in factories | (a) Article 39 <input type="checkbox"/> (b) Article 45 <input type="checkbox"/> (c) Article 24 <input type="checkbox"/> |
| 15. | Hague Convention deals with | (a) Foster Care <input type="checkbox"/> (b) Inter-Country Adoption <input type="checkbox"/> (c) Sponsorship <input type="checkbox"/> |
| 16. | Expand CEDAW | |
| 17. | Child Sex Ratio according to Census 2011. | (a) 914:1000 <input type="checkbox"/> (b) 904:1000 <input type="checkbox"/> (c) 940:1000 <input type="checkbox"/> |
| 18. | One of the biggest problems associated with Child Marriages is: | (a) Early Motherhood <input type="checkbox"/> (b) Higher incidences of death <input type="checkbox"/> (c) Birth of Low Birth Weight (LBW) babies <input type="checkbox"/> (d) All of the above <input type="checkbox"/> |
| 19. | Act related to education in India | (a) RTI <input type="checkbox"/> (b) RTE <input type="checkbox"/> |
| 20. | Statutory body to protect, promote and defend child rights in the country is (Under CPR Act, 2005). | (a) SCW <input type="checkbox"/> (b) SCPCR <input type="checkbox"/> (c) NCW <input type="checkbox"/> (d) NCPCR <input type="checkbox"/> |
| 21. | Both girls and boys are Vulnerable to Child Sexual Abuse | (a) Yes <input type="checkbox"/> (b) No <input type="checkbox"/> |

| | | |
|-----|---|---|
| 22. | Which one of the following is a myth about child abuse & neglect? | (a) Child abuse doesn't happen in good families <input type="checkbox"/> (b) Most child abusers are strangers <input type="checkbox"/> (c) Abused children always grow up to be abusers <input type="checkbox"/> (d) All of the above <input type="checkbox"/> |
| 23. | Physically abused children may have problems with | (a) academic achievement and developing friendships and relationships <input type="checkbox"/> (b) depression, anxiety and low self-esteem <input type="checkbox"/> (c) both (a) & (b) <input type="checkbox"/> (d) None <input type="checkbox"/> |
| 24. | The _____ is a very important tool for the child in rebuilding his or her life after he/she is sexually abused. | (a) Counsellor <input type="checkbox"/> (b) Society <input type="checkbox"/> (c) All above <input type="checkbox"/> |
| 25. | Children need advocacy because they | (a) do not have political power <input type="checkbox"/> (b) have limited say in decisions <input type="checkbox"/> (c) are rarely informed about new laws and policies <input type="checkbox"/> (d) All <input type="checkbox"/> |

Note: The same form can be used at the end of the training programme as Post Training Assessment Form

Key:

- 1) (a)
- 2) Any person below the age of 18 years
- 3) a-vi, b-v, c-iv, d-iii, e-ii, f-i
- 4) (a)
- 5) Correct-1, 4, 5, 6, 8, 11, 12
Wrong-2, 3, 7, 9, 10
- 6) (c)
- 7) (d)
- 8) (a)
- 9) (a)
- 10) Commissions for Protection of Child Rights
- 11) (c)
- 12) (b)
- 13) (d)
- 14) (c)
- 15) (b)
- 16) The Convention on the Elimination of all forms of Discrimination against Women.
- 17) (a)
- 18) (d)
- 19) (b)
- 20) (d)
- 21) (a)
- 22) (d)
- 23) (c)
- 24) (a)
- 25) (d)

Minimum Score: 0
Maximum Score: 25

Scoring Pattern:

- Assign score 1 for the right answer and 0 to wrong.
- Sum of all scores is the Total Score
- Ranges for assessing knowledge level of participants are:

| | |
|-----------|-------|
| Very Poor | 0-5 |
| Poor | 6-10 |
| Good | 11-15 |
| Very Good | 16-20 |
| Excellent | 21-25 |

D. Technical Sessions

Technical Session I: Child Rights: An Overview

Learning Objectives:

- To orient participants about UNCRC and other international instruments.
- To enable them to understand and contextualize UNCRC to the rights of children.

Methodology:

Presentation, lecture and discussion

Material Required:

Projector, computer, soft copy/hard copy of the concerned presentation, flip chart and marker.

Duration: 1 hour 15 minutes

Instructions:

- Ask the participants what they understand by the terms like 'rights' and 'conventions', difference between 'rights' and 'needs', etc.
- Explain the participants about the evolution of various conventions on child rights.
- Show and explain the slides on the session "Child Rights: An Overview". Include slides on reporting mechanism on UNCRC.
- Ask the participants to share the situation of children in their area/region/state.
- Also ask the participants to share their views on 'rights based approach to child protection system'.
- Explain the concept, components and guiding principles of rights based approach system with the help of slides.
- Discuss the terms 'monitoring' and 'evaluation'.
- Select the relevant response of the participants and explain the concept of 'rights based monitoring and evaluation'.
- Quickly write the responses of the participants on flip chart/white board.
- Quickly analyze the responses and presentation with discussion.
- Keep track of time and wind up the session.

Tips for the Facilitators/Resource Persons:

- This session is meant to make the participants understand and contextualize UNCRC and other international instruments on child rights and protection.
- As this is theoretical session try to seek as much participation as possible
- Link the participants view points with the available literature
- Read/Review the slides carefully before conducting the session.
- Have updated data and knowledge on the topic.
- Keep track of the time as it is an extensive session with limited time.

Reference Material for Technical Session I

CONTENTS

Concept of child rights

- Children's Rights
- Justifications
- Historical Definition of Children's Rights
- Types of child Rights
- Difference between Children's Rights and Youth Rights
- Parental Rights
- Movement
- Opposition
- International Law
- Convention on the Rights of the Child
- Vienna Declaration and Programme of Action
- Picture in India
- The History of Child Rights in India
- Indian Constitution Provisions
- Cases

Articles of UNCRC and other international instruments concerning child rights

- What is Convention?
- Understanding Wants, Needs and Rights
- Evolution of Children's Rights and UNCRC
- Articles of UNCRC
- UNCRC and Optional Protocols
- UNCRPD
- Beijing Rules
- Riyadh Guidelines
- Hague Convention, CEDAW, ILO Convention, etc

Relevance of UNCRC to rights of children

Rights-based approach in working with children

- Components, issues, guiding principles of right based child protection system
- Children's role in building rights based child protection system, rights-based monitoring and evaluation and
- Reporting mechanism on UNCRC

Concept of child rights

Children's Rights

Children's rights are the [human rights](#) of [children](#) with particular attention to the rights of special protection and care afforded to minors, including their right to association with both [parents](#), [human identity](#) as well as the basic needs for food, universal state-paid education, health care and criminal laws appropriate for the age and development of the child, equal protection of the child's [civil rights](#) and freedom from [discrimination](#) on the basis of the child's race, gender, sexual orientation, gender identity, national origin, [religion](#), [disability](#), [colour](#), [ethnicity](#), or other characteristics. Interpretations of children's rights range from allowing children the capacity for autonomous action to the enforcement of children being physically, mentally and emotionally free from [abuse](#), though what constitutes "abuse" is a matter of debate. Other definitions include the rights to care and nurturing.

"A child is any human being below the age of eighteen years, unless under the law applicable to the child, [majority](#) is attained earlier." According to [Cornell University](#), a child is a person, not a *sub person*. The term "child" often, but does not necessarily, mean minor, but can include adult children as well as adult nondependent children. There are no definitions of other terms used to describe young people such as "[adolescents](#)", "teenagers," or "[youth](#)" in [international law](#), but the children's rights movement is considered distinct from the youth movement.

The field of children's rights spans the fields of [law](#), [politics](#), [religion](#), and [morality](#).

Justifications

As [minors](#) by law children do not have autonomy or the right to make decisions on their own for themselves in any known jurisdiction of the world. Instead their adult caregivers, including [parents](#), [social workers](#), [teachers](#), [youth workers](#), and others, are vested with that authority, depending on the circumstances. Some believe that this state of affairs gives children insufficient control over their own lives and causes them to be vulnerable.

Structures such as government policy have been held by some commentators to mask the ways adults abuse and exploit children, resulting in child [poverty](#), lack of educational opportunities, and child labour. On this view, children are to be regarded as a [minority group](#) towards whom society needs to reconsider the way it behaves.

Researchers have identified children as needing to be recognized as [participants in society](#) whose rights and responsibilities need to be recognized at [all ages](#).

Historical Definitions of Children's Rights

Consensus on defining children's rights has become clearer in the last fifty years. A 1973 publication by Hillary Clinton (then an attorney) stated that children's rights were a "slogan in need of a definition". According to some researchers, the notion of children's rights is still not well defined, with at least one proposing that there is no singularly accepted definition or theory of the rights held by children.

Children's rights law is defined as the point where the law intersects with a child's life. That includes juvenile delinquency, due process for children involved in the criminal justice system, appropriate representation and effective rehabilitative services; care and protection for children

in state care; ensuring education for all children regardless of their race, gender, sexual orientation, gender identity, national origin, religion, disability, colour, ethnicity, or other characteristics, and health care and advocacy.

Types of Child Rights

Children's rights are broadly categorised into four: right to survival, right to protection, right to development and right to participation. Children's rights are also defined in numerous ways, including a wide spectrum of civil, cultural, economic, social and political rights. Rights tend to be of two general types: those advocating for children as autonomous persons under the law and those placing a claim on society for protection from harms perpetrated on children because of their dependency. These have been labelled as the **right of empowerment** and as the **right to protection**. Children's rights can also be classified into three categories as given below:

- **Provision:** Children have the right to an adequate standard of living, health care, education and services, and to play and recreation. These include balanced diet, a warm bed to sleep in and access to schooling.
- **Protection:** Children have the right to protection from abuse, neglect, exploitation and discrimination. This includes the right to safe places for children to play; constructive child rearing behavior, and acknowledgment of the evolving capacities of children.
- **Participation:** Children have the right to participate in communities and have programs and services for themselves. This includes children's involvement in libraries and community programmes, youth voice activities, and involving children as decision-makers.

In a similar fashion, the Child Rights Information Network, or CRIN for short, categorizes rights into two groups:

- **Economic, social and cultural rights**, related to the conditions necessary to meet basic human needs such as food, shelter, education, health care, and gainful employment. Included are rights to education, adequate housing, food, water, the highest attainable standard of health, the right to work and rights at work, as well as the cultural rights of minorities and indigenous people.
- **Environmental, cultural and developmental rights**, which are sometimes called "third generation rights," and including the right to live in safe and healthy environments and that groups of people have the right to cultural, political, and economic development.

Amnesty International openly advocates four particular children's rights, including the end to juvenile incarceration without parole, an end to the recruitment of military use of children, ending the death penalty for people under 21, and raising awareness of human rights in the classroom. Human Rights Watch, an international advocacy organization, includes child labour, juvenile justice, orphans and abandoned children, refugees, street children and corporal punishment.

Scholarly study generally focuses children's rights by identifying individual rights. The following rights "allow children to grow up healthy and free":

- Freedom of speech
- Freedom of thought
- Freedom from fear
- Freedom of choice and the right to make decisions
- Ownership over one's body

Other issues affecting children's rights include the military use of children, sale of children, child prostitution and child pornography.

Difference between children's rights and youth rights

"In the majority of jurisdictions, for instance, children are not allowed to vote, to marry, to buy alcohol, to have sex, or to engage in paid employment." Within the [youth rights movement](#), it is believed that the key difference between *children's* rights and *youth* rights is that children's rights supporters generally advocate the establishment and enforcement of protection for children and youths, while youth rights (a far smaller movement) generally advocates the expansion of freedom for children and/or youths and of rights such as [suffrage](#).

Parental rights

[Parents](#) affect the lives of children in a unique way, and as such their role in children's rights has to be distinguished in a particular way. Particular issues in the child-parent relationship include [child neglect](#), [child abuse](#), [freedom of choice](#), [corporal punishment](#) and [child custody](#). There have been theories which provide parents with rights-based practices that resolve the tension between "common sense parenting" and children's rights. The issue is particularly relevant in legal proceedings that affect the potential [emancipation of minors](#), and in cases where children sue their parents.

A child's right to a relationship with both their parents is increasingly recognized as an important factor for determining the [best interests of the child](#) in [divorce](#) and [child custody](#) proceedings. Some governments have enacted laws creating a [rebuttable presumption](#) that [shared parenting](#) is in the interests of children.

Movement

The 1796 publication of [Thomas Spencer's](#) [Rights of Infants](#) is among the earliest English-language assertions of the rights of children. Throughout the 20th century children's rights activists organized for homeless children's rights and [public education](#). The 1927 publication of [The Child's Right to Respect](#) by [Janusz Korczak](#) strengthened the literature surrounding the field, and today dozens of international organizations are working around the world to promote children's rights.

Opposition

The opposition to children's rights far outdates any current trend in society, with recorded statements against the rights of children dating to the 13th century and earlier. Opponents to children's rights believe that young people need to be [protected](#) from the [adult centric](#) world, including the decisions and responsibilities of that world. In adult dominated societies childhood is idealized as a time of innocence, a time free of responsibility and conflict, and a time dominated by play. The majority of opposition stems from concerns related to [national sovereignty](#), [states' rights](#) and the parent-child relationship. Financial constraints and the "undercurrent of traditional values in opposition to children's rights" are cited, as well.

International Law

The [Universal Declaration of Human Rights, 1948](#) is seen as a basis for all international legal standards for children's rights today. There are several conventions and laws that address children's rights around the world. A number of current and historical documents affect those rights, including the 1923 [Declaration of the Rights of the Child](#), drafted by [Eglantyne Jebb](#) and

her sister [Dorothy Buxton](#) in London, England in 1919, endorsed by the [League of Nations](#) and adopted by the [United Nations](#) in 1946. It later served as the basis for the [Convention on the Rights of the Child](#).

Convention on the Rights of the Child

The [United Nations'](#) 1989 [Convention on the Rights of the Child](#), or CRC, is the first legally binding international instrument to incorporate the full range of human rights—civil, cultural, economic, political and social rights. Its implementation is monitored by the [Committee on the Rights of the Child](#). National Governments that ratify it commit themselves to protecting and ensuring children's rights, and agree to hold themselves accountable for this commitment before the international community. The CRC is the most widely ratified human rights treaty with 190 ratifications. Somalia and the USA are the only two countries which have not ratified the CRC. The CRC is based on four core principles, namely the principle of non discrimination, the best interests of the child, the right to life, survival and development, and considering the views of the child in decisions which affect them (according to their age and maturity). The CRC, along with international criminal accountability mechanisms such as the [International Criminal Court](#), the [Yugoslavia](#) and [Rwanda Tribunals](#), and the [Special Court for Sierra Leone](#), is said to have significantly increased the profile of children's rights worldwide.

Vienna Declaration and Programme of Action

[Vienna Declaration and Programme of Action](#), 1993 urges at Section II para 47, all nations to undertake measures to the maximum extent of their available resources, with the support of international cooperation, to achieve the goals in the World Summit Plan of Action and calls on States to integrate the Convention on the Rights of the Child into their national action plans. By means of these national action plans and through international efforts, particular priority should be placed on reducing infant and maternal mortality rates, reducing malnutrition and illiteracy rates and providing access to safe drinking water and basic education. Whenever so called for, national plans of action should be devised to combat devastating emergencies resulting from disasters and [armed conflicts](#) and the equally grave problem of children in extreme poverty. Further para 48 urges all states, with the support of international cooperation, to address the acute problem of children under especially difficult circumstances. Exploitation and abuse of children should be actively combated, including by addressing their root causes. Effective measures are required against female [infanticide](#), harmful [child labour](#), [sale of children](#) and organs, [child prostitution](#), [child pornography](#), as well as other forms of sexual abuse. This gave an influence to adoptions of [Optional Protocol on the Involvement of Children in Armed Conflict](#) and [Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography](#).

Scenario in India

In India, children's vulnerabilities and exposure to violations of their protection rights remain wide spread and multiple in nature. The manifestations of these violations are various, ranging from child labour, child trafficking, to commercial sexual exploitation and many other forms of violence and abuse. Although poverty is often cited as the cause underlying child labour, other factors such as discrimination, social exclusion, as well as the lack of quality education or existing parents' attitudes and perceptions about child labour and the role and value of education need also to be considered. In states like Bihar, Mizoram, Rajasthan and Uttar Pradesh, 60 per cent or more girls dropped out before completing their five years primary education.

Trafficking of children also continues to be a serious problem in India. The nature and scope of trafficking range from industrial and domestic labour, to forced early marriages and commercial sexual exploitation. Existing studies show that over 40 per cent of women sex workers enter into prostitution before the age of 18 years. Moreover, for children who have been trafficked and rescued, opportunities for rehabilitation remains scarce and reintegration process arduous.

While systematic data and information on child protection issues are still not always available, evidence suggests that children in need of special protection belong to communities suffering disadvantage and social exclusion such as scheduled castes and tribes, and the poor. The lack of available services, as well as the gaps persisting in law enforcement and in rehabilitation schemes also constitute a major cause of concern.

The History of Child Rights in India

The Indian Constitution has a framework within which ample provisions exist for the protection, development and welfare of children. There are a wide range of laws that guarantee children their rights and entitlements as provided in the Constitution and in the UN Convention. It was during the 50s decade that the UN Declaration of the Rights of the Child was adopted by the UN General Assembly. This Declaration was accepted by the Government of India. As part of the various Five Year Plans, numerous programmes have been launched by the Government aimed at providing services to children in the areas of health, nutrition and education.

In 1974, the Government of India adopted a National Policy for Children, declaring the nation's children as 'supremely important assets'. This policy lays down recommendations for a comprehensive health programme, supplementary nutrition for mothers and children, nutrition education for mothers, free and compulsory education for all children up to the age of 14, non-formal preschool education, promotion of physical education and recreational activities, special consideration for the children of weaker sections of the population like the scheduled castes and the schedule tribes, prevention of exploitation of children and special facilities for children with handicaps. The policy provided for a National Children's Board to act as a forum to plan, review and coordinate the various services directed toward children. The Board was first set up in 1974. This policy has been revised in 2013.

The National Policy for Children, 2013

Recognises that:

- a child is any person below the age of eighteen years
- childhood is an integral part of life with a value of its own
- children are not a homogenous group and their different needs need different responses, especially the multi-dimensional vulnerabilities experienced by children in different circumstances
- a long term, sustainable, multi-sectoral, integrated and inclusive approach is necessary for the overall and harmonious development and protection of children

Reaffirms that:

- every child is unique and a supremely important national asset
- special measures and affirmative action are required to diminish or eliminate conditions that cause discrimination
- all children have the right to grow in a family environment, in an atmosphere of happiness, love and understanding

- families are to be supported by a strong social safety net in caring for and nurturing their children

The Department of Women and Child Development was set up in the Ministry of Human Resource Development in 1985. This department besides ICDS, implements several other programmes, undertakes advocacy and inter-sectoral monitoring catering to the needs of women and children. In pursuance of this, the Department formulated a National Plan of Action for Children in 1992.

The Government of India ratified the Convention on the Rights of the Child on 12 November 1992. By ratifying the Convention on the Rights of the Child, the Government is obligated "to review National and State legislation and bring it in line with provisions of the Convention". The Convention revalidates the rights guaranteed to children by the Constitution of India, and is, therefore, a powerful weapon to combat forces that deny these rights.

The Ministry of Women and Child Development has the nodal responsibility of coordinating the implementation of the Convention. Since subjects covered under the Articles of the Convention fall within the purview of various departments/ ministries of the Government, the Inter-Ministerial Committee set up in the Ministry with representatives from the concerned sections monitor the implementation of the Convention.

At the provincial level

The State Governments have to assimilate - in letter and spirit - the articles of the Convention on the Rights of the Child into their State Plans of Action for Children. A number of schemes for the welfare and development of children have been strengthened and refined with a view to ensuring children their economic, political and social rights. The Convention has been translated into most of the regional languages for dissemination to the masses.

Networking with experts and NGOs

The mobilisation and greater involvement of NGOs in programmes for the development of children and women has increased the potential to accelerate the development process in achieving the national goals for children, as outlined in the National Plan of Action. Accordingly, their involvement in dissemination of information of children's rights as well as in preparation of the Country Report was considered vital by the Government.

Indian Constitutional provisions:

Article 15 Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

1. The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them
2. No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to
 - a) access to shops, public restaurants, hotels and palaces of public entertainment; or
 - b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public

3. Nothing in this article shall prevent the State from making any special provision for women and children
4. Nothing in this article shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Article 21 Protection of life and personal liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 23 Prohibition of traffic in human beings and forced labour

1. Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
2. Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Article 24 Prohibition of employment of children in factories, etc.

No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Article 39 Certain principles of policy to be followed by the State

The State shall, in particular, direct its policy towards securing

- (a) that the citizen, men and women equally, have the right to an adequate means of livelihood
- (b) that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good
- (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment
- (d) that there is equal pay for equal work for both men and women
- (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength
- (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 45 Provision for free and compulsory education for children

The State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

Introduction (from Bills of Right Comparative Law Materials):

The rights of children are protected by the fundamental rights and freedoms and also have been covered under the Directive Principles of State Policy. Important among these are Article 24 (Right against exploitation) provides that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any hazardous employment; Article 39 (f) states that the State shall, in particular, direct its policies towards securing that children are given opportunities and facilitates to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment and under Article. 45, the State must endeavour to provide, within the period of 10 years from the commencement of the constitution, free and compulsory education for all the children until they complete the age of 14 years.

Cases:

1. Joseph Valamangalam, Rev. Fr v. State of Kerala: [AIR 1958 Ker. 290] Article 45 was held to be not justifiable, being only directive in nature. The Article does not confer legally enforceable right upon primary schools to receive grants-in-aid from the government.

2. Peoples Union for Democratic Rights v. Union of India: [(1982) 3 SCC 235; AIR 1982 SC 1473] Also known as the Asiad Workers case. The Supreme Court held that though the Employment of Children Act, 1938 did not include the construction work on projects because the construction industry was not a process specified in the Schedule to the Act, yet, such construction was a hazardous occupation and under Article 24 children under 14 could not be employed in a hazardous occupation. The right of a child against exploitation under Article 24 was enforceable even in the absence of implementing legislation, and in a public interest proceeding.

3. Lakshmi Kant Pandey v. Union of India: [(1984) 2 SCC 244; AIR 1984 SC 469] This is an extremely important case relating to the adoption of Indian children by persons inside and outside India. In the absence of legislation, the Supreme Court framed elaborate guidelines in the matter. There was no law to regulate inter-country adoptions and such lack of legal regulation could cause incalculable harm to Indian children. Considering the possibility of child trade for prostitution as well as slave labor, legal regulation of such adoptions was essential. Therefore, Justice Bhagwati created a scheme for regulating both inter-country and intra-country adoptions. The Supreme Court held that any adoption, in violation of or non-compliance with, may lead adoption to be declared invalid and expose person concerned with to strict action including prosecution. For years, social activists have used these directions to protect children and promote desirable adoptions. The Government of India framed a national policy in this regard. Also Indian Council for Social Welfare v. State of A.P. [(1999) 6 SCC 365]

4. M.C.Mehta v. State of T.N.: [(1991) 1 SCC 283] The Supreme Court directed that children should not be employed in hazardous jobs in factories for manufacture of match boxes and fireworks, and positive steps should be taken for the welfare of such children as well as for improving the quality of their life.

5. M.C.Mehta v. State of T.N.: [(1996) 6 SCC 756; AIR 1997 SC 699] The Supreme Court directed that the employers of children below 14 years must comply with the provisions of the Child Labour (Prohibition and Regulation) Act providing for compensation, employment of their parents / guardians and their education. Also Bhandhua Mukti Morcha v. Union of India [(1997) 10 SCC 549; AIR 1997 SC 2218]

6. Gaurav Jain v Union of India: [(1997) 8 SCC 114; AIR 1997 SC 3021] The Supreme Court held that the children of the prostitutes have the right to equality of opportunity, dignity, care, protection and rehabilitation so as to be part of the mainstream of social life without any stigma attached on them. The Court directed for the constitution of a committee to formulate a scheme for the rehabilitation of such children and child prostitutes and for its implementation and submission of periodical report of its Registry.

7. Sakshi v Union of India: [(1999) 8 SCC 591] In this Public Interest Litigation matter, the Supreme Court of India asked the Law Commission to consider certain important issues regarding sexual abuse of children submitted by the petitioner and the feasibility of amendment to 375 and 376 IPC.

Articles of UNCRC and other international instruments concerning child rights

What is Convention?

Convention may refer to

(1) Treaty, an agreement in International Law.

Whether Children need Rights?

YES, Children do need RIGHTS because:

- They are also human beings and their rights are Human Rights
- They are more vulnerable than adults to the conditions in which they live.
- In many societies, view persist that children are their parent's property, or are adults in the making, or are not yet ready to contribute to society.
- They are vulnerable to exploitation and abuse
- They are unheard many a times

Understanding Wants, Needs and Rights

- A need is something that is basic to being alive, for example, water, food, shelter, work, money.
- A want is something that you desire to have but don't have e.g. radio, TV, fancy clothes, cell phone etc.
- Wants and needs vary from person to person, but rights are common to all.
- All persons have rights irrespective of their age, caste, sex etc.
- Every child has rights. No matter which region/state they are from, which community or religion they belong to, how old they are, irrespective of their sex – all have same rights.
- All wants are not needs.
- Things that are WANTS but not NEED are called desirable but not necessary for survival (e.g. toys, games etc.).
- Rights are non-negotiable, they are legal entitlements recognized by Government.
- The Governments are the bearers of rights of children. They have an obligation to fulfill them.

Difference between Need and Rights Based Approaches

| Needs Based Approach | Rights Based Approach |
|--|---|
| Children deserve help | Children are entitled for help |
| Government ought to do something | Government have binding legal and moral obligation |
| Children can participate so as to improve service delivery | Children are active participants in all matters concerning them |
| Given scare resources, some children may have to be left out | All children have same rights to fulfill their potential |
| Each activity meets a set goal, but there is no unifying purpose | All activities contribute to an overarching goal |
| Certain groups have expertise to meet | All adults can play a role in achieving |

| | |
|--|---------------------|
| children's needs | children's right |
| Focus is on the specific immediate situation | Analyses root cause |

Evolution of Children's Rights and UNCRC

| Year | Developments |
|---------|--|
| 1914-18 | First World War |
| 1919 | Save the Children Fund |
| 1924 | League of Nations Concedes to Child Rights |
| 1948 | The Universal Declaration of Human Rights |
| 1959 | Acceptance of Right of the Child. It is the duty of Humanity to offer the best to every child |
| 1978 | Poland demanded for creation of Child Rights in the background of past and present situation of children |
| 1979 | International Children's Year. Committee on Child Rights Starts Functioning |
| 1989 | United Nations adopts Convention of Rights of the Child (UNCRC) |
| 1990 | World Leaders' Summit |
| 1990 | CRC – an International Law |
| 1992 | India Signs and ratified CRC |
| 1997 | India submitted First Country Report to UN Committee |
| 2000 | UN Committee reviews India's First Report |

Articles on UNCRC

- The Convention on the Rights of the Child is the first legally binding international instrument to incorporate the full range of human rights – civil, cultural, economic, political and social rights.
- The Convention sets out these rights in 54 articles and two Optional Protocols.
- The cluster of rights of children covered by Convention are:
 1. Right to Survival
 2. Right to Development
 3. Right to Protection
 4. Right to Participation
- Every right spelled out in the Convention is inherent to the human dignity and harmonious development of every child.
- The Convention protects children's rights by setting standards in health care; education; and legal, civil and social services.
- States parties to the Convention are obliged to develop and undertake all actions and policies in the light of the best interests of the child.

Given below are descriptions of some important Articles of UNCRC:

| UNCRC Article | Title of the UNCRC Article | Detail |
|---------------|-------------------------------|--|
| Article 1 | (Definition of the Child) | A child means every human being below the age of 18 years unless under the law applicable to the child majority is attained earlier. |
| Article 3 | (Best Interests of the child) | The best interests of the child must be a top priority in all actions concerning children. |
| Article 6 | Survival and | Every child has the inherent right to life. |

| | | |
|------------|---------------------------------------|--|
| | Development | Governments shall ensure the survival and development of the child. |
| Article 7 | Registration, Name, Nationality, Care | Every child has the right to be registered immediately after birth, right to name and right to acquire Nationality. |
| Article 8 | Preservation of Identity | Governments must respect and protect a child's identity and prevent their name, nationality or family relationships from being changed unlawfully. |
| Article 9 | Separation from Parents | Children must not be separated from their parents unless it is in the best interests of the child. |
| Article 11 | Kidnapping and Trafficking | Governments must take steps to prevent children being taken out of their own country illegally or being prevented from returning. |
| Article 12 | Respect for the Views of the Child | Every child who is capable of forming his/her own views has the right to express his/her views freely in all matters affecting them. |
| Article 13 | Freedom of Expression | Every child must be free to seek, receive and impart information and ideas of all kinds either orally, in writing or in print or any other media of the child's choice. |
| Article 16 | Right to Privacy | Every child has the right to privacy. The law should protect the child's private, family and home life. |
| Article 19 | Protection from All Forms of Violence | Governments must take all appropriate legislative, administrative, social and educational measures to protect child from all forms of physical and mental violence, injury or abuse. |
| Article 20 | Children Deprived of A Family | The State Govt. shall provide special protection and assistance to those children who are temporarily or permanently deprived of his/her family environment. |
| Article 21 | Adoption | The Govt. shall ensure the best interest of the child as paramount consideration before declaring the child free for adoption. |
| Article 23 | Children with Disability | A child with a disability has the right to live a full and decent life in conditions that promote dignity, independence and an action role in the community. |
| Article 24 | Health and Health Services | Every child has the right to the best possible health. |
| Article 26 | Social Security | Governments must provide extra money for the children of families in need. |
| Article 28 | Right To Education | Every child has the right to an education. Primary education must be free. Secondary education must be available to every child. |
| Article 30 | Children of Minorities | Every child has the right to learn and use the language, customs and religion of their family whether or not these are shared by the majority |

| | | |
|---|---------------------------------|---|
| | | of the people in the country. |
| Article 31 | Leisure, Play and Culture | Every child has the right to relax, play and join in a wide range of cultural and artistic activities. |
| Article 33 | Drug Abuse | Governments must protect children from the use of illegal drugs. |
| Article 34 | Sexual Exploitation | Governments must protect children from sexual abuse and exploitation. |
| Article 35 | Abduction | Governments must ensure that children are not abducted or sold. |
| Article 36 | Other Forms of Exploitation | Governments must protect children from all other forms of exploitation that might harm them. |
| Article 37 | Detention | No child shall be tortured or suffer from cruel treatment or punishment. Children must not be put in a prison with adults and they must be able to keep in contact with their family. |
| Article 39 | Rehabilitation of Child Victims | Children who are neglected, abused, exploited, tortured or who are victims of war must receive special help to recover their health, dignity and self-respect. |
| Article 40 | Juvenile Justice | A child accused or guilty of breaking the law must be treated with dignity and respect. |
| The Convention has 54 articles in total. Articles 43-54 are about how adults and governments must work together to make sure all children get all their rights. | | |

Optional Protocols to UNCRC

In 2000 the General Assembly of United Nations adopted the two Optional Protocols (OPs) to the Convention to increase the protection of children from involvement in armed conflicts and from sexual exploitation.

1. Optional Protocol on the Involvement of Children in Armed Conflict

The state shall take measure to ensure that no child below the age of 18 shall be directly involved in hostilities, are not subjected to compulsory recruitment into armed forces, and if voluntary recruitment of persons under 18 does take place then certain requirements must be met. India signed the OP on 15 Nov 2004 and ratified it on the 30 Nov 2005.

2. Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography

The OP calls for the state to take measures to ensure the prohibition and prevention of sale of children, child prostitution and child pornography. States are required to alter the penal code, or create new acts to make sure their legal system covers a minimal number of provisions such as taking a child for the sale if his/her organs, for the purpose of employment, for the purpose of prostituting the child, etc. Each state is required to submit a report two years after having ratified this OP. India signed the OP on 15 Nov 2004 and ratified it on the 16 Aug 2005.

3. Third Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OP3CRC)

The OP will allow individual children to submit complaints regarding specific violations of their rights under the Convention and its first two optional protocols. The Protocol opens for signature in 2012 and will enter into force upon ratification by 10 UN Member States.

All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially two years after acceding to the Convention and then every five years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of “concluding observations”.

UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 1985

The UN Standard Minimum Rules for the Administration of Juvenile Justice are not specific to education, but apply to the juvenile justice system. The Minimum Rules state that juvenile justice systems should:

1. “Emphasize the well-being” of young people and ensure that any reactions should always be in proportion to the circumstances of both the offenders and the offence
2. Encourage the use of diversion programmes which remove young people from the criminal justice process and implement supportive or community services
3. Ensure the right to privacy and procedural safeguards including presumption of innocence
4. Ensure that proceedings are conducive to the best interests of the child and that young people have the opportunity to participate and express themselves freely;

5. Use inquiry reports on social, family, and educational background to identify and provide appropriate social services;
6. Avoid institutionalization as much as possible by using other measures such as counselling, probation or community services;
7. Use institutionalization only as a last resort; and
8. Focus the goal of institutionalization on assisting young people in becoming productive members of society.

United Nations Guidelines for the Prevention of Juvenile Delinquency (“The Riyadh Guidelines”), 1990

1. The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young people can develop non-criminogenic attitudes.
2. The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood.
3. For the purposes of the interpretation of the present Guidelines, a child-centered orientation should be pursued. Young people should have an active role and partnership within society and should not be considered as mere objects of socialization or control.
4. In the implementation of the present Guidelines, in accordance with national legal systems, the well-being of young persons from their early childhood should be the focus of any preventive programme.
5. The need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others.
6. The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at social risk and are in need of special care and protection.
7. Specialized philosophies and approaches for delinquency prevention, on the basis of laws, processes, institutions, facilities and a service delivery network aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, the commission of infractions.
8. Official intervention to be pursued primarily in the overall interest of the young person and guided by fairness and equity.
9. Safeguarding the well-being, development, rights and interests of all young persons.
10. Consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood.
11. Awareness that, in the predominant opinion of experts, labeling a young person as “deviant”, “delinquent” or “pre-delinquent” often contributes to the development of a consistent pattern of undesirable behaviour by young persons.
12. Community-based services and programmes should be developed for the prevention of juvenile delinquency, particularly where no agencies have yet been established. Formal agencies of social control should only be utilized as a means of last resort.

United Nations Convention on the Rights of Persons with Disabilities, 2006

- The Convention on the Rights of Persons with Disabilities and its Optional Protocol was adopted on 13 December 2006. The Convention entered into force on 3 May 2008.
- The Convention is a movement from viewing persons with disabilities as “objects” of charity, medical treatment and social protection towards viewing persons with disabilities as “subjects” with rights, who are capable of claiming those rights and making decisions for their lives based on their free and informed consent as well as being active members of society.
- The Convention is intended as a human rights instrument with an explicit, social development dimension. It adopts a broad categorization of persons with disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. It clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced.

The Hague Convention on Inter-country Adoption, 1993

The Hague Convention on Inter-country Adoption is an international agreement between participating countries on best adoption procedures.

These procedures have basically two goals in mind:

- The best interest of children is considered with each inter-country adoption.
- The prevention of abduction, exploitation, sale, or trafficking of children.

The guidelines and procedures that are set forth in the Hague Convention are also for the protection of birth families, as well as adoptive families. Part of the Convention's guidelines ensures the one Central Authority in each country so that adoptive parents get the most accurate information regarding adoption.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979

It was adopted by the UN General Assembly as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

By accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms, including:

- To incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;
to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and
- To ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

The Convention provides the basis for realizing equality between women and men through ensuring women's equal access to, and equal opportunities in, political and public life – including the right to vote and to stand for election – as well as education, health and employment.

States parties agree to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms.

The Convention is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations. It affirms women's rights to acquire change or retain their nationality and the nationality of their children. State parties also agree to take appropriate measures against all forms of traffic in women and exploitation of women.

Declaration of the Rights of the Child, 1959

The General Assembly proclaimed the Declaration of the Rights of the Child to the end that the children may have a happy childhood and enjoy for their own good and for the good of society the rights and freedoms herein set forth, and calls upon parents, upon men and women as individuals, and upon voluntary organizations, local authorities and national Governments to

recognize these rights and strive for their observance by legislative and other measures progressively taken.

1. The child must be given the means requisite for its normal development, both materially and spiritually;
2. The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succored;
3. The child must be the first to receive relief in times of distress;
4. The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation;
5. The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men.

Basic principles on the use of restorative justice programmes in criminal matters

“Restorative process” means any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles.

Recalling that there has been, worldwide, a significant growth of restorative justice initiatives, Recognizing that those initiatives often draw upon traditional and indigenous forms of justice which view crime as fundamentally harmful to people, Emphasizing that restorative justice is an evolving response to crime that respects the dignity and equality of each person, builds understanding, and promotes social harmony through the healing of victims, offenders and communities, Stressing that this approach enables those affected by crime to share openly their feelings and experiences, and aims at addressing their needs, Aware that this approach provides an opportunity for victims to obtain reparation, feel safer and seek closure; allows offenders to gain insight into the causes and effects of their behaviour and to take responsibility in a meaningful way; and enables communities to understand the underlying causes of crime, to promote community wellbeing and to prevent crime, Noting that restorative justice gives rise to a range of measures that are flexible in their adaptation to established criminal justice systems and that complement those systems, taking into account legal, social and cultural circumstances, Recognizing that the use of restorative justice does not prejudice the right of States to prosecute alleged offenders.

United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), 1990

The basic principle are:

- The present standard minimum rules provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment
- The Rules are intended to promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society.

- The Rules shall be implemented taking into account the political, economic, social and cultural conditions of each country and the aims and objectives of its criminal justice system.
- When implementing the Rules, Member States shall endeavour to ensure a proper balance between the rights of individual offenders, the rights of victims, and the concern of society for public safety and crime prevention.
- Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.

United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990

An area of concern identified by the UN has been the treatment of children within state juvenile justice systems. Hence the UN drafted three documents of rules concerning child justice; the UN Standard Minimum Rules for the Protection of Juvenile Justice 1985 (the Beijing Rules), the UN Guidelines for the Administration of Juvenile Delinquency 1990 (the Riyadh Guidelines), and the UN Rules for the Protection of Juveniles Deprived of their Liberty 1990.

The main principles of these rules are:

- Depriving a child of his/her liberty should be a last resort and there should be a minimum period of deprivation set out by the state.
- Deprivation of children's right to liberty should follow the provisions and norms as laid out in international law
- The state should set up small open facilities where children can be tended to on an individual basis and hence avoid additional negative effects of deprivations of liberty
- The institutions should have adequate facilities and meaningful activities for children to promote their health, safety and responsibilities. It should also provide them with all necessary skill trainings to become responsible members of society
- Institutions should be decentralized to allow for children to continue having access to their families and community.
- Juveniles deprived of their liberty should be aided in understanding their rights and obligations.
- Personnel dealing with juveniles should have adequate training regarding child rights and welfare.
- Juvenile Justice Systems should be aimed at helping and benefiting the child so that he/she can return to society with a better understanding of rights and responsibilities.

ILO Convention No. 182 on the Worst Forms of Child Labour, 1999

Child labour, as the statistics clearly demonstrate, is a problem of immense global proportion. Following its comprehensive research into the issue, the ILO concluded that it was necessary to strengthen existing Conventions on child labour. Convention No. 182 helped to focus the international spotlight on the urgency of action to eliminate as a priority, the worst forms of child labour without losing the long term goal of the effective elimination of all child labour.

ILO Conventions No. 138 on the Minimum Age for Admission to Employment and Work, 1973

One of the most effective methods of ensuring that children do not start working too young is to set the age at which children can legally be employed or otherwise work. The main principles of the ILO's Convention concerning the minimum age of admission to employment and work are in the table below.

| | The minimum age at which children can start work. | Possible exceptions for developing countries |
|---|--|---|
| Hazardous work Any work which is likely to jeopardize children's physical, mental or moral health, safety or morals should not be done by anyone under the age of 18. | 18 (16 under strict conditions) | 18 (16 under strict conditions) |
| Basic Minimum Age The minimum age for work should not be below the age for finishing compulsory schooling, which is generally 15. | 15 | 14 |
| Light work Children between the ages of 13 and 15 years old may do light work, as long as it does not threaten their health and safety, or hinder their education or vocational orientation and training. | 13-15 | 12-14 |

ILO Declaration on Fundamental Principles and Rights at Work, 1998

Both Conventions Nos. 138 and are fundamental Conventions, Under the ILO Declaration, even the member States that have not yet ratified these Conventions should respect, promote and realize the principles.

Relevance of UNCRC to Rights of Children

Right is something you have as a person, for example the right to an education, or the right to life. Every child, no matter who they are, where they live or what they believe in has the right to grow up safe, happy and healthy. In 1989, the world's leaders officially recognised the human rights of all children and young people under 18 by signing the [UN Convention on the Rights of the Child](#). The UNCRC is an agreement between countries which sets out the basic rights all children should have. Almost every country in the world apart from the United States and Somalia has signed the agreement.

A common approach is to group the articles of UNCRC together under the following themes:

1. **Right to Survival:** include the child's right to life and the needs that are most basic to existence, such as nutrition, shelter, an adequate living standard, and access to medical services.

2. **Right to Development:** include the right to education, play, leisure, cultural activities, access to information, and freedom of thought, conscience and religion.
3. **Right to Protection:** ensure children are safeguarded against all forms of abuse, neglect and exploitation, including special care for refugee children; safeguards for children in the criminal justice system; protection for children in employment; protection and rehabilitation for children who have suffered exploitation or abuse of any kind.
4. **Right to Participation:** encompass children's freedom to express opinions, to have a say in matters affecting their own lives, to join associations and to assemble peacefully. As their capacities develop, children should have increasing opportunity to participate in the activities of society, in preparation for adulthood.

The UNCRC includes 42 rights given to all children and young people. Five important rights are:

- The right to a **childhood** (including protection from harm)
- The right to be **educated** (including all girls and boys completing primary school)
- The right to be **healthy** (including having clean water, nutritious food and medical care)
- The right to be treated **fairly** (including changing laws and practices that are unfair on children)
- The right to be **heard** (including considering children's views)

It's the most complete statement of children's rights ever produced and is the most widely-ratified international human rights treaty in history.

These are our rights and together we must make sure that every child and young person in India and across the world has the opportunity to grow up in a safe, happy, clean and healthy environment. The respective governments must report to the United Nations on the progress it has made in meeting the rights outlined in the UNCRC.

Rights-based approach in working with children

Rights-based national child protection systems

The building and strengthening of rights-based national child protection systems will lead to holistic, sustainable and well-coordinated ways of protecting all children.

An effective National Child Protection System recognizes the state's ultimate responsibilities and human rights obligations to children. It consists of:

- Laws and policies that protect children from abuse, neglect, exploitation and violence and respond in the best interests of the child when violations occur.
- A Central Government coordination mechanism for child protection, bringing together Central Government departments, different provinces, central and local levels of government and civil society.
- Effective regulation and monitoring at all levels of child protection standards, for instance, in child care institutions and schools.
- A committed working with relevant competencies and mandates.

A functioning child protection system is informed by children's views and experiences and strengthens families in the care and protection of their children. It connects child and family support mechanisms in the community with child-friendly services at all levels, regulated by quality standards and delivered by the government or accredited social agencies.

Components of national child protection systems

A rights-based National Child Protection System is made up of components that, work together to strengthen the protective environment around each child and his or family.

- Child protection laws and policies, including customary law, are all compliant with the UNCRC and other international and regional standards and good practice, and a plan of action exists to prevent, protect and respond to all forms of violence against children.
- There are coordination mechanisms across government, with civil society, human rights bodies and mechanisms, International organisations and between sectors at different level, with a framework for reporting and referral of child protection issues for each agency involved in working with children's rights and wellbeing, in emergency as well as development context.
- A centralized data collection system ensures regular information on both prevalence and knowledge of child protection issues and good practices.
- Services and responses are effectively regulated, including through accreditation and licensing of care providers, enforced minimum standards of care institutions and independent oversight of these.
- There is a range of preventive and responsive child-friendly services that recognize the need to support and strengthen the role of families in the care and protection of their children and which can intervene when families are unable or unwilling to fulfill their role appropriately.
- A skilled and committed child protection workforce has the mandate to respond effectively to issues faced by children, their families and communities.
- Adequate and appropriate resource allocation underpins effective children's and family services at all levels, including within the child's community.

- Children have genuine opportunities to express their views and be involved in responses and interventions deployed to protect them and in the development of policies and services relevant to their protection and the fulfillment of their rights.
- An aware and supportive public is engaged and involved in efforts to prevent harm to children and respond to child protection issues in their communities and neighbourhoods and in wider society.

Guiding principles of rights-based child protection system

A child protection system that truly promotes children's rights and wellbeing is based on the Government's obligations to respect, protect and fulfill children's right to protection and is guided by the following principles:

- Everyone has the right to participation (especially children, families and communities)
- Non-discrimination and inclusion of all children (especially groups who are discriminated against – such as girls, children with disabilities and those of minority ethnic background), regardless of their or their parents' legal identity and residency status.
- Every child is treated with dignity and respect
- Sensitivity to children's ages and their stage of development, recognising children's individuality and differences
- An absolute focus on the child and the promotion of the child's best interests is the primary consideration
- The system builds on the strengths of children, families and communities
- There is an emphasis on prevention as well response, with a focus on supporting the role and responsibilities of parents and caregivers
- Evidence of how children of different ages, gender and background are affected by violence, abuse, exploitation and neglect, ensuring that services and interventions are reviewed regularly, respond to needs and are proven to work in the long term
- Mandates, responsibilities, standards and systems of supervision are established to ensure compliance
- It is contextualized to the cultural, social, political situation. Positive aspects of traditional practices must be integrated into child protection policies and structures, while addressing aspects that hinder child protection

Rights-based Monitoring and Evaluation

Monitoring and evaluation can be undertaken for a range of purposes, including:

- To measure impact, outputs, efficiency, effectiveness or change;
- To strengthen accountability;
- To facilitate organisational learning; to strengthen partnerships and team building; to support advocacy efforts; or
- To influence an organisation's culture.

Reporting mechanisms

The UNCRC reporting mechanism

The UNCRC is monitored through a system of reporting by States Parties to the Committee on the Rights of the Child. Each State Party is required to submit a report two years after ratification of the Conventions. Progress reports are required every five years after that. The Committee may also request a complementary report or additional information between these periods. All States Parties from South Asia have submitted their initial reports to the Committee.

Committee on the Rights of the Child

- The Committee is composed of 18 independent experts who are elected in their personal capacity to four-year terms by States Parties.
- The Committee is responsible for examining the progress made by States Parties in fulfilling their obligations under the Convention and the Optional Protocols.
- The mechanism for addressing individual complaints under the UNCRC, once introduced, will help those children whose voices are not heard by the national authorities.

Essential elements of State Party reporting

- Cooperation with civil society organisations.
- Awareness and dissemination of reports.
- National human rights institutions.
- States Parties are expected to provide detailed information on their budgetary allocations for implementation of Child Rights.

(Source: Save the Children)

The status of reporting system of UNCRC can be seen in the Ministry of Women and Child Development website www.wcd.nic.in .

Technical Session II: Abuse and Violence against Children: A Situational Analysis

Learning Objectives:

- To develop an insight into the situation of violence against children in Indian perspective.
- To sensitize the participants about the sexual offences being committed against children.

Methodology: Presentation, lecture and discussion

Material Required:

Projector, computer, soft copy/hard copy of the concerned presentation, flip chart and marker.

Duration: 2 hour 45 minutes

Instructions:

- Show the slides on the topic.
- Ask the participants to share the situation of children in their area/region/state.
- Ask the participants about the categories of vulnerable children.
- Clarify the categories of vulnerable children with the help of slides.
- Discuss the issues related to vulnerable children with participants.
- Discuss on the safeguards for protection of children.
- Use power point presentation to lead the discussion
- Emphasize issues of the state which the participants represent (use media report as referral point).
- Quickly write the responses of the participants on flip chart/white board.
- Quickly analyze the responses and presentation with discussion
- Keep track of time and wind up the session.

Tips for the Facilitators/Resource Persons:

- This session is meant to make the participants understand the situation and condition of children in various parts of India and also the types and causes of their vulnerability.
- As this is theoretical session try to seek as much participation as possible.
- Link the participants view points with the available literature.
- Read/Review the slides carefully before conducting the session.
- Have updated data and knowledge on situation of children in India.
- Keep track of the time as it is an extensive session with limited time.

Reference Material for Technical Session II

CONTENTS

Demographic scenario of children

- Situational analysis of children in India
- Population of children in India
- Child sex ratio
- Status of birth registration of children in India
- Health status of children in India
- Child marriage: causes and consequences
- Education
- Child labour
- Street children
- Missing children
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- Vulnerable children and their issues

Safeguards for protection of children

- Protective environment for children
- Need and assessment of child protection and use of formats
- Formats for child protection developed by Ministry of Women and Child Development
- Sample judgements - Procedures to safeguard the interests of the child during trial in cases of rape and sex abuse

Demographic scenario of children

Situational analysis of children in India

Who is a child?

- “A child is any human being under the age of eighteen, unless an earlier age of majority is recognized by a country's law.” (UNCRC)
- As per “Protection of Children from Sexual Offences (POCSO) Act 2012”, “child” means a person who has not completed eighteen years of age.

Demography of Children in India

The total number of children in the age group 0-6 years as per the provisional population total of Census 2011 is 164.5 million. Out of this, the rural child population stands at 121.3 million and urban at 43.2 million in 2011.

Population of Children in India

| S. No | Age group | Male | Female | Total |
|-------|-----------------|-------------|-------------|---------------|
| 1. | 0-6 years | 85,752,254 | 78,762,999 | 164,515,253 |
| 2. | 7 years & above | 537,518,004 | 508,821,720 | 1,046,339,724 |

(Source- Census 2011)

Note: Population figures include estimated population of Paomata, Mao Maran and Purul Subdivisions of Senapati District in Manipur where census could not be conducted in 2011.

Child Sex Ratio:

The Child Sex Ratio is defined as the number of females in the age group 0-6 years per thousand males in the same age group. Census 2011 recorded considerable fall in child sex ratio in the age group 0-6 years and has reached 918, which is 9 points fall from 927 during 2001.

- CSR has declined in 21 out of 35 States and UTs.
- NCRB recorded a 39.7 per cent increase in foeticide between 2008 and 2009 and 5.24 per cent increase in foeticide between 2012 and 2013.

Facts sheet related to decline of Sex Ratio

- Poverty is clearly not a reason of falling sex ratio
- Mizoram, which has second lowest GDP, is best performing state in over all Sex Ratio Index. Whereas Maharashtra having highest GDP is the worst performing State over Sex Ratio Index.
- Wealthier, highly educated women and pregnant women with no living sons are much more likely to have an ultrasound test than other women.

(Source: IIPS & Macro International, 2007)

Status of Birth Registration of Children in India (2011, Vital Statistics of India Based on the Civil Registration System)

- Nationally, 83.6 per cent of estimated births in the year 2011 have been registered with the civil authorities.
- The extent of birth registration varies substantially across states, ranging from the highest in Arunachal Pradesh, Gujarat, Haryana, Himachal Pradesh, Kerala, Maharashtra, Meghalaya, Nagaland, Punjab, Tamil Nadu, West Bengal, Chandigarh, Delhi (100%) to the lowest in Bihar (59.81%).

Components of Birth Registration

| S.No | Component | Rural | Urban | Total |
|------|-----------------------|-------|-------|-------|
| 1. | Birth Rate | 22.9 | 17.3 | 21.4 |
| 2. | Death Rate | 7.5 | 5.6 | 7.0 |
| 3. | Infant Mortality Rate | 44 | 27 | 40 |

Source: SRS, 2013

Health Status of Children in India

| S.No | Indicator | Data | Source |
|-----------------------|--|------|-------------------|
| Mortality Rate | | | |
| 1. | IMR | 40 | 2013, SRS |
| 2. | U5MR | 49 | 2013, SRS |
| Nutrition | | | |
| 3. | % of infants with low birth weight | 21.5 | 2005-2006, NFHS-3 |
| 4. | Neonatal mortality rate | 28 | 2013, SRS |
| 5. | Early initiation of breastfeeding (%) (within one hour) | 33.5 | 2009, CES |
| 6. | % of under-fives suffering from stunting | 48 | 2005-2006, NFHS-3 |
| 7. | % of under-fives suffering from underweight, moderate & severe | 42.5 | 2005-2006, NFHS-3 |
| 8. | % of under-fives suffering from (weight-for-height) wasting moderate & severe | 19.8 | 2005-2006, NFHS-3 |
| 9. | Vitamin A supplementation coverage rate (6-59 months) | 73 | 2012 UNICEF |
| Health | | | |
| 10. | % of Anemia in 0-5 Years | 69.4 | NFHS 3 |
| 11. | % under-fives with diarrhoea receiving oral rehydration and continued feeding, | 33 | 2005-2009, UNICEF |
| 12. | % of Children aged 12-23 months are fully vaccinated in India | 61 | 2009, CES |

*CES = Coverage Evaluation Survey

- India contributes more than 20 per cent of child deaths in World (*UNICEF, The Situation of Children in India- A Profile, May 2011 pg.4*)

- One out of every five children who die of diarrhea world-wide is Indian (*Med India 2007, 19 Sept.*)

Child Marriage

According to Prohibition of Child Marriage Act, 2006, 'Child' means, a girl under 18 years or a boy under 21 years.

Percentage of women aged 20-24 years were married before the age of 18 years is as under:

| Total | Urban | Rural |
|-------|-------|-------|
| 47 | 29 | 56 |

Source: UNICEF 2011-State of World's Children

Statistics on Child Marriage

- In India, 43 per cent of women aged 20-24 were first married by the age of 18 between 2005-2013.
- Girls with no education are 5.5 times more likely to marry or enter into union as those with at least 10 years of education. On gender-biased sex selection, the report said the practice is more prevalent in the west and northwest part of the country.
- The child sex ratio, which is the number of girls per 1,000 boys, among children aged 0-4 in India was 924.

(Source: Report on 'Improving Children's Lives, Transforming the Future – 25 Years of Child Rights in South Asia' by UNICEF)

- The northern State of Bihar has the highest incidence of child marriage at 68% while Himachal Pradesh has the lowest incidence at around 9%.
- States which have the highest incidence of child marriage ranging from 51.9% to 68.2%:
 - ✓ Rajasthan
 - ✓ Bihar
 - ✓ Uttar Pradesh
 - ✓ Madhya Pradesh
 - ✓ Jharkhand
 - ✓ West Bengal
 (In each of these States, at least one in two currently married women in age group 20-24 years happened to be a child bride)
- In the older cohorts (45-49 years age group), 64.2% of females and 41.3% of males got married before legal age of marriage.
- In comparison, the percentage of marriages below legal age in younger generation (age group 25-29 years) has decreased to 55.4% and 32.3% amongst females and males respectively.
- The median age at marriage amongst Jain, Sikh, and Christian communities (22.5 years, 20.4 years, and 20.3 years respectively) is significantly higher than amongst Hindu or Muslim (17.3 years each) communities.

(Source: Report of UNICEF's Study on "Child Marriage in India 2012")

- Jharkhand recorded the highest percentage of women (13%) who got married before the legal age of marriage followed by Rajasthan (10.1%), West Bengal (8.2%).
- India's Capital recorded the lowest percentage of women (0.5%) who got married before 18 years of age in 2010 followed by Haryana (0.7%) and Jammu & Kashmir (0.9%).
- The percentage of women who got married before the age of 18 was nearly three times higher in rural India (6%) compared to urban (2.4%).
- Some states have witnessed a drastic dip in under-18 marriage – Andhra Pradesh from 12.7 per cent in 2001 to 4 per cent in 2010, Assam (11.7% to 3.4%), Karnataka (15.8% to 3.6%), Madhya Pradesh (25.3% to 4%) and West Bengal (18.2% to 8.2%).
- Some larger states recorded a minor dip – Maharashtra (6.4% in 2001 to 4% in 2010), UP (8.4% to 5.4%) and Kerala (3.5% to 2.2%).
- Percentage of females marrying at 21 and above is 48.8 nationally and varies from 36.7 in Rajasthan to 81.7 in Jammu & Kashmir.
- Almost 22 per cent women in India, who are now aged between 20 and 24 years, gave birth to a child before they turned 18.
- One of the biggest problems with early marriage is that it leads to early childbirth.
- These marriages are often performed without the consent of the girls involved in the marriage.

(Source: Sample Registration Survey, 2010 & The State of the World's Children report 2012 released by UNICEF)

Causes and Consequences of Child Marriage

| Causes of Child Marriage | Consequences of Child Marriage |
|--|---|
| <ul style="list-style-type: none"> • Customs and traditions • Gender roles in patriarchal society • Control over sexuality • Child marriage materialized to develop alliance between two families • Minimize risk of dishonor • Moulding the behavior of girl children easier in early marriage • Economic reasons • Anxiety of finding suitable matches • Mass marriages to save resources • Perception of girl child as "Paraya Dhan" • Lack of alternatives to child marriage • Lack of awareness to adverse health consequences • Lack of awareness about law related to child marriage | <ul style="list-style-type: none"> • Physical growth of girl children stop due to early motherhood in cases of child marriage • Risk to teenage mothers and her child's health in case of marriage and motherhood before reaching adulthood • Higher incidences of death • Closing of opportunities for education and economic empowerment of girl children • Chances of premature birth, still births and birth of Low Birth Weight (LBW) babies are higher • Loss of opportunities to gain skills for self reliance result in lifelong dependence • Violation of human rights of girl children |

Education

Education is most important as it enables a child to realize his or her full potential; to think, question and judge independently; develop sense of self-respect, dignity and self-confidence; learn to love and respect fellow human beings and nature; in decision making; develop civic sense, citizenship and values of participatory democracy.

Educational Status of Girl Child

Education is a critical input in human resource development and is essential for the country's economic growth. A high literacy rate, especially of girls, correlates with improvement in several socio-economic indicators, namely low birth weight, low IMR and increase in life expectancy. Educational status of children is given in the following Table:

Education Status of Children

| Education | Male (%) | Female (%) | Rural (%) | Urban (%) | Total (%) | Source |
|-------------------------------|----------|------------|-----------|-----------|-----------|-------------|
| Literacy | 80.9 | 64.6 | -- | -- | 74 | |
| Drop out rate I-V | | | 28.7 | 25.1 | 27 | Census 2011 |
| I-VII | | | 40.3 | 41 | 40.6 | |
| I-X | | | 50.4 | 47.9 | 49.3 | |
| Literacy Rate 7+ years | 82.14 | 65.46 | -- | -- | 74.04 | |
| Population below age 15 years | -- | -- | 34.4 | 28.8 | 32.6 | DLHS-3 |

Drop Out: Drop out is a universal phenomenon of education system in India, spread over all levels of education, in all parts of the country and across all the socio-economic groups of population. The drop out rates are much higher for educationally backward states and districts. Girls in India tend to have higher drop out rates than boys. Similarly, children belonging to the socially disadvantaged groups like Scheduled Castes and Scheduled Tribes have the higher drop out rates in comparison to general population.

Reasons for Dropping out from School

- Lack of interest in studies
- Lack of safety in schools
- Economic condition of the parents
- Migration of family
- Assist the family in domestic work
- Gender discrimination
- Taking care of younger siblings

1. Students' enrolment in rural India has been a rise (96.7%) in the year 2010 (The Economic Survey 2011-12).
2. Student enrollment of students in private schools has seen a sharp increase, from 18.7 per cent of children between the age group 6-14 years getting enrolled in private schools in 2006; it is 25.6 per cent in 2011 (Annual Status of Education Report (ASER) 2011).
3. National Sample Survey (NSS), GOI (61st Round 2004-05) reported the enrollment rate to be 80 per cent among boys and 73 per cent among girls in rural areas and 88 per cent boys and 85 per cent girls in urban areas attend schools.
4. Enrollment at the primary level went up from 19.2 million (5.4 million girls in 1950 to 130.8 million (61.1 million girls)) in 2004-05 (GOI, Selected Educational Statistics (SES) 2006).

5. School Dropout rate is 29 per cent (24.42% girls) at primary level, 50384 (51.28% girls) at elementary level and 61.92 per cent (63.88% girls) at secondary level (GOI, Selected Educational Statistics (SES)).

Child Labour

Children are often treated as the "property" of the very adults who are supposed to care for them; they are ordered around, threatened, coerced, and silenced, with complete disregard of them as "persons" with rights and freedoms.

Child labour refers to the employment of children in any work that deprives children of their childhood, interferes with their ability to attend regular school, and which may be mentally, physically, socially or morally deranging, dangerous, harmful and impede development of the individual.

In a significant move to curb the rampant spread of child labour across the country, the Government of India is set to ban all forms of child labour under the age of 14 years, making the employment of children below 14 years a criminal offense. The Child Labour (Prohibition and Regulation) Act, 1986 prohibits employment of children below 14 years in hazardous occupations. The Union cabinet of India approved the amendments to the Child Labour (Prohibition & Regulation) Act, 1986, by putting a blanket ban on employing anybody below 18 years in hazardous occupation. Such hazardous occupations have also been re-classified in line with the increase in the minimum age of child labour from 14 to 18 years. Through the Child Labour (Prohibition and Regulation) Amendment Bill, 2012 (a bill to amend the Child Labour (Prohibition and Regulation) Act, 1986) it is proposed to prohibit employment of children below the age of 14 years in all occupations and processes to facilitate their enrolment in schools in view of the Right of Children to Free and Compulsory Education Act, 2009 and to prohibit employment of adolescents (persons who have completed fourteenth year of age but have not completed eighteenth year) in hazardous occupations and processes and to regulate the conditions of service of adolescents in line with the ILO Convention 138 and Convention 182, respectively.

Statistics

- As per National Sample Survey Organization (NSSO) in 2004-05 the number of working children was 90.75 lakhs.
- As per NSSO (2004-05) the highest percentage of child labour was in Uttar Pradesh (22.9%) followed by Andhra Pradesh (13.2%).
- According to Eleventh Five Year Plan document 5.82 million children (age 5-14 years) work out of which 1.136 million in urban areas and 4.682 million are in rural areas.
- The Eleventh Plan Working Group on Child Labour has estimated that 3.643 million children (5-14 years) were working in non-agricultural sector, out of which 1.219 million children were engaged in hazardous occupations.
- The Working Group for Social Inclusion of Vulnerable Group like Child Labour and Bonded and Migrant Labour in 12th Five Year Plan states that the magnitude of Child Labour in India has been declining in last two decades.
- 17 million children in India work as per official estimates.
- A study found that children were sent to work by compulsion and not by choice, mostly by parents, but with recruiter playing a crucial role in influencing decision.
- When working outside the family, children put in an average of 21 hours of labour per week

- 90 per cent working children are in rural India.
- 85 per cent of working children are in the unorganized sectors.
- About 80 per cent of child labour is engaged in agricultural work.
- 25 per cent of the victims of commercial sexual exploitation in India are below 18 years of age.
- Millions of children work to help their families because the adults do not have appropriate employment and income thus forfeiting schooling and opportunities to play and rest.
- Large numbers of children work simply because there is no alternative - since, they do not have access to good quality schools.
- Poor and bonded families often "sell" their children to contractors who promise lucrative jobs in the cities and the children end up being employed in brothels, hotels and domestic work. Many run away and find a life on the streets.

All children have the right to be protected from work that interferes with their normal growth and development. Abandoned children, children without families and disabled children need special care and protection.

Vulnerability, abuse and violence against children - analysis and trends

Children living in areas affected by violence

Various States of India such as Nagaland, Chhattisgarh, Jharkhand, Maharashtra, Andhra Pradesh, Orissa, Bihar, West Bengal, Jammu and Kashmir, etc. are suffering from separatist, ethnic, naxalite and terrorist violence.

(Source: NCPCR, Policy Document on Protection of Children's Rights in Areas of Civil Unrest, Chapter 4, 4.1, page 27)

Effects of violence on children are as under:

- **Violation of the Right to Education:** The Naxalites have attacked or destroyed school buildings, ostensibly for housing the police or armed forces, and intimidated local communities, resulting in the denial of education to children.
- **Constraints in access to other basic services:** The weakening of public infrastructure and service delivery at the village level has resulted in the deprivation of basic rights and services (health, water, nutrition, sanitation, education, protection) for women and children, especially for the most vulnerable.
- **Exploitation and detention of children:** Various reports and anecdotal evidences suggest that communities and families are increasingly being persuaded to contribute at least one child per family towards insurgent groups, suggesting forced participation of children.
- **Displacement and family separation:** Thousands of families have been displaced in the affected districts and have relocated, sometimes in a spontaneous manner and in other cases by being brought to relief camps.
- **Security risks:** The presence of armed groups results in increased risks for the physical security of children. In some cases, the Naxalites are using women and children as human shields to protect their movements.
- **Psychosocial risks:** Growing up amid violence and experiencing displacement, family separation, and institutionalization has highly adverse effects on the psychosocial well-being of children.

(Situation of Children in India – A Profile, UNICEF, 2011)

Vulnerable children and their issues

| S. No. | Vulnerable Children | Definition | Categories | Reasons of Vulnerability |
|--------|---------------------|--|---|---|
| I. | Street Children | Those children who are forced to live on the streets due to compelling circumstances and where there is no protection, supervision and care from concerned adults. | Runway/ Children of migrated families/ Refugees/ Temporarily migrated Children/ Orphans | <ul style="list-style-type: none"> ➤ Family disintegration ➤ Poor family income (poverty) ➤ Large family size ➤ Parental negligence ➤ Domestic Violence ➤ Migration |
| II. | Trafficked | According to UNICEF a | No specific | ➤ Tender Age |

| | | | | |
|------|--|---|---|---|
| | Children | child victim of trafficking is “any person under 18 who is recruited, transported, transferred, harboured or received for the purpose of exploitation, either within or outside a country”. | categories of Children. | <ul style="list-style-type: none"> ➤ Militarism ➤ Civil unrest ➤ Internal armed conflict ➤ Natural disasters ➤ Poverty ➤ Cheap Labourers |
| III. | Working children/ Child Labour | When a child is engaged in wage earning, to support himself/ herself or the family, and it directly or indirectly interferes with the growth and development | Agriculture labourers/ On the streets/ Domestic Worker/ bonded laborers | <ul style="list-style-type: none"> ➤ Increasing population ➤ Lack of resources ➤ Low literacy rate ➤ Increase of poverty |
| IV. | Child Abuse | Child abuse includes physical abuse, physical neglect, sexual abuse and mental (emotional) abuse of a child less than 18 years of age by a parent or other caretaker or any member of the society. | Physical Abuse/ Neglect/ Sexual Abuse/ Emotional Abuse | <ul style="list-style-type: none"> ➤ Lack of socialization ➤ Lack of education ➤ Lack of parental attitude for parenting ➤ Discrimination on the basis of the gender |
| V. | Children Involved in Substance Abuse | Substance abuse involves taking a drug/ alcohol for reasons other than medical and in amount, strength, frequency or manner that damages the physical/ mental functioning of a person, causing social or medical harm. | Alcohol/ Nicotine/ Opioids/ LSD/ Hashish (oil and resin)/ Marijuana | <ul style="list-style-type: none"> ➤ Dysfunctional families ➤ Anxiety or depression ➤ Peer pressure ➤ Sensation-seeking or high need for excitement ➤ Favorable attitudes toward drinking |
| VI. | Children in Conflict and Disaster Situations | Conflict is a situation where two or more groups of people do not agree with each other, cannot find a solution and try to force their views on each other. Disasters refer to the destruction of and damage to life and property on a large scale. Injury is caused to | Civil wars/ Droughts floods/ Earthquake/ Cyclones/ Tsunamis/ Hurricanes | <ul style="list-style-type: none"> ➤ Loss of stability ➤ Adverse impact on child’s access to health and nutrition, schooling and welfare services ➤ Psychological damage ➤ Trauma ➤ Permanent loss of a sense of |

| | | | | |
|-------|---|--|--|--|
| | | everyone in the environment. | | security |
| VII. | Children in 'At Risk' Families | 'At-risk' families are those that are likely to disintegrate and breakup due to social, economic, cultural pressures or any other physical, emotional or psychological crises. | Single parent families/ Poor Families/ Parents with chronic or terminal illness or are mentally ill/ challenged/ Parents involved in crime and antisocial activities/ Children of prisoners/ HIV/ AIDS infected and affected parents/ Families of construction workers | <ul style="list-style-type: none"> ➤ No one to look after ➤ Lack of guidance |
| VIII. | Differently-Abled/ Challenged Children | A differently-abled person is one who finds it difficult to perform normal physical and/or mental function because of impairment. | Locomotor disability/ Hearing impaired/ Visually impaired/ Mentally challenged | Biological, social, emotional, accidental, etc. |
| IX. | HIV/ AIDS – Affected/ Infected Children | A disease of the human immune system caused by the human immunodeficiency virus (HIV). | <ul style="list-style-type: none"> ➤ Born to HIV positive mothers ➤ Children addicted to drugs ➤ Children who are sexually abused and exploited ➤ Children needing blood transfusions | <ul style="list-style-type: none"> ➤ Prejudice and social exclusion leading to exploitation and abuse ➤ Denial of access to schooling ➤ The infected parent's earning capacity reduces and often the children have to resort to earning due to financial pressures, leading to "child-headed" household |
| X. | Juvenile in Conflict with Law | Children in conflict with the law are boys and girls below eighteen years of age, alleged to have committed offences and have been taken into custody by the police under Juvenile Justice | Burglary, stealing and petty thefts/ murder/ rape/ molestation & sexual abuse/ causing grievous hurt or injury to another/ Other | <ul style="list-style-type: none"> ➤ Poverty ➤ Lack of appropriate guidance and discipline ➤ Disintegration of the family ➤ School dropouts |

| | | | | |
|--|--|---------|----------------|--|
| | | System. | minor offences | <ul style="list-style-type: none"> ➤ Peer group Influence ➤ Lack of age appropriate sex education ➤ Involvement in anti-social activities |
|--|--|---------|----------------|--|

(Source: Situation of Children in India – A Profile, UNICEF, 2011)

Safeguards for protection of children

The National Commission for Protection of Child Rights (NCPCR) was set up in March 2007 under the Commission for Protection of Child Rights Act, 2005, an Act of Parliament (December 2005). The Commission's Mandate is to ensure that all Laws, Policies, Programmes, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child. The Child is defined as a person in the 0 to 18 years age group.

The Commission visualises a rights-based perspective flowing into National Policies and Programmes, along with nuanced responses at the State, District and Block levels, taking care of specificities and strengths of each region. In order to touch every child, it seeks a deeper penetration to communities and households and expects that the ground experiences inform the support the field receives from all the authorities at the higher level. Thus the Commission sees an indispensable role for the State, sound institution-building processes, respect for decentralization at the level of the local bodies at the community level and larger societal concern for children and their well-being.

Protective Environment for Children

Elements of a good Protective Environment

Protection involves maximizing safety from deliberate and situational harm by appropriate and timely safeguards, which are part of the day-to-day environment of children at home, in the community and through the basic service structures. The concept of protection works around the premise that all children have the right to grow up and develop in an environment, which is protective in which violence, exploitation and abuse are prevented as well as mitigated and redressed. Some of the principal safeguards are based on the need for institutionalized national systems and attitudes and practices of society at large, which are protective. Elements include laws, child welfare services, social protection measures to support families at risk, and supportive, complementary community actions; generating more open discussion around protection issues, and building support for protection practices in the home, the community and public services, as well as abandoning customs which harm or fail to protect. Protection rights are an intrinsic part of human rights of the child and must acknowledge the child as a person, and that children are important actors in their own protection and their capabilities have to be strengthened.

Every person bears multiple identities, of which some, or one, tend to define who he or she is. An owned identity may not be the same as one which is assigned. Protection, both as concept and as practice, must take into account the issue of a child's identity, because identity can either protect a child or expose him/her to risk, in a given setting. Every child has a distinct identity as an individual human being. He or she also bears the identity of a specific race, culture, faith system – as well as that of class, caste and other socially identified grouping. The sex, or gender, of children is also part of their identity. Disability is also an identifying factor.

The child's status and condition – and 'protectiveness'-- can be significantly influenced by questions of identity. Such labeling can determine whether a child is included or excluded in terms of rights entitlements. Children at risk because of who they are, or who they are seen to be, must come within the ambit of protection policy and programme. Girl children face or suffer neglect, devaluation, abuse, exploitation and brutality simply because of their female identity, and may face multiple risks due to their other identities. Belonging to subjugated or

disadvantaged groups in society sharpen these classifications and their effects. Children in general and girl children in particular, deserve protection against all these evidences and threats of discrimination.

In more specific terms the key elements of a protective environment in the family, community, service structure and society, which need to be built and strengthened and against which we can assess the situation of child protection are as follows:

1. Attitudes, traditions, customs, behaviour and practices:

- a) There are favourable attitudes, traditions, customs, behaviors and practices within families and communities which make all forms of abuse, violence against children and their exploitation unacceptable, all children are valued and rights of children respected.
- b) Families and communities are motivated and empowered to protect their children from harm, violence and exploitation. Community leaders are committed to prevent exploitation of children and promote positive social norms.
- c) Failures in protection at family, community or state level attract public concern and affront.

2. Open discussion of and engagement with child protection issues:

- a) In families and communities: There is a dialogue and interaction on child protection issues. There is no culture of silence. Issues like sexual abuse, corporal punishment, violence against children and others are openly discussed and get the attention of communities, government, and the public. Children have the space and opportunity to speak out against violence, abuse and other protection issues without fear.
- b) In Media and civil society: There is a lively and open public discourse on protection issues, ethical reporting and investigation in the public sphere. Civil society takes up protection as a priority. There is public scrutiny of actions to protect children and monitor accountability.

3. Protective Legislation and its enforcement:

- a) There are adequate protective laws, in line with Constitutional provisions, and international standards for child rights. There is consistent implementation of these laws, speedy prosecution of offenders and no impunity for crime /offences against children.
- b) There are adequate regulatory mechanisms and recourse mechanisms set up which are easily accessible and have the financial and human resources to function effectively.
- c) Children have access to complaint mechanisms and to legal representation-legal and investigative proceedings are child-friendly and confidential and safeguard the best interest of the child.
- d) Girl children and others at risk of exclusion enjoy special support/receive special attention to ensure their access to services and protection mechanisms.
- e) Standards are established and monitored for all parts of the justice administration process. The child is protected in the justice process.
- f) There is a regular monitoring and reporting on prosecutions and use of system data for strengthening effectiveness of justice administration systems in place.

4. Capacity Development:

- a) There are efforts to build the capacity of the Ministries and other partners responsible for the implementation to provide for a protective environment.
- b) The protection lens is applied to all basic services for children.
- c) Capacity of all those in direct contact with children including anganwadi workers, teachers, health workers, medical officers, social workers and lawyers, justice sector

officials and the police, PRI representatives, bureaucrats, judges etc. are strengthened to equip them with skills and knowledge, to identify and respond to child protection issues. This should also include those undertaking training to work in child care services i.e. student trainees.

- d) Law enforcement agencies and judiciary have the skills and capacity to handle protection issues in a sensitive and child-friendly manner.
- e) Capacity development efforts are regular and use information from implementation experience to enrich content and focus.
- f) Special services for children who have suffered because of protection failures are equipped with child – sensitive, trained staff to care for them, including provide psycho-social care and support and maintain high standards established for care.

5. Children's life skills, knowledge and participation:

- a) Children are informed and knowledgeable to participate in their own protection.
- b) Children, adolescents, have safe protected and constructive channels for self expression and participation.
- c) Children assess situation and negotiate for improvements.
- d) Plan implement actions for redressal of their grievances.

6. Responsive, comprehensive services for recovery and reintegration are available following child protection abuses/violations:

- a) There are appropriate and adequate services for victims of abuse, violence, exploitation.
- b) Children who have been victims of any form of neglect, abuse are entitled to and receive quality care.
- c) Speedy family tracing and return to family.
- d) Social support system supports children and families.
- e) Family support services for need- based, quality, alternative care for all children deprived of parental care.
- f) Complete psycho-social, educational, vocational support to all children in institutions.
- g) Institutionalization of children used as a measure of last resort.
- h) Mechanisms for review of child placements in institutions.
- i) Strict monitoring of implementation of standards and protection norms in institutional care.

7. Government commitment to child protection:

- a) Government interest in, recognition of and commitment to child protection is reflected in policies and programme frameworks.
- b) There is coordination in social and economic policy development to prevent contradictions in child impact objectives.
- c) There is a willingness to allocate adequate budget and resources for child protection and monitor outcomes for children.
- d) Government is committed to growth with social justice and equality and implements strong measures to reduce poverty, vulnerability, disparities and discrimination. There are strong measures to address social exclusion.
- e) Government policies focus support to families to provide economic security and nurturing environments for children's development. Family is the first front for care and protection of the child. State support to families and communities is such that they are equipped to promote and protect children in their care, with a special effort to support families in worst off areas.

- f) Government seriously examines the lack of development and resultant exclusion of deserving groups among children and their communities and the protection risks that ensue.
- g) Government also recognises and caters to the linkages between discrimination, vulnerability relating to group identities and the threats and dangers that result.
- h) Government tracks and assesses the impact of urbanization and its impact on child protection, especially the impact of urban evictions, homelessness, inadequate living conditions, and lack of basic services and livelihood opportunities.
- i) There are effective coordination mechanisms for inter-sectoral and inter-Ministerial coordination at central, state, district and panchayat levels.
- j) All departments analyze resources spent on children, allocate appropriate investments, monitor outcomes for children and make information available to the public. All departments analyze policies for their child impact.

8. Monitoring and reporting:

- a) The extent of abuse, exploitation and violence against children is measured and reported. Effective monitoring system is in place to record the incidence and nature of protection abuses and failures. This information is channeled to inform policy and programming for appropriate response.
- b) Intersectoral collaboration for data collection on children, child protection.
- c) Independent oversight of police, judiciary, children's institutions, etc
- d) Independent structure for monitoring violations of child rights is available – Commission for Protection of Child Rights, 2005. Complaints mechanism is accessible to children.
- e) Mechanisms exist through government and civil society in emergencies and regular situations that collect data, advocate against, report and communicate on abuse, violence and exploitation.
- f) Tracking systems exist for children in need of special care/ difficult circumstances, for instance, missing children, child labour, children in institutional care and children available for adoptions.

Need & Assessment of Child Protection and Use of Formats

Child protection is the prevention of or responding to the incidence of abuse, exploitation, violence and neglect of children. Protection also allows children to have access to their other rights of survival, development, growth and participation. When child protection fails or is absent, children have a higher risk of death, poor physical and mental health, HIV/AIDS infection, educational problems, displacement, homelessness, vagrancy and poor parenting skills later in life.

Assessment of Child Protection

Child protective services agencies are legally required to respond to concerns about child abuse and neglect. Intake involves receiving and screening reports of possible harm to determine if intervention is necessary. Investigations are conducted to determine if children have been harmed or are at risk of being harmed. Assessments determine the level of risk and safety for children and evaluate families' strengths and needs regarding the care of their children.

Often, these services are provided by multidisciplinary teams or through a collaborative approach by public and private service providers. When children have been harmed or are at risk of harm, staff may seek court involvement to compel families' participation in services.

Formats for assessment of child protection are developed by the Ministry of Women and Child Development and are available on www.wcd.nic.in.

Relevant Extracts from Sample Judgements - Procedures to Safeguard the Interest of the Child during Trial in Cases of Rape and Sex Abuse

In **Sakshi v UOI & Ors. AIR 2004 SC 3566** the SC gave following direction regarding trial of offences child sexual abuse and/ or rape:-

Re enquiry or trial of offences under S. 354 (outraging the modesty of a woman by use of assault or criminal force) or under S. 377(unnatural offences) S. 327 (2) (regarding constraining the sufferer or any person interested in such sufferer to do anything which is illegal or which may facilitate the commission of an offence) should also be applied.

The Court further provided for procedures to safeguard the interest of the child victim to such crime:

1. A screen or some such arrangements may be made where the victim or witnesses do not see the body or face of the accused;
2. The questions put in cross-examination on behalf of the accused, relating to the incidence of crime should be given in writing to the Presiding Officer of the Court who may put them to the victim or witnesses in a clear language which is not embarrassing;
3. The victim of child abuse or rape be given sufficient breaks as and when required.

Some other directions given in **State of Punjab v Gurmit Singh & Ors. 1996 AIR 1393** approved in Sakshi v UOI are following:

4. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case.
5. Trial of rape cases in camera should be the rule and an open trial in such cases an exception.
6. The anonymity of the victim of the crime must be maintained as far as possible throughout.
7. If possible lady judges should try a case of sexual assault on female to provide the victims an ease and the system an improved quality of evidence and proper trial.

The Court in this case also hoped and observed that "... the Parliament will give serious attention to the points highlighted by the petitioner and make appropriate legislation with all the promptness which it deserves."

In **Hiranath Misra v. Rajendra Medical College MANU/SC/0044/1973: (1973) IILLJ111SC**, the denial of opportunity to cross-examine the material witnesses was held not to vitiate the order made. It was a case where certain male students entered a girls' hostel during the night and misbehaved with the girls. The committee appointed to enquire into the matter recorded the statements of girls in camera and used them (on the question of identity of miscreants) against the appellants without allowing them to cross-examine the girls on the ground that such a course would reveal the identity of the girls and would expose them to further indignities and also because the enquiry was held by a committee of responsible persons.

The Director, Tamil Nadu State Judicial Academy v State of Tamil Nadu W.P.No. 36807 of 2006

The High Court of Madras gave various directions to different authorities, including those to judicial magistrates, juvenile justice boards and legal services authorities.

DIRECTIONS FOR MAGISTRATES/JUVENILE JUSTICE BOARD/LEGAL SERVICES AUTHORITY:

“Trials of cases of trafficking should generally be In-Camera and the Magistrate/Board should avoid disclosing the name of the prosecutrix and their orders, to save embarrassment to the victim and anonymity of the victim of the crime should be maintained throughout.”

To check if the appropriate sections of Indian Penal Code, Immoral Traffic Prevention Act and Juvenile Justice Act against the traffickers have been stated in the Charge Sheet and refer the matter to the concerned Court. Ensure that the evidence of the child is taken in-Camera, as per Section 327 of the Cr.P.C. and arrange for translators, if the child is from another State and does not speak the local language. Ensure that the Special Courts/Boards have a child friendly and supportive atmosphere while taking the child's evidence. Preferably, an elder woman who inspires the confidence of the child may be present.

Sheeba Abidi versus State and Another in the High Court of Delhi at New Delhi Writ Petition (Crl) 356/2003 28.07.2004 – R.C.Chopra, J.

The petitioner in this Writ petition, under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, is the mother of a child, aged about 6 years, who is alleged to be a victim of an offence under section 377 read with Section 511 of the Indian Penal Code at the hands of his teacher-respondent No.3. FIR No.938/2002 was registered at P.S. Malviya Nagar, New Delhi against respondent No.3. The trial is pending.

According to the petitioner, the child complained of sexual abuse on 25.10.2002 and on inquiries, revealed that he was a victim of sexual abuse by respondent No.3 on many occasions and at different locations in the school. The child was examined by Shri Achal Bhagat, a consultant psychiatrist and psycho therapist at Apollo Hospital, New Delhi. She categorically opined that it would be in the best interest of the child not to expose him to the perpetrator of the crime which may compound the impact of the abuse. She opined that the child was showing signs of Post Trauma Stress Disorder and was likely to suffer further psychological trauma if he was confronted with the accused. In these premises, the petitioner, who is the mother of the child victim, prays that the trial be conducted in a child friendly environment outside the Court room so that the child can give his evidence without fear, apprehension or intimidation. It is also prayed that the testimony of the child be recorded with the help of a close circuit live television link to avoid confrontation and eye contact between the child and the accused-respondent No.3 and at the time of the examination of the child a support person, preferably the mother of the child, be allowed to remain present. She also seeks permission for the use of testimonial aids so that child may freely express himself in ways other than oral testimony.

The State has no objection to the issuance of appropriate directions by this Court to ensure that the testimony of the child victim is recorded in a friendly and congenial atmosphere and the child does not suffer any mental trauma.

Learned counsel for respondent No.3 also does not oppose the prayer made by the petitioner but has two reservations. First is that the support person should not be a prosecution witness.

He agrees that the father may be allowed to remain present at the time of the examination of the child as a support person.

His second objection is in regard to the mode and method of the cross examination. He submits that while issuing directions, this Court must ensure that the valuable right of the accused to cross-examine the child witness is not frustrated or defeated.

The issues rose in this petition and the directions sought are squarely covered by the recent Apex court judgement in "Sakshi vs. Union of India and Ors." reported in 2004 (2) JCC Page-892. This judgement was given in a Public Interest Litigation filed by a Social Organization "Sakshi". The relief claimed in the said petition was primarily in regard to the enlargement of the definition of "sexual intercourse" as contained in Section 375 of the Indian Penal Code and directions to the Union of India and others for registration of cases falling within the broadened interpretation of "sexual intercourse". Their Lordships, after in-depth examination of the question of enlargement of the definition of "rape" as contained in Section 375 of the Indian Penal Code came to the conclusion that it would not be in the larger interests of the State or the people to alter the definition by a process of judicial interpretation. However, in para 27 of the judgement, their Lordships considered certain suggestions made by the petitioner for the protection of a victim of sexual abuse at the time of recording of his statement in Court. These suggestions read as under:

- Permitting use of a videotaped interview of the child's statement by the judge (in the presence of a child support person).
- Allow a child to testify via closed circuit television or from behind a screen to obtain a full and candid account of the acts complained of.
- The cross examination of a minor should only be carried out by the judge based on written questions submitted by the defence upon perusal of the testimony of the minor.
- Whenever a child is required to give testimony, sufficient breaks should be given as and when required by the child."

After examining the various implications of the suggestions, the Apex Court disposed of the writ petition with the following directions as contained in para 34 of the judgement :

"34. The writ petition is accordingly disposed of with the following directions:-

1. The provisions of sub-section (2) of the section 327 Cr.PC shall, in addition to the offences mentioned in the sub-section, would also apply in inquiry or trial of offences under sections 354 and 377 IPC.
2. In holding trial of child sex abuse or rape:
 - i. 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 they relate directly to the incident should be given in writing to the Presiding 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. These directions are in addition to those given in State of Punjab V. Gurmit Singh."

In view of the directions issued by the Apex Court as quoted above, there is hardly any scope for this Court to issue any additional directions or guidelines for the protection of a child victim of sex abuse or a witness to such an incident. The prayer made by the petitioner in Sakshi vs.

Union of India and Ors. (supra) for permitting use of a videotaped interview of the child's statement by the Judge did not find favour. However, the prayer for allowing the child or witness to testify via closed circuit television or from behind a screen to obtain a full and candid account of the acts complained of, received approval in Sub- Clause 2(i) of para 34 of the judgement. The words "or some such arrangements" used in this sub-para cover examination through close circuit television also. Regarding cross-examination also, the procedure prescribed by the Apex Court is that the questions to be 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 Presiding Officer of the Court, who may put them to the victim or witness in a language, which is clear and not embarrassing. The apprehension of learned counsel for respondent No.3 that sometimes a further question may have to be put on a witness in view of the answer to a question put in the cross examination which may not be possible by this procedure, is misconceived inasmuch as after the questions given in writing to the Presiding Officer are put to the witness, the defence counsel may give some further questions in writing to the presiding officer, which may also be put to the witness by the presiding officer of the Court, if deemed fit and relevant.

The presence of a support person with the victim of child abuse or rape at the time of his testimony in Court with sufficient breaks as and when required is fully justified. In the absence of a support person, a child of tender age may not be able to say anything. The objection of learned counsel for the respondent No.3 accused that the support person should not be a prosecution witness himself, has some substance and as such in the present case, instead of the mother, who is a prosecution witness, the father of the child can be permitted to be a support person. The question as to whether the child witness in the present case should be allowed to be examined by keeping him behind a screen or through closed circuit television can be left to the discretion of the Trial Judge inasmuch as at times the equipment required for examination of witness through closed circuit television may not be readily available and returning the witness without examination may not be deemed fit by Trial Judge. In view of the facts and circumstances of the case and in the light of the Apex Court judgement in Sakshi Vs. Union of India and Ors. (supra), this Court has no hesitation in concluding that the time has now come when the Courts should firmly step in to prevent harassment and humiliation of the witnesses and victims of sexual abuse in the course of their cross-examination in Courts. The spate of questions put to them in cross-examination which sometimes cross the limits of decency even makes them re-live the whole incident. This appears to be a major factor which prompts numerous victims of such crimes to renege from their statements for fear of humiliation. It happens in spite of holding of a trial in-camera because the presence of the prosecutor, defence counsel, accused as well as staff is unavoidable.

The directions given by the Apex Court in Sakshi Vs. Union of India (supra) have to be applied not only to the victims of child sex abuse or rape but some witnesses also who may be equally vulnerable like a child victim. In appropriate cases, the Courts may apply these directions to the victims or witnesses of other sexual offences also if it appears that they are vulnerable to mental pressure of Court proceedings. In the case of "State of Maharashtra Vs. Dr.Praful B.Desai and Anr." reported in JT 2003(3) C P-382, the recording of evidence through video conferencing stands approved. It has been clearly held that evidence so recorded meets the requirements of Section 273 Cr.PC so long as the accused and/or his pleader are present when evidence is recorded by video conferencing. The ratio of the said judgement can be applied to the victims and witnesses of sex abuse and rape cases also. However, a child victim has to be provided additional protections also as contained in Sakshi Vs. Union of India and Ors (supra).

The petition accordingly stands disposed of with the directions to Trial Judge to examine the child witness in FIR No.938/2002 registered at P.S. Malviya Nagar, New Delhi in terms of the directions issued by the Apex Court in Sakshi vs. Union of India and Ors. (supra) and the

observations made by this Court. The father of the child would be the support person who will remain present at the time of the examination/cross-examination of the child. The questions to be put by the defence counsel in cross-examination would be handed over to the learned presiding Judge, who would put them to the child witness in his own language ensuring that the child does not suffer any further trauma. Further questions may also be allowed to both the sides after the cross-examination of the child is over so that the clarifications, if required, are obtained. The testimonial aids may also be permitted so that the child can express himself freely and meaningfully.

The learned Trial Judge may also consider the feasibility of examining the child witness in his Chamber so that the child is not overawed by the Court atmosphere. The presiding Judge must ensure that the child victim is examined in a congenial, cordial and friendly atmosphere. It would be better if the evidence is recorded in post-lunch session at the end of Board when other cases are over and Court is less crowded. This Court need not say that necessary equipment/ gadgets for compliance of directions have to be arranged by the prosecution.

A copy of this order be circulated to all the officers of District Judiciary so that these directions are followed while examining the victims/witnesses of sex abuse or rape and especially when the victim or witness is a child.

Technical Session III: Understanding Child Sexual Abuse, Children's Consequential Trauma and its Impact on them

Learning Objectives:

- To develop an insight into the situation of sexual abuse and trauma consequently faced by children
- To sensitize the police about gravity of this issue

Methodology: Presentation, lecture and discussion

Material Required:

Projector, computer, soft copy/hard copy of the concerned presentation, flip chart and marker.

Duration: 1 hour 15 minutes

Instructions:

- Ask the participants to share what they know on child sexual abuse, its effect on children and interventions required for the same.
- Quickly write the responses of the participants on flip chart/white board.
- Show the slides on the topic
- Taking relevant information given by the participants, use power point presentation to explain additional contents and to lead the discussion.
- Emphasize issues of the state which the participants represent (use media report as referral point).
- Quickly analyze the responses and presentation with discussion
- Keep track of time and wind up the session.

Tips for the Facilitators/Resource Persons:

- This session is meant to make the participants understand child sexual abuse, trauma faced by them, its effect and the interventions required to bring the victims back to normal life.
- As this is theoretical session try to seek as much participation as possible
- Link the participants view points with the available literature
- Read/Review the slides carefully before conducting the session.
- Have updated data and knowledge on the topic.
- Keep track of the time as it is an extensive session with limited time.

Reference Material for Technical Session III

CONTENTS

Defining sexual abuse

- Child sexual abuse
- Understanding child abuse and neglect
- Myths and facts about child abuse and neglect
- Types of child sexual abuse
- Abusers

Trauma faced by children as a result of sexual abuse

Trauma responses in children – pre schoolers, school age children and teenagers

Effect of abuse and trauma among the victims

- Can children recover from sexual abuse?
- Effects of child abuse and neglect
- Effects of child sexual abuse
- Some more specific behaviours of children following sexual assault
- Indicators and effects

Interventions required for bringing the victims back to normal life

- Interventions for child sexual abuse
- Preventing child sexual abuse

Defining sexual abuse

Child Sexual Abuse

Child Sexual Abuse is the use of a child for sexual gratification by an older or more powerful person. The offender is usually an adult, but could also be a more powerful child. Both girls and boys are vulnerable. Besides being a public health concern, it is a crime punishable by law.

Understanding Child Abuse and Neglect

Child abuse is more than bruises or broken bones. While physical abuse is shocking due to the scars it leaves, not all child abuse is as obvious. Ignoring children's needs, putting them in unsupervised, dangerous situations, or making a child feel worthless or stupid are also child abuse. Regardless of the type of child abuse, the result is serious emotional harm.

Myths and Facts about Child Abuse and Neglect

MYTH #1: It's only abuse if it's violent.

Fact: Physical abuse is just one type of child abuse. Neglect and emotional abuse can be just as damaging, and since they are more subtle, others are less likely to intervene.

MYTH #2: Only bad people abuse their children.

Fact: While it's easy to say that only "bad people" abuse their children, it's not always so black and white. Not all abusers are intentionally harming their children. Many have been victims of abuse themselves, and don't know any other way to parent. Others may be struggling with mental health issues or a substance abuse problem.

MYTH #3: Child abuse doesn't happen in "good" families.

Fact: Child abuse doesn't only happen in poor families or bad neighbourhoods. It crosses all racial, economic, and cultural lines. Sometimes, families who seem to have it all from the outside are hiding a different story behind closed doors.

MYTH #4: Most child abusers are strangers.

Fact: While abuse by strangers does happen, most abusers are family members or others close to the family.

MYTH #5: Abused children always grow up to be abusers.

Fact: It is true that abused children are more likely to repeat the cycle as adults, unconsciously repeating what they experienced as children. On the other hand, many adult survivors of child abuse have a strong motivation to protect their children against what they went through and become excellent parents.

Child sexual abuse includes a variety of sexual offenses, including:

- **Sexual assault** – a term defining offenses in which an adult touches a minor for the purpose of sexual gratification; for example, **rape** (including **sodomy**), and sexual penetration with an object.
- **Sexual exploitation** – a term defining offenses in which an adult victimizes a minor for advancement, sexual gratification, or profit; for example, prostituting a child and creating or trafficking in child pornography.
- **Sexual grooming** – defines the social conduct of a potential child sex offender who seeks to make a minor more accepting of their advances, for example in an online **chat room**.

Child Sexual Abuse includes the following: Touching and Non-Touching Behaviours (but need not be limited only to these acts)

Touching behaviours include

- Fondling a child's body for sexual pleasure
- Kissing a child with sexual undertones/inclinations
- Sexually touching a child's body, and specifically private parts. Includes encouraging or forcing a child to do likewise
- Playing sexual games
- Encouraging or forcing a child to masturbate, with the child as either a participant or observer
- Encouraging or forcing a child to perform oral sex

Non-touching behaviours include

- Encouraging a child to watch or hear sexual acts either in person or lowering the bars of privacy
- Looking at a child sexually
- Exposing one's private body parts to a child (exhibitionism)
- Watching a child in a state of nudity, such as while undressing, using the bathroom, with or without the child's knowledge (voyeurism)
- An adult making suggestive comments to the child that are sexual in nature.
- Commenting on the sexual development of a child
- Encouraging or forcing a child to read/watch pornography, giving pornographic material or using the child in pornography

Types of Child Abuse

Child abuse and neglect occurs in a range of situations, for a range of reasons. In this section, we outline the different forms of child abuse most commonly identified by research, and some of the consequences of this abuse for victimised children and adults.

In abusive homes, children are rarely subject to one form of abuse. They often endure multiple forms of abuse at once. The most severe effects of child abuse often do not become apparent until the abused child grows to adulthood, at which point the adult may experience a range of psychological, emotional and social problems related to childhood abuse.

Different types of child abuse, commonly found, are:

- [Emotional abuse](#)
- [Neglect](#)
- [Physical abuse](#)
- [Family violence](#)
- [Sexual abuse](#)
- [Organised sexual abuse](#)

Emotional abuse

Emotional abuse refers to the psychological and social aspects of child abuse, and it is one of the main causes of harm to abused children.

Many parents are emotionally abusive without being violent or sexually abusive. However, emotional abuse invariably accompanies physical and sexual abuse. Emotionally abusive parents practice forms of child-rearing that are orientated towards fulfilling their own needs and

goals, rather than those of their children. Their parenting style may be characterised by overt aggression towards their children, including shouting and intimidation, or they may manipulate their children using more subtle means, such as emotional blackmail. Parents may also emotionally abuse their children by "mis-socialising" them, which means that they may encourage their children to act in inappropriate or criminal ways with direct encouragement and/or by surrounding the child with adults for whom such behaviour is normative.

Emotional abuse does not only occur in the home. Children can be emotionally abused by teachers and other adults in a position of power over the child. Children can also experience emotional abuse by other children, and one of the most common experiences of child-to-child emotional abuse is trivialised in Australia under the rubric of "bullying". Chronic emotional abuse in schools is a serious cause of harm to victimised children.

- **Who is most likely to be emotionally abused?** Boys and girls are equally likely to be victims of emotional abuse by their parents, and emotional maltreatment has been reported to peak in the 6 to 8 year old range and to remain at a similar level throughout adolescence.
- **What are the characteristics of emotionally abusive parents?** Research findings suggest that emotionally abusive parents have negative attitudes towards children, perceive parents as unrewarding and difficult to enjoy, and that they associate their own negative feelings with the child's difficult behaviour, particularly when the child reacts against their poor parenting methods. *Emotional abuse has increasingly been linked to parental mental health problems, domestic violence, drug and alcohol misuse, being abused or having been in care as children.

Sexual abuse

Sexual abuse describes any incident in an adult engages a minor in a sexual act, or exposes the minor to inappropriate sexual behaviour or material. Sexual abuse also describes any incident in which a child is coerced into sexual activity by another child. A person may sexually abuse a child using threats and physical force, but sexual abuse often involves subtle forms of manipulation, in which the child is coerced into believing that the activity is an expression of love. Sexual abuse involves contact and non-contact offences.

- **How many children are sexually abused?**

According to a statement released by Louis-Georges Arsenault, UNICEF Representative to India, clearly establishes children in India are facing child sexual abuse. Arsenault states, "It is alarming that too many of these cases are children. One in three rape victims is a child. More than 7,200 children including infants are raped every year; experts believe that many more cases go unreported. Given the stigma attached to rapes, especially when it comes to children, this is most likely only the tip of the iceberg."

But as alarming as that sounds the current report released by Human Rights Watch is not the only study done in India on a subject of child sexual abuse. In 2007 the Indian government sponsored a survey called, "National Study on Child Abuse: India 2007" through the Ministry of Women and Child Development, GoI. The findings of the study was based on interviews with 12,500 children in 13 different states, and reported serious and widespread sexual abuse, thereby bringing on record the gravity of the problem. Yet no concrete steps were initiated to deal with the problem and Renuka Chowdhry, the then Minister of Women and Child, went as far as describing the prevalence of child sexual abuse in India as "a conspiracy of silence"

What was really disturbing was the fact that the survey confirmed that 72 percent of the victims said they were abused and they did not report the matter to anyone. Only a small 3 percent of the victims' families complained to the police or made the abuse public. Interestingly, prior to the GoI study in 2007, an India NGO named Recovery and Healing from Incest(RAHI) conducted India's first study of child sexual abuse in 1998 called "Recovery and Healing from Incest, Voices from the Silent Zone(New Delhi 1998). The study interviewed 600 English-speaking middle and upper class women out which 76 percent said they had been abused in their childhood or adolescence. Shockingly 40 percent said they had been abused by a family member mostly an uncle or a cousin. Yet despite the study making its findings public nothing much was done by the government or related agencies to address the problem with seriousness.

<http://www.countercurrents.org/asingh220313.htm>

- **Who is most likely to be sexually abused?** Whilst all children are vulnerable to sexual abuse, girls are more likely to be sexually abused than boys. Disabled children are up to seven times more likely to be abused than their non-disabled peers.
- **How often is sexual abuse reported to the authorities?**

A study conducted by Ministry of Women and Child Development in association with the United Nations Children's Fund (UNICEF) and a few Indian NGOs working for child's rights found that more than 53% of children in India are subjected to sexual abuse, but most don't report it. The survey was conducted in 2007 and covered 13 states across the country with a sample size of 12,447. NGOs are demanding an in-depth study to address the issue properly.

The first-ever survey on child abuse in the country disclosed that more than 50% of survey participants had been sexually abused in ways that ranged from severe — such as rape or fondling — to milder forms of molestation that included forcible kissing. In 50% of child abuse cases, the abusers were known to the child or were in a position of trust and responsibility and most children did not report the matter to anyone.

<http://www.hrw.org/es/node/113480>

- **Who sexually abuses children?** Across all community-based studies, most abusers are male and related to the child. Most adults who sexually abuse children are not mentally ill and do not meet the diagnostic criteria for "paedophilia".

Signs in childhood

Sexually abused children exhibit a range of behaviours, including:

- Withdrawn, unhappy and suicidal behaviour
- Self-harm and suicidality
- Aggressive and violent behaviour
- Bedwetting, sleep problems, nightmares
- Eating problems e.g. anorexia nervosa and bulimia nervosa
- Mood swings
- Detachment
- Pains for no medical reason
- Sexual behaviour, language, or knowledge too advanced for their age

Signs in adulthood

Adults, sexually abused as children, have poorer mental health than other adults. They are more likely to have a history of eating disorders, depression, substance abuse, and suicide attempts. Sexual abuse is also associated with financial problems in adulthood, and a decreased likelihood to graduate from high school or undertake further education.

Organised sexual abuse

Organised sexual abuse refers to the range of circumstances in which multiple children are subject to sexual abuse by multiple perpetrators. In these circumstances, children are subject to a range of serious harms that can include child prostitution, the manufacture of child pornography, and bizarre and sadistic sexual practices, including ritualistic abuse and torture.

- **What are the circumstances in which children are subject to organised sexual abuse?** Many children subject to organised abuse are raised in abusive families, and their parents make them available for abuse outside the home. This abuse may include extended family members, family "friends", or people who pay to abuse the child. Other children are trafficked into organised abuse by perpetrators in schools, churches, state or religious institutions, or whilst homeless or without stable housing.
- **Who is most likely to be sexually abused in organised contexts?** Children who are vulnerable to organised abuse include the children of parents involved in organised abuse, and children from unstable or unhappy family backgrounds who may be targeted by abusers outside the family.
- **Who sexually abuses children in organised contexts?** Organised abuse, like all forms of child abuse, is primarily committed by parents and relatives. Organised abuse differs from other forms of sexual abuse in that women are often reported as perpetrators. Research with female sexual abusers has found that they have often grown up in environments, such as organised abuse, where sexual abuse is normative, and, as adults, they may sexually abuse in organised contexts alongside male offenders.

Signs in childhood

Young children subject to organised sexual abuse often have severe traumatic and dissociative symptoms that inhibit disclosure or help-seeking behaviour. They are often very withdrawn children with strong suicidal ideation. They may exhibit disturbed behaviours while at play or when socialising with their peers or other adults.

Signs in adulthood

Organised abuse is a key predisposing factor for the development of Dissociative Identity Disorder and other dissociative spectrum disorders. Adults with histories of organised abuse frequently have long histories of suicide attempts and self-harm, and they often live with a heavy burden of mental and physical illnesses.

Abusers

Most people imagine abusers to be shadowy and frightening strangers. In fact, most often these abusers can range from family members to acquaintances and someone the victim trusts explicitly. Rarely are abusers complete strangers.

Contrary also to what people may think, a person who abuses a child is usually not someone with a psychiatric disorder. They are usually indistinguishable from anyone else. In fact, often an abuser is a "regular" person who leads a "routine" life and is known to the victim, but has no inhibition or qualms for having sex with children.

Furthermore, child sexual abusers do not share any specific common characteristics:-

- Though most abusers are men, women can also be abusers.
- They do not belong to any particular socio-economic class.
- Education, or the lack of it, does not define an abuser.
- The abuser need not have any psychological/emotional problems.
- Abusers can be married and have children of their own.
- The abuser may or may not have history of abuse in his/her childhood.

When abusers plan on targeting a child, they keep in mind the following factors:

- Picking someone who can be safely victimized.
- Spending time observing and then tricking the child into performing sexual acts so that the victim appears to be willing partner.
- Manipulates an apparently "willing victim" through encouragement, coercion, surveillance, constraint and bribery.

Trauma faced by children as a result of sexual abuse

Trauma responses in children

It can often be very difficult to recognise whether or not a child is being abused, both for parents and for professionals. Children respond to sexual assault in many different ways according to their age, gender, personality and family circumstances. Their behaviour will always reflect how they feel as children tend to communicate through their behaviour. Children frequently find it extremely hard to talk about what is happening to them, especially when they have been told to keep it a secret or have been subjected to coercion, bribery or threats. Children very rarely lie about sexual abuse. They may underplay the effects of the abuse or change the identity of the perpetrator in an attempt to protect the family, but they have not been found to lie about the occurrence of the abuse itself.

Generally speaking there are two main behavioural indicators of trauma following sexual abuse. Regression to an earlier developmental stage or loss of developmental tasks previously achieved and failure to learn or distortion of new developmental tasks.

Signs of Trauma Responses in Preschoolers (ages 2- 5)

- They may become anxious and clingy, not wanting to separate from their parents at day care or the baby-sitters house.
- They may seem to take a backward step in development, sucking their thumbs, wetting their beds, refusing to go to sleep, or waking at night when they passed those stages long ago.
- They may become aggressive in their play with other children, with their parents, or with their own toys.

- They may play the same game over and over, like piling blocks and knocking them down, dropping toys behind furniture and retrieving them, or crashing the same two cars over and over again.
- They may express 'magical' ideas about what happened to them which alters their behaviour. ("Bad things happen if I get too happy")
- Though they say they are having fun in an activity, they may look sullen, angry, and intense in a way that to an adult doesn't look like they are having fun.

Signs of Trauma Responses in School Age Children

- They may revert to developmentally earlier coping mechanisms, such as an ego-centred view (i.e. thinking that someone died because they had bad thoughts about the person).
- They may compensate for feeling helpless during the crisis of the abuse by blaming themselves for what happened. Thinking that they caused the event gives children a sense of power and control while helplessness painfully reminds them of being young and totally dependent.
- Their lack of control over the abuse may make them feel that their future is unsure, which can lead some children to act recklessly.
- They may experience a significant change in school performance. It's not uncommon for children to have great difficulty concentrating and performing in school following trauma. On the other hand, they may become intensely focused on schoolwork to the exclusion of other activities in an effort to cope.
- They may test rules about bedtime, homework, or chores. School age children believe in rules. When something bad happens even if they obeyed the rules they become oppositional and testy.
- They may have interruptions in their friendships.
- They may experience sleep disturbances, nightmares and difficulty in falling asleep.
- They may engage in reckless play. Where the preschool child will crash their truck a hundred times, the school age child might physically engage in dangerous games as a way of exhibiting a sense of control that was lost during the abuse.

Signs of Trauma Responses in Teenagers (13 -18)

- They often feel that no one can understand what they are going through and there is a marked shift in relationships with parents and peers.
- They may get involved in risky behaviours, such as experimenting with drugs, sexual activity, or school refusing as a way of handling anxiety and countering feelings of helplessness. They feel their future is limited and may believe they are damaged for good by the abuse so planning for the future is pointless.
- They develop a negative self image because they were not able to avoid or alter what happened to them.
- They are likely to engage in revenge fantasies against the person or people responsible for the abuse and then feel guilty about their vengeful feelings.
- They may experience a shift (either an intensification or withdrawal) in the normal developmental tasks of their age, such as dating, friendships, or sense of autonomy. They may isolate themselves, be depressed and at risk of suicide.

Effect of abuse and trauma among the victims

Can children recover from sexual abuse?

In an attempt to better understand the ill effects of child abuse, psychologists and other researchers have studied what factors may lessen the impact of the abuse. More research needs to be done, but, to date, factors that seem to affect the amount of harm done to the victim include the age of the child; the duration, frequency, and intrusiveness of the abuse; the degree of force used; and the relationship of the abuser to the child.

Children's interpretation of the abuse, whether or not they disclose the experience, and how quickly they report it also affects the short- and long-term consequences. Children who disclose the abuse soon after its occurrence may be less traumatized than those children who live with the secret for years.

Some researchers have begun to look at the question of whether someone can recover from sexual abuse, and, if so, what factors help in that recovery. Children and adults who were sexually abused as children have indicated that family support, extra-familial support, high self-esteem, and spirituality were helpful in their recovery from the abuse.

It is important for victims of abuse to relinquish any guilt they may feel about the abuse. Victims also report that attending workshops and conferences on child sexual abuse, reading about child sexual abuse, and undergoing psychotherapy have helped them feel better and return to a more normal life. Research has also shown that often the passage of time is a key element in recovery.

Counselling and other support services are also important for the caregivers of abused children. One of the strongest predictors of the child's recovery from the abuse experience is a high level of maternal and family functioning. (This, of course, assumes that the abuser was not a member of the immediate family or, if so, is not still living within the family.)

Effects of child abuse and neglect

All types of child abuse and neglect leave lasting scars. Some of these scars might be physical, but emotional scarring has long lasting effects throughout life, damaging a child's sense of self, ability to have healthy relationships, and ability to function at home, at work and at school. Some effects include:

- **Lack of trust and relationship difficulties.** If you can't trust your parents, who can you, trust? Abuse by a primary caregiver damages the most fundamental relationship as a child—that you will safely, reliably get your physical and emotional needs met by the person who is responsible for your care. Without this base, it is very difficult to learn to trust people or know who is trustworthy. This can lead to difficulty maintaining relationships due to fear of being controlled or abused. It can also lead to unhealthy relationships because the adult doesn't know what a good relationship is.
- **Core feelings of being “worthless” or “damaged.”** If you've been told over and over again as a child that you are stupid or no good, it is very difficult to overcome these core feelings. You may experience them as reality. Adults may not strive for more education, or settle for a job that may not pay enough, because they don't believe they can do it or are worth more. Sexual abuse survivors, with the stigma and shame surrounding the abuse, often especially struggle with a feeling of being damaged.

- **Trouble regulating emotions.** Abused children cannot express emotions safely. As a result, the emotions get stuffed down, coming out in unexpected ways. Adult survivors of child abuse can struggle with unexplained anxiety, depression, or anger. They may turn to alcohol or drugs to numb out the painful feelings.

Effects of Child Sexual Abuse

The effects of child sexual abuse vary from child to child with each child developing his/her own coping mechanism. The effects are dependent on a host of factors, the primary ones being age of the child, sex of the child, the relationship with the abusers, frequency of abuse and availability of support systems etc. But some of the more common effects of child sexual abuse recorded are:

- Distrust of others and themselves.
- Terror and anxiety
- Shame, guilt, and self-hatred
- Alienation from their bodies
- Isolation and withdrawal from people and activities
- Powerlessness, depression, and extreme passivity
- Anger
- Obsession with sex or complete aversion to it
- Questioning their sexuality and gender
- Drug and alcohol use, abuse and addiction
- Eating disorders
- Perfectionism and workaholicism
- Mental illness and suicide
- Sexual offending

Health and Behavioural Problems Resulting from Sexual Abuse

- Sexually abused children who do not disclose or who do and are not believed are at greater risk than the general population for psychological, emotional, social, and physical problems that last well into adulthood.
- Victims of child sexual abuse often report symptoms of Post Traumatic Stress Disorder. They suffer more sadness and more school problems than non-victims.
- Victims of child sexual abuse are more likely to experience major depressive disorder as adults.
- Young girls who are sexually abused are more likely to develop eating disorders as adolescents.

Drug and Alcohol Problems

- 70-80 per cent of sexual abuse survivors report excessive drug and alcohol use.
- Young girls who are sexually abused are 3 times more likely to develop psychiatric disorders or alcohol and drug abuse in adulthood than girls who are not sexually abused.
- Among male survivors, more than 70 per cent seek psychological treatment for issues such as substance abuse, suicidal thoughts and attempted suicide.

Teenage Pregnancy and Promiscuity

- Victims of child sexual abuse are more likely to be sexually promiscuous.
- Women who report childhood rape are 3 times more likely to become pregnant before age 18.
- An estimated 60 per cent of first pregnancies in teens are preceded by experiences of molestation, rape, or attempted rape. The average age of their offenders is 27 years.
- More than 75 per cent of teenage prostitutes have been sexually abused.

Crime

- Adolescents who suffer violent abuse are more likely to commit felony assault, domestic violence, or property offenses as adults.
- Nearly 50 per cent of women in prison state they were abused as children.
- Over 75 per cent of serial rapists report they were sexually abused as youngsters.

The Effects of Child Sexual Abuse are Severe and Far Reaching

Child sexual abuse contributes to health disparities. People who have experienced sexual abuse as children are at higher risk for numerous adverse health conditions. The impact of sexual abuse may not become evident for some individuals until later in adulthood.

- Mental health conditions such as depression, anxiety, post-traumatic stress disorder (PTSD), insomnia, and lack of trust in others are reported more often by people who have experienced child sexual abuse.
- Physical health conditions such as HIV or other STDs, unintended pregnancy, alcohol or other drug abuse, hypertension, and obesity are all reported with greater frequency among people who have experienced child sexual abuse.
- Many survivors of sexual abuse overcome adverse health conditions, and can prove especially resilient when provided with therapy and other supports that empower them to take control over their lives and relationships.

Some More Specific Behaviours of Children Following Sexual Assault

Wetting/soiling

Many young children lose bladder/bowel control following sexual assault. It can be frustrating for parents and cause extra work. It can be humiliating and embarrassing for children. It is easy for adults and children to focus on the consequences of wetting and soiling e.g. changing sheets/clothes, washing, rather than the reasons why it happens.

All children bed wet from time to time when they are sick, stressed or anxious. Children who have been sexually assaulted will often bed wet every night and sometimes more than once a night. Bedwetting can be linked to feelings and may be a result of nightmares. Extreme fear can cause loss of bladder control and may serve the purpose of waking a child from a terrifying dream.

Bedwetting can also result from feelings of helplessness when children feel a loss of ownership and power over their body when it has been used by someone more powerful than they are. Bedwetting can be a reflection of children regressing in many ways, following sexual assault, when they lose a number of skills they previously had. Children may regress to a younger state to try and get their needs met. Bedwetting and soiling may also occur because a child separates from their genital/urinary/anal areas. They may lose the ability to respond to their body cues and therefore become less able to regulate their toilet habits. Sometimes children may be scared to

actually go to the toilet. They may have experienced sexual assault in a bathroom or their fears may focus on the toilet itself.

Nightmares

All children have bad dreams from time to time but children who have experienced sexual assault often have nightmares every night sometimes more than once. They may have recurring dreams which are all the more frightening because they know what is coming. Nightmares can make children terrified of the dark and bed time leading to difficult behaviours. Their dreams are likely to reflect their fears and their sense of lack of control. Looking at the content of their dreams can help them to talk about what has happened.

Persistent Pains

Lots of children develop aches and pains that have no physical cause. These will often have a connection to an aspect of the assault. Sometimes if a child has experienced physical pain during the assaults their body can retain the memory of this pain, for example, one child who had been tied up continued to have tingling in his hands; another child had severe stomach pains after vaginal penetration. Another boy had blinding headaches because he felt he could not get the offender out of his head. Children may also think that something is broken inside of them. Repeated pain can also be a way for children to gain the extra love and attention they need at the time. Sometimes emotions manifest themselves physically for children because they do not have the ability to put it in to words.

Clingyness

A clingy child can test the patience of a saint! This behaviour which is so common after sexual assault is a communication of a real need to be reassured of being lovable and of being secure. Children are attempting to rebuild a sense of safety and trust through their relationships with close adults. They are trying to restore a sense of good touch by demanding affection and cuddles. In essence, they are trying to heal their wounds. Constant physical and verbal demands can be difficult for parents but can be modified by identifying what the child needs and putting limits on when and how they are met. Clinginess can also reflect fears which can be reduced by talking about them.

Aggression

Aggression in children after sexual assault tends to be related to fear and anger. It can be a direct communication that states "I am never going to be hurt again". Anger is a healthy response and a necessary part of the recovery process from any trauma. It needs to be expressed in a safe and constructive way with firm limits against hurting yourself or others. To do this, anger needs to be acknowledged and recognised by the child and the adult. A child needs opportunities to discharge their anger. If this, for whatever reason, does not happen then anger is likely to come out through aggression. This causes the child more problems as their aggression prevents other people seeing or understanding the child's needs.

Aggression also stems from fear and a need to protect themselves from further hurt. This can be evident in boys who may believe they were weak because they did not fight off the offender. Sometimes they can make themselves feel more powerful by hurting other children or animals. Being aggressive can also cause a child to punish themselves and confirm their low self esteem because they have no friends and are always in trouble.

Sexualised Behaviour

When children are sexually assaulted their sense of what is right and wrong becomes distorted. What they had previously learnt about bodies and sexual activity becomes invalid. If a child was shown how to light a fire, for example, it is likely that the child will attempt to repeat what they saw. If children have learnt that they get attention by being sexual with one person they may well repeat the behaviour with another person. If children have experienced sexual feelings, which are common in children who have been sexually assaulted, they are likely to try and recreate those reactions. They may begin to sexually act out with other children to try and make sense of what has happened to them. Their curiosity about sexual matters may have been activated years before they develop the intellectual ability to understand. Children may want to sexually act out on other children to make them feel less vulnerable in the same way they may be aggressive. The trouble they may get into as a result of this behaviour then confirms their view of themselves as dirty and bad.

Sexual acting out by children needs to be distinct from what is natural curiosity. Sexual acting out usually involves a difference in power between the children and may involve coercion/force or blackmail and a repetition of an adult sexual activity.

Normal sexual activity between children is about exploration not gratification (Martinson 1991 in Hunter 1996). Up to the age of 5, children are interested in touching their private parts and looking and touching the private parts of others if they have the opportunity. From 6 to 10 children have learnt that sexual activity should be hidden and will masturbate secretly. They may create situations with their peers that involve looking and possibly touching. (Attempted or actual penetration and activities using force are not normal). They are likely to be curious about adult bodies. Early adolescents will masturbate and begin to develop relationships that involve a range of touching.

Sexual acting out in children who have been assaulted will involve either the child repeating what has been done to them on other children or getting other children to do to them what the offender did. It can also involve children approaching adults in a sexual way. It does not mean that the child automatically becomes an offender but it is an indication that professional help is needed.

Triggers & Recovery

Everyone who has suffered a trauma will react when they are reminded of it. The things that remind us can be called 'triggers' and they cause similar feelings to those experienced during the trauma. Very often these 'triggers' are not known to the adult because they relate to an aspect of the assault the parent may not know about. Some examples include the smell of beer or smoke; the smell of engine oil for a girl assaulted by a mechanic; the feel of a beard; the colour of a car; someone resembling the offender; a song or a game. Some are obvious, others are not. Often children can be triggered by unrelated things going wrong because that triggers their feelings of helplessness.

When children are triggered then their behaviour tends to reflect the fact that they are experiencing similar feelings to the ones they felt during the assaults. Parents should be encouraged to discuss with the child what sort of things trigger them, so they are all aware of situations when it may occur.

The behaviours that children exhibit after sexual assault do tend to pass in time as children regain a sense of safety and self control. When the feelings that drive the behaviour are explored, they become less powerful and the behaviour becomes more manageable.

Establishing a link between the feeling and the behaviour is important as it gives you an understanding of what is happening.

Children can and do recover from sexual assault. The long term effects of sexual assault are often caused by secrecy, fear and denial of feelings. The more open and honest you can be about what happened the easier it is for children to be the same and the quicker the recovery.

Indicators and Effects

Sexual abuse is more likely to be identified through behavioral indicators, rather than by physical indicators.

Physical Indicators

- Difficulty in walking or sitting
- Anxiety related illnesses, such as anorexia or bulimia
- Discomfort in urinating or defecating
- Recurrent urinary infections
- Evidence of physical trauma, to the oral, genital or anal areas, manifested as bleeding, discharge, soreness and/or itching
- Bruising and other injury to breasts, buttocks and thighs and other parts of the body
- Sexually transmitted disease in a child of any age
- Unwanted pregnancy

Behavioural Indicators

Behavioural indicators in and of themselves do not constitute abuse. Together with other indicators they may warrant a referral. Some behavioural indicators are:

- Learning problems, inexplicable fall in academic grades, poor memory and concentration
- Reluctance to participate in physical or recreational activities
- Regression to younger behaviour, such as thumb-sucking, acting like a baby, bedwetting and/or speech difficulties
- Tendency to cling or need constant reassurance
- Sudden accumulation of money or gifts
- Complaining of headaches, stomach pains or nausea without a physiological basis
- Fatigue and sleeping difficulties
- Poor self-care/personal hygiene
- Depression
- Social withdrawal (such as poor or deteriorating relationships with adults and peers)
- Developing fears, phobias and anxieties (A fear of a specific place related to abuse, a particular adult, refusing to change into sports/swimming clothes)
- Wearing of provocative clothing, or layers of clothes to hide injuries and/or to appear unattractive
- Sexual knowledge, behavior, or use of language not appropriate to age level
- Sexual inference in children's recreational activities such as drawing, playing, singing etc.
- Sexually abusive behavior towards other children, particularly younger or more vulnerable than themselves
- Age inappropriate sexual behavior

- Child running away from home/school
- Self-injurious behavior, like alcohol or drug abuse, body-mutilation, getting in trouble with law, suicide attempts

Interventions required for bringing the victims back to normal life

What Can You Do?

Support child abuse victims. Children need to know that they can speak openly to a trusted adult and that they will be believed. Children who are victims of sexual abuse should always be reassured that they are not responsible for what has happened to them. You can offer encouragement to victims by way of supporting organizations that help victims of incest or by simply reassuring victims of sexual abuse that they should not feel shame or guilt. It is important to understand that troubled families can be helped and that everyone can play a part in the process.

If you suspect sexual abuse and believe that a child is in imminent danger, as one of the options, you may seek the services of the professionals who work with children. Under the Act, the citizens are required to report reasonable suspicion of abuse or neglect. Furthermore, citizens who suspect abuse or neglect are required to report it to the police. "Reasonable suspicion" based on objective evidence, which could be firsthand observation or statements made by a parent or child, is all that is needed to report. Remember that you may be the only person in a position to help a child who is being sexually abused.

Preventing Child Sexual Abuse

An atmosphere of trust, confidentiality, and openness to discussing sexual issues all contribute to prevention of child sexual abuse. These social determinants also contribute to the healing and resilience of people who have experienced sexual abuse.

- School-based prevention programs that teach avoidance skills to youth show evidence that youth empowerment and safety can be increased, and also help reduce stigma and self-blame for sexually abused youth.
- Training of medical providers, school staff, clergy, child protection caseworkers, forensic interviewers, and law enforcement officials can increase the willingness of youth to disclose child sexual abuse as well as the willingness of adults to report suspected abuse.
- Training parents to refute common myths around "stranger danger" can help to increase their awareness of far more common (and preventable) sexual abuse risk factors in the household.
- Training parents to teach proper names for genitals and other reproductive organs to their youngest children can help to increase youths' empowerment to resist sexual abuse or disclose it to trusted adults. It can also reduce shame, stigma, and self-blame for youth who have experienced child sexual abuse.
- Evidence is lacking that laws and policies prevent child sexual abuse when they focus on monitoring and restricting known perpetrators. There is stronger evidence that sexual abuse is prevented — rather than simply avenged; through laws, policies, and fully-funded programs that focus on early identification of people at risk for committing child sexual abuse. Effective strategies help those at-risk of committing sexual abuse by confronting attitudes and behaviours that contribute to exploitation of children. Effective strategies also hold open the possibility for offenders — especially juvenile offenders whose recidivism rates are low — to re-integrate into society and establish productive and trusting relationships with family and community members.

Technical Session IV: Salient Features of Protection of Children from Sexual Offences (POCSO) Act and Rules, 2012

Learning Objectives:

- To enhance the knowledge of the participants about salient features of POCSO Act, 2012
- To enable participants to understand the different types of sexual offences and appropriate punishments for the same

Methodology: Presentation, lecture and discussion

Material Required:

Projector, computer, soft copy/hard copy of the concerned presentation, flip chart and marker.

Duration: 2 hours 15 minutes

Instructions:

- Evaluate the pre training assessment questionnaire which was given to the participants on the day 1 to know the knowledge of the participants on POCSO Act.
- Also ask the participants to share what they know on the provisions and components of the Act.
- Quickly write the responses of the participants on flip chart/white board.
- Taking relevant information given by the participants, use power point presentation to explain additional contents and to lead the discussion.
- Emphasize issues of the state which the participants represent (use media report as referral point).
- Quickly analyze the responses and presentation with discussion
- Keep track of time and wind up the session.

Tips for the Facilitators/Resource Persons:

- This session is meant to make the participants understand the provisions, procedures and punishments given in POCSO Act/Rules.
- As this is theoretical session try to seek as much participation as possible
- Link the participants view points with the available literature
- Read/Review the slides carefully before conducting the session.
- Have updated data and knowledge on the topic.
- Keep track of the time as it is an extensive session with limited time.

Reference Material for Technical Session IV

CONTENTS

Provisions and Components of POCSO Act/Rules

Procedure for:

- ✓ **reporting of cases**
- ✓ **recording of statement of child**
- ✓ **medical examination, etc**

Provisions and Components of POCSO Act/Rules

The Protection of Children from Sexual Offences (POCSO) Act 2012 is applicable to the whole of India. The POCSO Act, 2012 defines a child as any person below the age of 18 years and provides protection to all children under the age of 18 years from sexual abuse. It also intends to protect the child through all stages of judicial process and gives paramount importance to the principle of "best interest of the child".

Penetrative and aggravated penetrative sexual assault, sexual and aggravated sexual assault, sexual harassment, and using a child for pornographic purposes are the five offences against children that are covered by this Act. This Act envisages punishing even abetment or an attempt to commit the offences defined in the Act. It recognizes that the intent to commit an offence, even when unsuccessful needs to be penalized. The punishment for the attempt to commit is up to half the punishment prescribed for the commission of the offence.

This Act suggests that 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 i.e. media personnel, staff of hotel/ lodges, hospitals, clubs, studios, or photographic facilities. Failure to report attracts punishment with imprisonment of up to six months or fine or both. It is now mandatory for police to register an FIR in all cases of child abuse. A child's statement can be recorded even at the child's residence or a place of his choice and should be preferably done by a female police officer not below the rank of sub-inspector.

As per this Act, the child's medical examination can be conducted even prior to registration of an FIR. This discretion is left up to the Investigation Officer (IO). The IO has to get the child medically examined in a government hospital or local hospital within 24 hours of receiving information about the offence. This is done with the consent of the child or parent or a competent person whom the child trusts and in presence of such a person.

Child Welfare Committees (CWC) play a vital role under the POCSO Act. The cases registered under this act need to be reported to the CWC within 24 hours of receiving the complaint. The CWC should take into account the opinion of the child to decide on the case within three days and conclude whether the child should remain in an institution or be with the family. The CWC should nominate with the consent of the child/ parent / guardian / other person whom the child trusts, a support person to assist the child during the investigation and trial of the case.

The State Commissions for Protection of Child Rights (SCPCRs) have been entrusted with the responsibility of monitoring the implementation of the provisions of the POCSO Act, 2012, to conduct inquiries and to report the activities undertaken under the POCSO Act, 2012, in their Annual Reports. These Commissions also have the authority to call for a report on any specific case of child sexual abuse falling within the jurisdiction of a CWC in their State. The Commissions may also recommend interim relief, or make recommendations to the state government to effectively redress the matter.

The rules laid down in this Act define the criteria for awarding the compensations by the Special Courts that include the following:

- type of abuse, gravity of the offence and the severity of the mental or physical harm or injury suffered by the child;
- the expenditure incurred or likely to be incurred on his medical treatment for physical and/or mental health;

- loss of educational opportunity as a consequence of the offence, including absence from school due to mental trauma, body injury, medical treatment, investigation and trial of the offence, or any other reason;
- loss of employment as a result of the offence, including absence from place of employment due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;
- the relationship of the child to the offender, if any;
- whether the abuse was a single isolated incidence or whether the abuse took place over a period of time;
- whether the child became pregnant as a result of the offence;
- whether the child contracted a sexually transmitted disease (STD) as a result of the offence;
- whether the child contracted human immunodeficiency virus (HIV) as a result of the offence;
- any disability suffered by the child as a result of the offence;
- financial condition of the child against whom the offence has been committed so as to determine his need for rehabilitation;
- any other factor that the Special Court may consider to be relevant.

Some of the child-friendly procedures which are envisaged under the POCSO Act are as follows:-

- Child to be interrogated once only and in a child-friendly environment.
- At night no child is to be detained in the police station.
- The statement of the child be recorded as spoken by the child.
- Frequent breaks for the child during trial.
- Child not to be called repeatedly to testify.

For offences under this Act the burden of proof is on the accused, keeping in view the vulnerability and innocence of children. To prevent misuse of the law, punishment has been provided for false complaints or false information with malicious intent.

The media has been barred from disclosing the identity of the child without the permission of the special court. The punishment for breaching this provision by media may be from six months to one year.

For speedy trial, the evidence of the child is to be recorded within a period of 30 days. Also, the Special Court is to complete the trial within one year.

The Act casts duty on state to spread awareness among general public, about the provisions of this Act through media, i.e., television, radio and print at regular intervals.

Procedure for reporting of cases, recording of statement of child, medical examination, etc

Procedures under POCSO Act

The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) prescribes five sexual offences against children - penetrative sexual assault, aggravated penetrative sexual assault, sexual assault, aggravated sexual assault, sexual harassment, and using a child for pornographic purposes. Abetment of or an attempt to commit these offences is also punishable under the Act. These offences are gender neutral vis-à-vis the perpetrator as well as the victim. The Act requires the State Governments to designate the Sessions Court in each district as a Special Court to try offences under the Act. If, however, a Children's Court under the Commissions for Protection of Child Rights Act, 2005 or Special Court for a similar purpose has been notified in a district, then that court will try offences under this Act.

The process laid down under the Act and POCSO Rules, 2012 for recording of complaints and trial of sexual offences against children is explained below:

Reporting of Cases

Who can report?

Any person (including the child) who has an apprehension that an offence under the POCSO Act is likely to be committed or has knowledge that an offence has been committed has a mandatory obligation to report the matter. An express obligation has also been vested upon media personnel, staffs of hotels, lodges, hospitals, clubs, studios, or photographic facilities, to report a case if they come across materials or objects that are sexually exploitative of children. Failure to report is punishable with imprisonment of up to six months or fine or both. This penalty is, however, not applicable to a child.

Whom should the case be reported to?

A case must be reported to the Special Juvenile Police Unit (SJPU) or the local police. The police or the SJPU must then record the report in writing, ascribe an entry number, read the report over to the informant for verification, and enter it in a book. A FIR must be registered and its copy must be handed to the informant free of charge.

Language of the report

If a case is reported by a child, it must be recorded verbatim and in simple language so that the child understands what is being recorded. If it is being recorded in a language that the child does not understand, a qualified translator or interpreter must be provided to the child.

Recording of Statement of Child

A. Recording of Statement of Child by the Police

Where the child's statement must be recorded?

A child's statement must be recorded at his or her residence or a place where he or she usually resides or at a place of his or her choice. Under no circumstances can a child be detained in the police station in the night. The police officer must also try and ensure that the statement is recorded by audio-visual means. (or atleast by audio means).

By whom should the statement be recorded?

As far as practicable, the statement must be recorded by a woman police officer not below the rank of a Sub-inspector. She should not be in uniform when the statement is recorded. The assistance of a qualified translator or interpreter can be taken while recording the statement. The statement must be recorded in the presence of parents or any other person in whom the child trusts or has confidence.

What steps must the police take to protect the child?

While examining the child, the police officer investigating the case must ensure that the child does not come in contact with the accused at any point. The identity of the child must also be protected from the media unless the Special Court, in the interest of the child, directs otherwise.

What measures must be taken to record the statement of a child with disabilities?

The police officer must seek the assistance of a qualified special educator or a person familiar with the manner of communication of the child or an expert in that field, while recording the statement of a child with mental or physical disability.

B. Recording of Statement of Child by the Magistrate

How must the statement be recorded?

A Magistrate recording the statement of a child under Section 164 of the Code of Criminal Procedure (Cr. PC) must record it verbatim (in the exact language spoken by the child). The statement must be recorded in the presence of parents or any other person in whom the child trusts or has confidence. The assistance of a qualified translator or interpreter can be taken while recording the statement. The Magistrate must also try and ensure that the statement is recorded by audio-visual (or audio) means. The Magistrate must also provide the child and his or her parents or representative, a copy of the police report in the matter.

What measures must be taken to record the statement of a child with disabilities?

The Magistrate must seek the assistance of a qualified special educator or a person familiar with the manner of communication of the child or an expert in that field, while recording the statement of a child with mental or physical disability.

Medical Examination of the Child

Take the child victim for medical examination immediately

A medical examination of a child can be conducted even before a FIR is filed or a complaint is registered. It must be conducted by a registered medical practitioner in a government hospital or a hospital run by a local authority within 24 hours from the time of receiving information about the commission of offence. If such practitioner is not available, the examination can be conducted by any other registered medical practitioner with the consent of the child or a person competent to give consent on his or her behalf. If the victim is a girl child, the examination must be conducted by a woman doctor. The medical examination must be conducted in the presence of the parent or any other person in whom the child reposes trust or confidence. If a parent or such other person cannot be present, for any reason, the medical examination must be conducted in the presence of a woman nominated by the head of the medical institution.

"Forensic Medical Care for Victim of Sexual Assault – DHR Guidelines", brought out by the Department of Health Research (DHR), Family Welfare, Government of India in 2013 has suggested several guidelines aiming at forensic medical care for survivors of sexual assault. The guidelines suggest the following:

- Whenever cases of sexual assault comes on her own to the hospital or are brought by the police, it shall be registered as MLC (Medical Legal Care).
- The information obtained for medical examination is confidential and therefore, every effort must be made to protect the privacy and safety of the patient.
- The victim must be given appropriate treatment and counselling as per the need. Victim must not be refused treatment and/or examination for want of police papers.
- Exposure to sexual violence is associated with a range of health consequences for the victim. Comprehensive care must address the following issues: physical injuries; pregnancy; STIs, HIV and hepatitis B; counseling and social support, follow-up consultations and appropriate referral.
- The examination should be conducted in private but the patient should be allowed to choose to have a support person (e.g. family member or counselor) to be present. If the patient does not request the presence of a support person, the patient should be informed that she may have a female nurse or other suitable chairperson present during the examination.
- Each hospital can use already printed version of the Forensic Medical Form or can generate the same form through software. The form may include information such as name of the Department/Hospital/Unit including place where the examination was conducted; general information and consent; history/details of alleged sexual assault; medical, obstetrical and surgical history; general physical examination; injury examination: injuries on body (if any); local examination of genitals, anus and oral cavity; specific examinations (these examinations shall only be done whenever facilities exist and if indicated); sample collection for hospital/clinical laboratory; collection of forensic evidence/material/samples; and provisional opinion.
- In the past, survivor examination was only done after receiving police requisition. Now, the police requisition is not mandatory for a rape survivor to seek medical examination and care. The doctor should examine such cases if the survivor reports to the hospital first without FIR. He should then inform the police accordingly.

As per the document "Guidelines & Protocol, Medical-legal Care for Survivors/Victims of Sexual Violence", Ministry of Health & Family Welfare, Government of India, 2014, the

following guidelines have been suggested in order to forge an interface of health system with police:

- A standard operating procedure outlining the interface between the police and health systems is critical. Whenever a survivor reports to the police, the police must take her/ him to the nearest health facility for medical examination, treatment and care. Delays related to the medical examination and treatment can jeopardize the health of the survivor.
- Health professionals should also ask survivors whether they were examined elsewhere before reaching the current health set up and if survivors are carrying documentation of the same. If this is the case, health professionals must refrain from carrying out an examination just because the police have brought a requisition and also explain the same to them.
- The health sector has a therapeutic role and confidentiality of information and privacy in the entire course of examination and treatment must be ensured. The police should not be present while details of the incident of sexual violence, examination, evidence collection and treatment are being sought from the survivor.
- The police cannot interface with the duties of a health professional. They cannot take away the survivor immediately after evidence collection but must wait until treatment and care is provided.
- In the case of unaccompanied survivors brought by the police for sexual violence examination, police should not be asked to sign as witness in the medico legal form. In such situations, a senior medical officer or any health professional should sign as witness in the best interest of the survivor.
- Health professionals must not entertain questions from the police such as "whether rape occurred", "whether survivor is capable of sexual intercourse", "whether the person is capable of having sexual intercourse". They should explain the nature of medico legal evidence, its limitations as well as the role of examining doctors as expert witnesses.

Types of sexual offences covered under the Act and punishments thereof

List of sexual offences under the Act and the punishment for the offences:

| S. No | Offence and Description | Punishment |
|-------|---|---|
| 1 | Section 3 Penetrative Sexual Assault Inserting body part or object in a child, or making a child does this with another. | Section 4 Not less than seven years of imprisonment which may extend to imprisonment for life, and fine |
| 2 | Section 5 Aggravated Penetrative Sexual Assault Penetrative sexual assault by a police officer, member of armed forces, public servant, staff of remand home, jail, hospital or school. It includes penetrative sexual assault committed by any other person through gang penetrative assault, penetrative sexual assault using | Section 6 Not less than ten years of imprisonment which may extend to imprisonment for life, and fine |

| | | |
|---|--|---|
| | <p>deadly weapons, fire, heated substance or corrosive substance, penetrative sexual assault which physically incapacitates the child or causes child to become mentally ill, causing grievous hurt or bodily harm and injury to the sexual organs of the child, making girl child pregnant, inflicting child with HIV or any other life threatening disease, penetrative sexual assault more than once, penetrative sexual assault on a child younger than 12 years, by a relative, owner / manager or staff of any institution providing services to the child, by a person in a position of trust or authority over the child, committing penetrative sexual assault knowing the child is pregnant, attempts to murder the child, by a person previously convicted for a sexual offence, penetrative sexual assault in the course of communal or sectarian violence, penetrative sexual assault and making the child strip or parade naked in public.</p> | |
| 3 | <p>Section 7 Sexual Assault With sexual intent touching the private parts of a child</p> | <p>Section 8 Not less than three years of imprisonment which may extend to five years, and fine</p> |
| 4 | <p>Section 9 Aggravated Sexual Assault Sexual assault by a police officer, member of armed forces, public servant, staff of remand home/jail/hospital/school, etc, and other acts of sexual assault by any person as mentioned in the second part of section 5, except making a girl child pregnant.</p> | <p>Section 10 Not less than five years of imprisonment which may extend to seven years, and fine (Section 10)</p> |
| 5 | <p>Section 11 Sexual Harassment of the Child With sexual intent:</p> <ul style="list-style-type: none"> • showing any object/body part, or • making any gesture aimed at a child • making a child exhibit her body • enticing or threatening to use a child for pornography | <p>Section 12 Up to three years of imprisonment and fine</p> |
| 6 | <p>Section 13 Use of Child for Pornographic Purposes</p> | <p>Section 14 (1) Imprisonment up to five years and fine and in the event of subsequent conviction, up to seven years and fine</p> |
| 7 | <p>Section 14 (2) Penetrative sexual assault by directly participating in pornographic acts</p> | <p>Section 14 (2) Not less than ten years of imprisonment, which may extend to imprisonment for life, and fine</p> |

| | | |
|----|--|--|
| 8 | Section 14 (3) Aggravated penetrative sexual assault by directly participating in pornographic acts | Section 14 (3) Rigorous imprisonment for life and fine |
| 9 | Section 14 (4) Sexual assault by directly participating in pornographic acts | Section 14 (4) Not less than six years of imprisonment which may extend to eight years, and fine |
| 10 | Section 14 (5) Aggravated sexual assault by directly participating in pornographic acts | Section 14 (5) Not less than eight years of imprisonment which may extend to ten years, and fine |
| 11 | Section 15 Storage of pornographic material involving a child for commercial purposes | Section 15 Three years of imprisonment and / or fine |
| 12 | Section 21 Punishment for failure to report or record a case by (i) Any person; (ii) Any person, being in charge of any company or an institution. (This offence does not apply to a child) | Section 21 (i) Imprisonment of either description which may extend to six months or with fine or with both (ii) Any person, being in charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub section (1) of section 19 in respect of a subordinate under his control shall be punished with imprisonment for a term which may extend to one year and with fine. |
| 13 | Section 22 (1) Punishment for false complaint or false information in respect of an offence committed under sections 3, 5, 7 and section 9 solely with the intention to humiliate, extort or threaten or defame him. (2) False complaint or providing false information against a child knowing it to be false, thereby victimising such child in any of the offences under this Act. (This offence does not apply to a child) | Section 22 (1) Imprisonment for a term which may extend to six months or with fine or with both. (3) Imprisonment which may extend to one year or with fine or with both. |

Note: POCSO Act and Rules, 2012 are enclosed as annexure at the end of this manual.

Technical Session V: Role of CWCs in Implementation of POCSO Act and Rules, 2012

Learning Objectives:

- To develop an understanding of role of CWCs in implementation of POCSO Act and Rules, 2012
- To sensitize the participants on the procedures laid down in the Act

Methodology: Presentation, lecture and discussion

Material Required:

Projector, computer, slides on 'Roles and responsibilities of members of, flip chart, marker

Duration: 2 hour 30 minutes

Instructions:

- Ask the participants about their roles as chairpersons or members of CWCs
- Quickly write their responses on the flip chart
- Ask them to prioritize their responses
- Clarify the responses with the help of power point presentation referring the POCSO Act and Rules
- Ask the participants what mechanism they follow to review the cases.
- Appreciate their responses and clarify with presentation.
- Wind up the session by answering the relevant queries.

Tips for the Resource Persons:

- This session is important to make the participants clarify their roles as chairpersons or members of CWCs as per the POCSO Act 2012.
- Encourage the participants to share their experiences while dealing with cases
- As this session would be relying heavily on the knowledge of facilitation and legal aid services, the resource person must be well -versed with all these issues specified in the Act.
- Read the slides carefully before conducting the session
- Keep a track of the time as it is a extensive session

Reference Material for Technical Session V

CONTENTS

Discussing role of CWCs given in the Act

- facilitating arrangements for the safety and security of the child once the matter of child sexual abuse is brought to the notice of CWCs by the police within 24 hours
- assisting the child in facing pre-trial and trial situations
- ensuring care, protection, treatment, development and rehabilitation of the child in accordance with the powers under sub-section (1) of section 31 of JJ Act,2000
- dispose of the cases within a given period of time
- serve the best interest of the child by questioning and interviewing the child to take into account any preference or opinion expressed by the child on the issue of whether the child needs to be taken out of the custody of his/her family/shared household and placed in children's home/shelter home
- providing/terminating a support person to render assistance to the child through the process of investigation and trial
- maintaining list of persons/NGOs who may be appointed as support person to assist the child
- invariably ensuring that the support person submit Child Protection Plan

Discussing role of CWCs given in the Act

(A) When information is received by a CWC from any source including the media regarding sexual abuse of a child under its jurisdiction the committee should take the following steps:

1. Acknowledge receiving the information on record, take suo-motu cognizance of cases brought to notice and seek a report from local police within shortest possible time.
2. A copy of such order should be mailed / faxed or sent by hand to the Police Station and to the State/District Child Protection Unit seeking necessary support in dealing with the cases.
3. In case of no response from Police, there must be a follow-up in a time bound manner. Matter must be brought to the knowledge of the senior police officers for necessary action. The State / District-CPU should also be kept informed about action taken.
4. Make efforts to locate the whereabouts of the victim and provide assistance by way of counselling, medical etc.

(B) When a child victim of sexual abuse is produced before the Committee by any person, the Committee is required to do the following:

1. If the child is in an institutional care (recognized or unrecognized) action as contained in, Rule 60 (2) of the Delhi JJ Rules, 2009 should be strictly followed by all concerned and CWC should ensure compliance. The Committee should seek a detailed report from the Head of the Institution within two days of having received such information regarding abuse of child in writing from any person or verbally from the child at the time of production or inspection of the institution.
2. Child should be interviewed by a female member (s) separately. In case female member is not available only then the female Welfare Officer / Counsellor should interview the child in the presence of a CWC Member.
3. Opinion of the family members and / or relatives should be sought before taking any decision about the child's care, protection and rehabilitation. The opinion sought should be mentioned in the order.
4. The version of the child must be taken on record, identifying the abuser clearly, nature of abuse and need of the child for medical, psychological and psychiatric treatment. The name of the CWC member and / or Welfare Officer / Counselor who interviewed the child should be placed on record.
5. In case, the child is not in a position to speak due to age , mental and physical condition, committee should make such observation referring to the medical examination report.
6. In case committee finds any discrepancy in the statement of the child and the version recorded in the FIR and / or medical examination report, the same must be indicated in the observation of the CWC in writing.
7. In accordance with Rule 27 (9), the Committee shall facilitate filing of police complaint and F.I.R. in all cases of sexual violence, exploitation and abuse of child.
8. The Committee should also arrange for required legal aid through the legal aid counsel deputed by Delhi Legal Services Authority (DLSA) with the Committee and a copy of CWC order should be given to the concerned person.

(C) Directions/Guidelines issued by Hon'ble High Court of Delhi in the matter W.P. (Crl.) No. 696/2008 (Delhi Commission for Women vs Delhi Police) should be strictly followed as and where applicable in pursuance to the High Court's Order. The CWC is required to do the following :

1. In cases of incest and children in need of care and protection, the Child Welfare Committee shall examine the victim to ascertain the nature of support she is getting from her family and initiate steps for ensuring best interest of the child. In such cases the Child Welfare Committee shall conduct a home study to assess and ensure the safety of the victim.
2. In cases where the child is placed in an institution the Committee shall monitor the condition of the victim closely
3. In cases of incest, while the victim stays in the children home the family members should be allowed to meet the victim only in the presence of the support persona and care be taken by the staff of the home that the meeting is not used to pressure\w / influence the victim to chance her statement.
4. Child Welfare Committee shall ensure that rehabilitation facilities are provided to the victim in appropriate cases. In cases of prolonged stay, the victim should be given educational and vocational training in order to enable the victim to support herself after she leaves the children home.
5. Before passing any order of restoration of custody of child to the family, the Child Welfare Committee shall conduct an inquiry to assess the suitability of the victim being restored to the family. The Custody of the child will be altered by the Child Welfare Committee only after consultation with the stake holders.
6. Child Welfare Committee shall ensure that the victim is provided with necessary medical and psychological aid during her stay in Children Home for the purpose of her rehabilitation.
7. Child Welfare Committee shall maintain a list of all registered Child Care Homes providing residential support, special Services and rehabilitation facilities to the victim.

(D) The role of CWC in handling cases of Sexual abuse is well defined and prescribed under the provision of the JJ Act, Delhi JJ Rules 2009 and POCSO Act and Rules 2012. The same must be complied with in letter and spirit of the Act and Rules. The provisions under the POCSO Rules are as under:

1. Take cognizance of the children produced by Police/SJPU, NGOs Child Lane or by any person including child himself/herself under the provisions of JJ Act and the POCSO Act.
2. To provide a detailed assessment of the child produced by Police / SJPU under Rule 4 (3) of the POCSO Rules, 2012 to the State Commission.
3. In case child is a victim of abuse within a family or shared household, the CWC should decide within three days whether he/she needs to be taken out of the family/shared household and placed in a children home/shelter home.
4. CWC must take into account consent of the child and considerations listed I to VII under Rule 4 (5) of the POCSO Rules 2012.
5. CWC shall inform the parent/guardian / support person about the decision taken regarding the custody and also explain the reasons.
6. As per rule 4 (7) of the POCSO Rules 2012, the CWC has to provide a support person to each child to render assistance through the process of investigation and trial. The CWC may designate W.O of CWC/CIC counselor/W.O SJPU/W.O. DCPU/Social Worker of NGO as support person. The CWC must explain to the support person his/her role and responsibilities. In case of a non Govt. person, CWC must ensure willingness and competence of the person before designating him/her a support person.
7. While deciding about the support person CWC must take into account the opinion of the child/parent/guardian and ensure that he/she enjoys the trust and confidence of the child/parent/guardian.

8. Compensation – CWC should facilitate the child's parent/guardians in seeking the compensation under victim compensation fund through DLSA as provided under section 33 of the POCSO Act 2012. The W.O posted in CWC should provide all required support to the persons applying the compensation.

(E) Crisis Intervention Centre – CWC should coordinate with the crisis intervention centre programme of the Delhi Commission for Women and Delhi Police and refer all cases of Child Sexual abuse for their intervention in writing and seek progress report periodically.

Guidelines for the Child Welfare Committees

According to section 29 (5) of The Juvenile Justice (Care and Protection of Children) Act 2000, The Child Welfare Committee “shall function as a Bench of Magistrates and shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class.” **The CWC performs judicial functions**, and there is an obligation under POCSO to produce a child in need of care and protection before the CWC. Since the functions of the CWC are quasi judicial in nature, they are being dealt with in the “Guidelines for the Judiciary”.

(1) Judicial functions of Child Welfare Committee (CWC): Section 19 (6) of the Act and rule 4 (3) of the Protection of Children from Sexual Offences Rules, 2012, provide for production of a child by the police before the Child Welfare Committee within 24 hours of recording information under section 19.

- The role of the police under rule 4 (3) in producing a child before the CWC is to allow a detailed assessment to be made of its requirements for care and protection and follow-up directions. The responsibility of the police to produce a child under section 19 (6) of the Act before the CWC as soon as possible is to enable the CWC to determine within 3 days, as provided in rule 4 (4) of the Rules of 2012, whether the child needs institutionalized care and protection;
- The police or the special juvenile police unit is entrusted with the responsibility of producing the child within 24 hours before the Child Welfare Committee for a **detailed assessment** of its requirements of care and protection;
- Upon receiving and recording the information under section 19 of the Act and after satisfying themselves an offence under the POCSO Act has been committed or attempted by a person living with the child;
- If the child has no home or parental care or lives in a care institution without parental care [Rule 4 (3)];
- The reasons must be recorded by the police [Rule 4 (3)].

(2) Guidelines for deciding whether a child needs care and protection: One of the mandatory functions of the Child Welfare Committee in respect of such child is to determine the care it needs by inquiry under sub-section (1), section 31 of the Juvenile Justice Act, 2000. Such inquiry as above under sub-section (1), section 31 of the Juvenile Justice (Care and Protection of Children) Act, 2000, is conducted only when:

- a) Offence under the POCSO Act is committed or attempted; and
- b) The child lives with an accused or has no home or parental care or lives in a child care institution without parental care.

The inquiry is envisaged by section 33 of the JJ Act, 2000. Section 33 of the JJ Act, 2000 Inquiry-

1. On receipt of a report under section 32, the Committee or any police officer or special juvenile police unit or the designated police officer shall hold an inquiry in the prescribed manner and the Committee, on its own or on the report from any person or agency as mentioned in sub-section (1) of section 32, may pass an order to send the child to the children's home for speedy inquiry by a social worker or child welfare officer.
2. The inquiry under this section shall be completed within four months of the receipt of the order or within such shorter period as may be fixed by the Committee Provided that the time for the submission of the inquiry report may be extended by such period as the Committee may, having regard to the circumstances and for the reasons recorded in writing, determine.
3. After the completion of the inquiry if the Committee is of the opinion that the said child has no family or ostensible support, it may allow the child to remain in the children's home or shelter home till suitable rehabilitation is found for him or till he attains the age of eighteen years.

Section 54 of the Juvenile Justice Act, 2000, provides that the procedure in such inquiries is to be, as far as possible, summons-case procedure for trial under the Code. Therefore, **an inquiry by the Child Welfare Committee must be taken to be a judicial inquiry**. Sub-section (5), section 29 of the Juvenile Justice Act, 2000, clearly provides that the Committee function as a bench of Magistrates and have powers of a Magistrate of a first class under the Code.

While deciding whether a child needs care and protection the Committee must:

- a) hear the parent or guardian likely to be affected by the decision,
- b) place on record the wish of the child after speaking to it,
- c) the wishes of the child in favour of living in the family or with parents must be accorded priority,
- d) allow a parent or guardian of such child to place material on record showing institutionalized care unnecessary,
- e) take the decision as provided based upon material on record,
- f) give reasons in support.

When the parents are living separately from each other, the child shall normally be allowed to live with his / her mother as the first option by the CWC.

When the child is unwilling to live with its parents, guardian or other relative, the Child Welfare Committee should find reasons for such refusal and see whether apprehensions of the child in this regard can be set at rest by taking appropriate measures. In such a case, the CWC is advised to consider whether the custody of the child with the family should temporarily be under supervision. Full-fledged custody may be extended if the child is taken proper care of.

Rule 4 (5) of the Protection of Children from Sexual Offences Rules, 2012, apart from the preference of the child, lay down the considerations to be taken into account by the Child Welfare Committee conducting the inquiry:

- a) Capacity of the parents etc. to fulfill immediate needs of, including medical care to, the child;
- b) Need that the child must remain within the family;
- c) Age, maturity, gender, and social and economic background of the child;

- d) Disability, if any, of the child;
- e) Chronic illness a child may suffer;
- f) History of family violence of the child or a member of its family; and
- g) Other relevant factors in the interest of the child.

(3) Institutionalization of the child: *A decision in favour of institutionalizing the child by the Child Welfare Committee should be the last resort.* Even if the child has lost both its parents, or if neither parent is traceable, the Committee must endeavour to find other relatives of the child willing to take care of the child. Section 39 of the Juvenile Justice (Care and Protection of Children) Act, 2000, makes it clear that even children's homes or shelter homes shall have restoration of the child as their prime objective and shall take steps for a child deprived of family atmosphere to live with its family.

(4) Child unable to communicate due to young age, suffering from severe physical or mental disability including injury shall not be produced before the CWC to the discomfort of the child unless directed: Section 47 of the Juvenile Justice (Care and Protection of Children) Act, 2000, gives discretion to the Committee in relation to a child in need of care and protection to dispense with his attendance during the inquiry. Rule 27 (2) of the Juvenile Justice (Care and Protection of Children) Rules 2007,¹ provides for sending written report to the CWC with the photograph of a child instead of producing him, when the child is under 2 years of age and medically unfit. *Thus, the presence of a disabled, severely injured or a child below 2 years before the CWC is not necessary for beginning with the statutory inquiry, and the CWC has powers to dispense with attendance of such child.* The CWC should be apprised by the police in writing of cases involving such children. In cases where for example, due to severe injuries or illness it would be detrimental for a child to travel to appear before the CWC and the child is not in a position to state whether he wants to live with his family, rule 4 (3) of the Rules of 2012 and section 19, sub-section (6) of the Act shall not be read as mandatory.

(5) Time limit for inquiry by CWC: When a child has been placed by the police in a shelter home under section 19 (5) of the Act, the CWC must conclude the inquiry within the prescribed time limit of 3 days [Rule 4 (4) of the Rules of 2012]. *If a child placed temporarily in a shelter home is released in the interim custody of his family, the compulsion for the CWC to conclude the inquiry within three days may not be necessary.* Strict adherence to the time schedule should not lead to sacrificing just and fair nature of the proceeding or giving hasty decision. Both expeditious conclusion of the inquiry and giving a just decision should be the aims and objects of the Child Welfare Committee, and, to this limited extent, a strict compliance with rule 4 (3) of the Protection of Children from Sexual Offences Rules, 2012, providing for conclusion of inquiry by the Child Welfare Committee within 3 days should not be seen as mandatory.

(6) Tracing Missing Children: Under Rule 27 (7) of the Juvenile Justice (Care and Protection of Children) Rules 2007 whoever produces a child before the Committee shall submit a report on the circumstances under which the child came to their notice and efforts made by them on informing the police and the missing persons squad and in cases where a recognized voluntary organization or any police personnel produce a child before the Committee, they shall also submit a report on the efforts made by them for tracing the family of the child.

¹ Rule 27 (2) of the JJ Rules 2007 states "In case of a child under two years of age, who is medically unfit, the person or the organization shall send a written report along with the photograph of the child to the Committee within twenty-four hours and produce the child before the Committee as soon as the child is medically fit along with a medical certificate to that effect." Rule 27 (3) of the Delhi Juvenile Justice (Care and Protection of Children) Rules 2009 reproduces this same Rule.

In *Hori Lal vs. Commissioner of Police, Delhi and Ors* W.P (Crl) 610 of 1996, the Supreme Court laid down the steps to be taken by Investigation Officers for tracing missing girls. These steps include, publishing photographs of the missing child with the permission of the parent/guardian, making inquiries in the neighbourhood, contacting the school and making inquiries on incidents of violence in the family.

(7) Interim measures by the CWC: The Child Welfare Committee, have powers to provide for basic needs of such child, protect its human rights, and order temporary financial assistance to cover its basic and immediate needs [section 31 (1) JJ Act 2000].

Technical Session VI: Group Work Based on Cases of Children under POCSO Act, 2012 (using case studies/mock trial/role play)

Learning Objectives:

- To enhance practical knowledge of the participants about the Act
- To know about difficulties/problems encountered in the implementation of POCSO Act,2012
- To learn about skills and techniques required in solving the problems
- To ponder over alternatives and possible solutions

Methodology: Group work/role-play/mock session and discussion

Material Required:

Duration: 1 hour 15 minutes

Instructions:

- Initiate all the participants to the group work/role play/mock session.
- All participants are requested to take part in the group work/role-play/mock session and discussion to get practical exposure in dealing with child victims of sexual abuse in the Act.
- Ask the participants to perform mock trails/role play with the help of some case studies dealt under POCSO Act, 2012
- Ask them to give their views and suggestions (with the help of reference material or use power point presentation, if possible)
- Quickly write their responses and suggestions on the white board/flip chart and lead the discussion.
- Keep track of time and wind up the session.

Tips for the Facilitators/Resource Persons:

- This session is important to make the participants (DCPOs) understand their role in the Act.
- Also this session will give practical exposure to the participants for the better implementation of the Act.
- Keep track of the time as it is an extensive session.

Reference Material for Technical Session VI

CONTENTS

- 4-5 case studies dealt under POCSO Act, 2012
- Each case study followed by questions to guide the group discussion
- Mock trial/role play by the participants

4-5 Case studies dealt under POCSO Act, 2012

Participants shall be asked to go through the cases given below and give their views vis-à-vis the provision of POCSO Act, 2012.

CASE – 1

February 26, 2013 (Delhi): *A 15-year-old girl elopes with her 22-year-old boyfriend. The duo reaches the boy's village near Kolkata, ties the knot and consummates the marriage. The girl's mother lodges a missing complaint on March 5. A team is sent to Kolkata and brings back the couple. The boy is booked for kidnapping and 'rape' of a minor under the Protection of Children from Sexual Offences (POCSO) Act, 2012.*

Verdict: *Accused acquitted by a ruling that the minor, on her own will, accompanied him and an obstacle should not be put in their happy married life.*

Rejecting a plea by the Delhi Police and the Delhi Commission for Women that POCSO Act prohibits minors from having any kind of sexual relationship, Additional Sessions judge Dharmesh Sharma said: "I am afraid if that interpretation is allowed, it would mean that the human body of every individual under 18 years is the property of the State and no individual below 18 years can be allowed to have pleasures associated with one's body. In my opinion, it would neither serve the object of present enactment, nor the purpose of criminal law to hold the accused guilty on the ground that he had sexual intercourse with a girl below 18 years." The judge also said that it would not be good for the girl's health if her husband (he married the girl) is sent to jail.

The ruling has opened up a debate on what should be the right age for a "minor" to exercise her sexual rights. While some lawmakers believe that consensual or not, sex with a person deemed minor under the law tantamounts to rape, many others say that the POCSO Act, 2012, which deals with such offences is misplaced. According to Sujato Bhadra, professor and human rights activist from West Bengal, even though this Act's provisions need to be studied, the above-mentioned judgement is paradoxical to the Act.

"The ruling is contrary to the POCSO Act. The fact that the charges were filed under POCSO Act means that the girl is not a major. Being a minor, she has no right over her body and, therefore, the issue of giving her consent doesn't arise," Salim Khan, the case's public prosecutor, insists. Child right activists argue that the ruling has potential to impact other crime against women cases. They stress that it might be used by the accuser's lawyer to seek his client's acquittal or, worse still, give him a reason to 'buy' the victim's consent. "I told the judge that it was not keeping in tune with the provisions of the Act under which the case had been filed. On one hand, the nation is demanding stricter laws to prevent crime against women and minors, on the other; a ruling says it is okay for a minor to have sex. The Act was made to protect minors and can't be disregarded," Khan says.

Ask him why the accused was not booked simultaneously for violation of the Child Marriage Act and he says "when there is a specific Act is available, general Acts are usually not taken into account". As Prof Bhadra points out, law deems that a boy below 21 and a girl below 18 can't get married. "But the judgement says that a man having physical relations with a minor doesn't amount to rape if it is consensual. How is it that a girl is not allowed to marry till she is 18 but can have sex at 15? Something needs to change," he says.

According to the Ministry of Women and Child Development which has collaborated with global human rights body Breakthrough for a campaign titled Nation Against Early Marriage, 47 per cent Indian girls are married off before the age of 18. The study also says that of the 30 million underage marriages in South Asia, one-third happen in India — 10 million! Prof Bhadra is quick to point out the need to plug this dichotomy in the system. According to this study, it's not just the rural belt that has been openly defying the law but also its urban counterparts where the violations are almost as high. So, while the law must be upheld and enforced, the reality should also be taken into account, he adds, explaining why the judge may have felt the need to not treat the elopement as rape and kidnapping.

Child rights groups say that while the wide gap between law and reality needs to be bridged, there is also an urgent need for a proper awareness mechanism among the young. "Efforts should be made to create awareness among the young about sex. School workshops are must. Amendments in law would be a major step in the right direction. Though it's tricky to determine at what age a girl is mature enough to give consent for sex, it is the evidence in each case that needs to be considered carefully. We have been demanding changes in law to ensure that the guilty get punished and an innocent walk free," All India Democratic Women's Association general secretary Sudha Sundararaman says.

Strangely, however, the more the number of laws on crime against women, the more the loopholes. "Too much rigidity in applying an Act can be exploited. The solution lies in looking at each case individually. For instance, one can't prevent any court in the country from citing the judgement given by the Delhi court. That is what a lawyer will do to save his client. It is, however, for that court to see whether the case in hand has any similarity with the case being cited. If not, it must ignore the parallels drawn and give its ruling on the evidence presented," Prof Bhadra states.

Considering that almost 99 per cent criminal cases (especially rape) are not fought on merit and that there are umpteen cases where the 'other lawyer' and witnesses are bought or coerced into giving a weak statement in court, the 'consensual sex not amounting to rape' has, indeed, opened a Pandora's box. Advocates of the Act point out how lower courts seldom go against the provisions of law. The popular thinking is that it wouldn't make sense for parliamentarians to draft a law then. Significantly, India has the largest child population in the world with 42 per cent below 18. And sexual crime against children is on the rise. In 2013 alone, 313 minor rapes have been recorded.

So is it correct to wonder if this sort of a ruling has potential to be misused? "Not at all," says Supreme Court advocate ML Sharma. "One has to see the intention. We see so many cases where women levy false charges of rape. One has to understand that it is not only the woman whose reputation is at stake. A false allegation can ruin a man's life too," Sharma says, citing one case that has stayed in his memory. "The woman had falsely alleged that the man had fondled her in a train whereas the truth was that she cried foul after being asked to get up from the accuser's duly reserved seat. It took the innocent man six long years and several court appearances to clear his name. The so-called 'victim' never ever came to court to testify", Sharma recalls. Despite the fact that there are many cases where the man is implicated wrongly, it doesn't take away the fact that over 53 per cent minors surveyed in 2007 said that they had experienced one or more forms of sexual abuse.

"The Act says that a girl below 18 can't give her consent, irrespective of what the circumstances are. Before this Act came in 2012, the set age was 16 years. The raise was implemented after much deliberation. If a case has been filed under the POCSO Act, it automatically means that

sexual assault took place,” inspector SS Malhan, Special Police Unit for Women and Children, argues.

But Sharma has a different take on the provisions of the POCSO Act which he feels are misplaced. “How can one prove a negative? It is the positive that is easy to prove. The Act says that for the more heinous offences of penetrative sexual assault, aggravated penetrative sexual assault, sexual assault and aggravated sexual assault, the burden of proof is shifted on the accused. How should the accused prove otherwise,” he questions. While the debate on this issue is open, experts like Prof Bhadra have a solution. They say that given the fact that adolescents are maturing faster, it is vital for the State to rethink before determining the age of consent.

“There is no denying that many false cases are filed. There is also no denying that many youth run away from home and it is the parents who file charges of kidnapping and sexual abuse. But should that be the case? A girl who attains puberty has a mind of her own. Neither her parents, nor the State can impose their will on her. If she stands in court and says she was not abused, one will have to believe her statement,” Prof Bhadra says. Malhan, however, dissents. The question of a 15-year-old giving her consent in cases where she has run away from home, married the boy and lived with him as a couple doesn’t arise. In fact, so strict are the provisions of the Act that a failure to report such a crime — by parents, neighbours, friends or relatives — is also punishable with an imprisonment up to six months. As is the case where a police officer refuses to register such a case. This has been done so that no crime against a minor goes unreported,” he explains.

Some activists say that the age gap between the minor and the accused needs to be also kept in mind while giving a verdict. If the difference is slim and the girl says she gave her consent and evidence also points to the same, given the fact that there was no blackmail or threat involved, a ruling should be given accordingly. However, if the age difference is more, say the girl is 10 and the man 35 or so, there is no question of not taking the Act into account. While lawyers and activists say that the provisions under the POCSO Act need to be seen in a wider spectrum and each case needs to be individually examined before a judgement is given, Malhan says that any criminal offence against a minor should be universally punishable. “If the person gets away by saying that the girl gave her consent, why make the Act?” he asks.

“We have filed an appeal in High Court and waiting for its acceptance. But I am positive that a ruling in our favour will be given which will send a strong message that one can’t get away with a crime against a minor by saying it was ‘consensual’,” Khan says.

CASE – 2

Lack of harmonisation of the Medical Termination of Pregnancy Act, 1971 with those meant to protect children from sexual abuse has put gynaecologists in a fix.

The abortion law guarantees absolute confidentiality to a woman irrespective of her age, while the Protection of Children from Sexual Offences Act, 2012 and the Criminal Law Amendment Act, 2013 — put in place after the horrific gang-rape of the 23-year-old girl in Delhi last year — make it mandatory for the hospitals, local bodies or individuals, to report any kind of offence or even a suspicion of offence in the case of a minor.

The problem arises when a girl, below the age of 18 years seeks an abortion. Under the Medical Termination of Pregnancy Act, 1971 she has a legal right to seek abortion but the Protection of Children from Sexual Offences Act, 2012 and the Criminal Law Amendment Act, 2013

criminalises sex below the age of 18 years even if it is consensual, thereby it is presumed pregnancy is a result of rape.

“There needs to be more clarity on the issue. We have had some cases recently where abortion conducted on girls below the age of 18 years became an issue and doctors were harassed by police for not reporting as these amounted to rape,” Nozer Sheriar, secretary general of the Federation of Obstetric and Gynaecological Societies of India (FOGSI) told The Hindu.

It is still an urban phenomenon where adolescents have access to health facilities but could become a major issue in the coming years if not addressed immediately, Dr. Sheriar said.

Women’s groups and child rights activists shared similar apprehensions and said ambiguity left laws to individual interpretations. “Attention needs to be drawn to the poor access to safe abortions and its consequences on women’s health and rights, particularly on unmarried adolescents and women, in general face in accessing safe services.

If confusing laws deny access to safe abortions, adolescents will go for unsafe procedures which are harmful for women’s health,” explained V.S. Chandrashekhar, an independent consultant on women’s health.

Twenty-two per cent of India’s population comprises young adolescents. Doctors want the Centre to come out with some directions on the matter to end confusion and allay fears.

Under the Medical Termination of Pregnancy Regulations, 2003, “admission register is a secret document and the information contained therein as to the name and other particulars of the pregnant women shall not be disclosed to any person. It shall not be open to inspection except under the authority of law or on the application of an employed woman whose pregnancy has been terminated, to grant a certificate for the purpose of enabling her to obtain leave from her employer.”

In the POCSO Act, Section 19 requires “...any person (including the child who has the 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 — (a) the special juvenile police unit or (b) the local police unit.” Section 21 says any person failing to report could be punished with imprisonment of six months or fine or both.

In the Criminal Law Amendment Act, Section 357C requires “All hospitals, public or private ..., whether run by the central or state government or local bodies or any other person, shall immediately provide the first aid or medical treatment free of cost, to the victims of any offence covered under Sections 326A, 376, 376A, 376B, 376C, 376D or Section 376E of the IPC and shall immediately inform the police of such incident.”

A pregnancy can be terminated if its continuation endangers the life of the pregnant woman or of grave injury to her physical or mental health; or there is a substantial risk that if the child were born, it would suffer from such physical and mental abnormalities as to be seriously handicapped; where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to cause grave injury to the mental health of the woman; and where pregnancy occurs as a result of failure of any device or method used by any married woman or her husband to limit the number of children.

Further, the Act says that no pregnancy of a woman, who has not attained the age of 18 years, or who is a “mentally ill person,” shall be terminated except with the consent in writing of her

guardian; otherwise pregnancies can be terminated only with the consent of the pregnant woman.

Officials in the Ministry of Health and Family Welfare said abortion was being provided as an assertion of reproductive rights of a woman not to carry an unwanted pregnancy or a foetus likely to have abnormalities.

"However, any provision that violates the spirit of privacy and confidentiality needs to be reviewed," the officials said. Concurring with gynaecologists, child rights activist Enakshi Ganguly of HAQ said there were any number of cases in the Juvenile Justice Board where consensual sex became rape because the girls were younger than 18 years.

CASE - 3

JAIPUR: The Jodhpur police are set to slap more stringent sections of the newly introduced Protection of Children against Sexual Offences Act on the notorious preacher Asaram. He will be booked under section 9 of POCSO Act which tries an accused for allegedly sexually assaulting a minor under his charge.

The police have documents to prove that the girl who has charged [Asaram](#) with sexual assault studied and lived in his ashram school. Cops are now looking to establish Asaram's connection to the ashram school.

"Once it's proved - and this shouldn't be difficult - his alleged act would attract a maximum imprisonment of seven years in prison," said a legal expert. He added that this would also shift the onus on Asaram of proving his innocence.

"If Asaram was running the ashram, it would mean he is part of the ashram, its school and hostel. It implies the girl was under his care, which will help us make the case against him stronger," said a police officer.

During Asaram's bail application hearing, his counsel KK Menon raised several questions over the FIR, the medical report and the statement of the girl who has alleged that she was sexually assaulted. He argued that no non-bailable section was applicable as the girl wasn't raped.

Menon also asked why was the FIR lodged in Kamla Nagar police station in New Delhi, and that too four days after the incident. He said the FIR could have been filed at a police station within the jurisdiction of her house and claimed that legal assistance was sought in filing the FIR.

Besides, Menon said, the FIR did not mention the timing of the alleged sexual assault. He said that according to the FIR, the mother of the girl was outside the room in which she was said to be with Asaram. "So when she cried, why didn't her mother respond?" he asked. He added that the teenager's statement of the victim is therefore inadmissible.

Menon also said that the girl's medical examination was carried out before the FIR but it does not mention sexual assault. He raised questions about the age of the victim. Through these arguments, he suggested neither Section 376 of the IPC nor the POCSO Act was applicable in Asaram's case. "Hence, the case is fit for granting of bail," Menon said.

The defence also objected to the potency test on Asaram holding political leaders and the media responsible for "activism" that led to the self-styled god man's arrest. The prosecution will reply to the points raised by Asaram's defence.

CASE – 4

The Delhi Police filed a charge sheet in a city court against two men for brutally raping a five-year-old girl in east Delhi two months ago. The kidnap and rape of the minor in east Delhi had sparked public outrage against the alleged apathy of police in registering the case, leading to the suspension and transfer of policemen of various ranks, including an ACP who had been caught on camera while slapping a young protester.

The accused — Manoj Shah, 22 and Pradeep Kumar, 20 — were arrested from Bihar.

In its charge sheet filed before Additional Sessions Judge Sanjay Garg, the police said the evidence collected pointed out that the accused had raped the minor after kidnapping her and confined her to a room for two days.

Manoj and Pradeep have been charge sheeted under various provisions of the newly enacted Protection of Children from Sexual Offences (POCSO) Act, relating to aggravated sexual assault and for offences including kidnapping, procuring a minor girl, wrongful confinement, attempt to murder and destruction of evidence under the IPC.

Under the POCSO Act, the accused is required to prove his innocence and it prevails over the IPC in which the accused is presumed innocent until proven guilty.

ASJ Garg, presiding over the special court under the POCSO Act, took cognisance of the charge sheet and fixed the matter for July 1, 2013 for hearing. The offences, if proved, entail a maximum punishment of life term.

Manoj and Pradeep are accused of brutally raping the five-year-old girl on April 15, 2013 in a building in east Delhi's Gandhi Nagar. The girl was rescued 40 hours later on April 17, 2013.

The charge sheet said Manoj and Pradeep had intentionally kidnapped the child and after confining her in Manoj's rented room, raped her.

It also said that both the accused inserted candles and an oil bottle in her private parts and that they had tried to kill her by strangulating and slitting her throat. They later fled the spot, leaving her for dead, the charge sheet says.

CASE – 5

The Gurgaon police submitted a 120-page charge sheet in the 8-year-old molestation case in a Gurgaon court on Saturday. The accused two maids have been charged under Section 354 (a&b) and Section 4 & 8 of the Protection of Children from Sexual Offences (POCSO) Act. The duo has already been remanded into judicial custody and lodged in Bhondsi jail. Meanwhile, the bail plea of both the accused maids was rejected by a Gurgaon court on Friday.

CASE-6

In yet another incident of crime against women, a 17-year-old girl was allegedly kidnapped, drugged and raped by three youths, including a minor, in northeast Delhi's New Usmanpur. The incident took place on May 17, 2013 but was reported at the Usmanpur police station only on Sunday. The girl's medical examination confirmed rape.

Police said the accused include two brothers who stay in a rented room in the same house where the victim lives with her family.

The police arrested one of the brothers, identified as Vijay Kumar, 20. His minor brother and the third unidentified accused are absconding.

Police said they are conducting raids to nab the absconding accused. A police officer said the matter came to light after the victim and her parents approached them and registered their complaint on Sunday.

In her complaint, the victim told the police that on May 17, 2013 around 9 pm, she went out of her house to look for her younger brother who had not returned home.

"She was looking for her brother in the locality when the three youths overpowered her in a dark, isolated place and made her consume a soft drink laced with sedatives. She fell unconscious. The accused then took her to a secluded place and raped her," said the police officer.

When the girl didn't return home, her parents became worried and began a frantic search for her in their locality.

Around 11 pm, the three youths brought the girl to her home in an unconscious state and told her parents that she had consumed alcohol and that she was heavily drunk.

"The family members could not believe their claims. The girl regained her consciousness the next morning and narrated the entire incident to her parents. The family then approached the local police and lodged a complaint," the officer added.

A case has been registered at Usmanpur police station under sections 328, 3762G of IPC and POCSO Act, 2012.

CASE – 7

In a small operation aimed at curbing "misplaced sexual tendencies" among young men residing in semi-urban slum clusters, eight men were arrested for retailing child pornography at southwest Delhi.

According to the police, the operation was conducted at a small market in Kapashera and eight shopkeepers, later identified as Amit Gupta, Mohammad Nasim, Murshid Alam, Guddu, Ajay Singh, Ajay Kumar, Rupesh and Sonu Khan, were arrested.

"Keeping in view the gravity of increasing incidents of sexual assault on children at several locations across the Capital, several teams were formed to apprehend the culprits," said an officer.

The police said the operation was aimed directly at curbing misplaced sexual tendencies among migrant labourers residing in the area, many of whom are not able to visit their families at their native places for months.

"A majority of them stay alone owing to poor socio economic conditions - a fact that retailers of mobile phones exploit. Chinese-made mobile phones are easily available at cheaper rates and in order to attract customers for sale, dealers entice them with chips loaded with pornographic clippings," the officer said.

According to the police, this was why the task of identifying shops and dealers retailing such clips was taken up. After identifying the shops, a strategy was chalked out and raids were conducted simultaneously.

The police claimed as many as eight computers, memory card readers and 52 memory cards containing pornographic clips were recovered from the accused. "Eight separate cases under section 15 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 have been registered against the arrested men," the officer added.

CASE – 8

The Hisar police have booked a man of Barwala area for alleged rape of his eight-year-old daughter. The police said the incident occurred in Dhani Prem Nagar area of Barwala on April 11, 2013 when the girl's mother was away to fields for work and her father was alone with her at home. The accused, 32, is a farm labourer and since the incident was reported to the police by the girl's mother on Saturday, he is absconding. The accused had also threatened his wife of dire consequences if she reported the matter to the police, a police official said. He said the girl's medical examination report was awaited and further investigations were being carried out. The police booked the accused under the Protection of Children from sexual offences (POCSO) Act, 2012.

Mock trial/role-play by the participants

Mock Trials:

A **mock trial** is an act or imitation [trial](#). It is similar to a [moot court](#), but mock trials simulate lower-court trials, while moot court simulates [appellate court](#) hearings. [Attorneys](#) preparing for a real trial might use a mock trial consisting of volunteers as role players to test theories or experiment with each other. Mock trial is also the name of an [extracurricular](#) programme in which people participate in rehearsed trials to learn about the legal system in a competitive manner. Mock trial is often taught in conjunction with a course in [Trial Advocacy](#).

Familiar method of law-related education, the mock trial combines role play, simulation, and debate, permitting participants to hear many sides of an issue and recognize the multiple roles and impacts of a human rights situation. They also build familiarity with court procedures and human rights law, as well as the intersection and potential conflicts of international, regional, national, and customary law.

Assign roles (e.g., one group represents the prosecution and another defense) and explain their tasks (e.g., how to make an opening statement, lead evidence, cross-examine, make a closing statement). Allow time to prepare carefully. Verdicts might be decided upon by a panel of real or role-playing "judges" or by vote of all participants. Cases might be based on historical or current human rights issues.

Mock trial experiences allow seeing different perspectives of a case by playing different roles: witness, plaintiff, defendant, attorney, etc.

Through participation in mock trials, participants gain

- an insider's perspective on courtroom procedures
- critical analysis of problems
- strategic thinking
- questioning skills
- listening skills
- skills in oral presentation and extemporaneous argument
- skills in preparing and organizing material
- exposure to a wide variety of law-related careers

Guide to Conducting Mock Trials

The mock trial has proven to be an effective learning tool to develop useful knowledge about the law, questioning techniques, critical thinking and oral advocacy skills. Good mock trials will also leave participants with an appreciation of the difficulties that judges, lawyers and juries face in attempting to present all relevant facts and legal arguments and insure the just resolution of the issues involved.

Below is a brief outline explaining the various types of mock trials that can be presented, how to prepare for and conduct mock trials and how to conduct mock trial competitions.

Types of Mock Trials

The mock trial begins where actual trials begin with a conflict or a dispute that the parties have been unable to resolve on their own. Mock trials may draw upon historical events, trials of contemporary interest, school and/or classroom situations, or hypothetical fact patterns. Most mock trials use some general rules of evidence and procedure, an explanation of the basic facts, and brief statements for each witness. Other mock trial formats range from free-wheeling activities where rules are created by the participants (sometimes on the spot) and no scripts are used, to serious attempts to simulate the trial process based on simplified rules of evidence and procedure to dramatic reenactments of historical trials in which scripts are heavily relied upon.

Steps in Preparing for a Mock Trial

a) Distribute mock trial materials to the participants.

The facts and basic law involved should be discussed with the entire class. Resource persons may develop fact patterns and witness statements (e.g., brief summaries of each witness' testimony), have students develop them, or use the materials provided.

b) Try to match the trial to the skills and sophistication of your participants.

For example, if your participants are unfamiliar with mock trials, you probably should begin with a simple exercise. Remember that the aim of mock trials isn't always to imitate reality, but rather to create a learning experience for trainees. Just as those learning piano begin with simple exercises, so those learning mock trials can begin simply and work up to cases which more closely approach the drama and substantive dimensions of the real thing.

c) Participants should be selected to play attorneys and witnesses, and then form groups to assist each witness and attorney prepare for trial.

A case could easily involve the entire class. For example, at least two could be assigned as attorneys for each side. In addition, four students are needed as witnesses and twelve participants can serve as the jury. Such a division of tasks directly involves approximately two dozen participants and others can be used as bailiff, court reporter, judge, and as possible replacements for participants, especially witnesses, in the event of an unexpected absence. Still other trainees may serve as radio, television or newspaper reporters who observe the trial and then "file" their reports by making a presentation to the class in the form of an article or editorial following the trial.

d) Participants work in the above mentioned task-groups in class for one or more class periods

During the preparation time, jurors might explore the role of the jury, the historical development of the jury system, and other topics related to their part in the mock trial. Participant attorneys should use this time to outline the opening statements they will make. Because these statements focus the attention of the jury on the evidence, which will be presented, it will be important to work in close cooperation with all attorneys and witnesses for their side.

Participant attorneys should **develop questions** to ask their own witnesses and rehearse their direct examination with these witnesses. Witnesses should become thoroughly familiar with their witness statements so that their testimony will not be inconsistent with their witness statements. (These statements which may be considered to be sworn to pretrial depositions or affidavits, can be used by the other side to impeach a witness who testifies inconsistently with the statement.)

On **direct examination** (that is, either the plaintiff's or defendant's attorneys questioning their own witnesses), questions should not be leading - - they should not have the answer included as part of the question. Leading questions may, however, be used in cross-examining a witness in order to impeach the witness' credibility in the testimony.

While some attorney-witness groups are constructing the questions and testimony for direct examination, other attorneys should be thinking about how they will cross-examine the witnesses for the other side. As mentioned, the purpose of cross-examination is to make the other side's witnesses seem less believable if the eyes of those determining the facts of the case (i.e., the jurors in a jury trial or the judge if no jury is used). Leading questions, sometimes requiring only a yes or no answer, are permitted. Frequently it is wise to ask relatively few questions on cross-examination so that the witness will not have an opportunity to reemphasize strong points to the jury.

During **cross-examination**, for example, the attorneys for the plaintiff might try to suggest that the testimony of the defense witnesses is inconsistent.

The **closing arguments** are rather challenging since they must be flexible presentations, reviewing not only the evidence presented for one's side but also underscoring weaknesses and inconsistencies in the other side's case which arise out of the trial proceedings.

Conducting a Mock Trial

a) Once all preparation has been completed, convert the classroom into a courtroom by rearranging desks. It is also helpful to have long tables for each attorney's team to work from; the trainer's desk can serve as the judge's bench.

b) Conduct the trial with a judge. A student jury may be used. The role of the jury is often minimized in television trials. Participants should understand that the jury determines the facts in a case, primarily through their acceptance or rejection of the testimony offered by various witnesses for both sides. The judge deals with questions of law and explains to the jurors the key legal issue in the case.

Participants:

Judge (could be a visitor to class with legal experience), prosecutor(s) or plaintiff's attorney(s) in a civil case defense attorney(s), witnesses for the prosecution, witnesses for the defense, bailiff (swears in witnesses and marks evidence), Jury composed of twelve persons, one of whom should be named jury foreman; alternates may also be designated.

c) Simplified Steps in a Trial:

1. **Calling of Case by Bailiff:** "All rise. The Court of _____ is now in session. Honorable Judge _____ presiding.
2. **Opening Statement:** First the prosecutor (criminal case) or plaintiff's attorney (civil case), then the defendant's attorney, explain what their evidence will be and what they will try to prove.
3. **Prosecution's or Plaintiff's Case:** Witnesses are called to testify (direct examination) and other physical evidence is introduced. Each witness called is cross-examined (questioned so as to break down the story or be discredited) by the defense.
4. **Defendant's Case:** Same as the third step except that defense calls witnesses for direct examination; cross-examination by prosecution/plaintiff.
5. **Closing Statement:** An attorney for each side reviews the evidence presented and asks for a decision in his/her favor.
6. **Jury Instructions (Jury Trials Only):** The Judge explains to the jury appropriate rules of law that it is to consider in weighing the evidence. As a general rule, the prosecution (or the plaintiff in a civil case) must meet the burden of proof in order to prevail. In a criminal case this burden is very high. In order for the accused? Are some parts of the trial more important than others? Would you trust a jury of your peers to determine your guilt or innocence? Students should also explore their reactions to playing attorneys, witnesses, jurors, and the judge. What roles do each play in the trial process?

If a resource person has participated in the mock trial, the debriefing is an excellent way to make the most of his or her experience and insights. Since the mock trial is a common frame of reference, the resource person has a natural vehicle for expressing ideas and observations, and participants should be better able to grasp the points that are being discussed.

Technical Session VII: Presentation of Group Work by Participants

Learning Objectives:

- To fill in the gaps in information, knowledge, skills and the overall presentation of the group in a simple and understandable manner

Methodology: Presentation and discussion

Material Required:

Duration: 1 hour

Instructions:

- Ask the participants to use power point presentations or reference materials to lead and continue the previous session which was on mock trials and role-play by them on the issue of dealing with child victims of sexual abuse in the Act. The presentations or reference materials should be in accordance with the self explanatory guide provided by the trainer.
- Emphasize issues which the participants represent (use media report as referral point).
- Quickly write the responses of the participants on flip chart/white board.
- Quickly analyze the responses and presentation with discussion
- Keep track of time and wind up the session.

Tips for the Facilitators/Resource Persons:

- This session is meant to make the participants learn from experiences/solutions to be shared in presentations
- As this is practical session try to seek as much participation as possible.
- Link the participants view points with the available literature.
- Read/Review the slides carefully before conducting the session.
- Have updated data and knowledge on the issue.
- Keep track of the time as it is an extensive session with limited time.

Reference Material for Technical Session VII

CONTENTS

Group work presentations

- Sample module for conducting this session

Reference Material:

- Guide that contains self explanatory material about the session to be provided to the participants by the trainer.
- Power point presentations/reference material/any other material prepared by the participants (Police) during the process of taking part in group work/role play/mock session on the role to be played by them in dealing with child victims of sexual abuse.

Group work presentations

A sample module exclusively for conducting this session is given below:

Module - Testing trainees - Group presentations

Objective

To evaluate the training capability of trainees following their training

Suggested methods of instruction

- Clear instructions to trainees of what is expected of them - both orally and in writing
- Assistance with preparation of presentations

Aids

- Handouts

Time frame

- Presentations of 15-20 minutes each

Content

- Group presentations as a means of testing trainees
- Notification of presentation requirements
- Discussion to aid in preparation of presentations

Learning outcome

Participants should demonstrate knowledge of the subject material and skills developed based on the foregoing training.

GROUP PRESENTATIONS AS A MEANS OF TESTING TRAINEES

There are a number of ways of testing trainees like seeing how well they have mastered the skill taught, demonstrating the new on-the-job procedure, etc. A proven method of testing trainees is to see how they perform in a training situation.

The material that follows is self-explanatory and is offered as a guide only. It is important that the trainees discuss their proposed group presentations with the trainer to ensure that pitfalls that often confront novice trainers (e.g. inappropriate choice of subject, topic too broad for coverage in the time available, insufficient time in which to prepare suitable aids) are avoided. The trainer should be sure to be available at all times to assist and advise trainees on the preparation of their presentations.

Notification of Presentation Requirements

Trainees should first be advised of the presentations at the beginning of the course, and the following notification should be distributed halfway through the course.

Guidelines for group presentations

During the concluding days of the course trainees will present a 15-20 minute training session on a selected topic related to the Act.

Topics will be chosen by the trainer (or trainees). As part of the presentation the trainees will:

- Produce a plan for the session
- Produce a handout for distribution to other course members following the presentation
- Prepare visual aids (charts, overhead transparencies, slides, etc.) for use in the presentation

In the presentation, trainees will be expected to make use of training skills (including communication techniques, visual aids, questions, etc.) and technical knowledge learned during the course.

Group presentations should be developed progressively by trainees during the course and maximum guidance in their presentation should be available from the trainer. Each presentation will be followed by a five-minute evaluation by the group.

DISCUSSION TO AID IN PREPARATION OF PRESENTATIONS

Trainees in groups should be requested to complete a form comprising the following questions for discussion with the trainer before preparing the presentation.

- What is your subject?
- Have you given thought to a plan for your presentation? (brainstorming)
- Have you jotted down thoughts, especially main points you wish to emphasize?
- Do you need assistance with information?
- Have you determined at what level you wish to pitch your presentation?
- How do you propose making the greatest impact?
- What aids do you propose to use?
- Do you propose giving a demonstration?
- Do you propose using handouts?
- Have you in mind to ask questions?
- Have you discussed your subject or its presentation with trainees in other groups? Do you intend to do so?

Technical Session VIII: Panel Discussion on Interface of CWCs with Other Stakeholders/Open House Discussion

Learning Objectives:

- To provide a platform to participants to share their experiences and views on linkages with other stakeholders in implementation of POCSO Act, 2012
- To enable the participants to effectively deal with diverse situations

Methodology: Panel/open discussion

Material Required: Pen/pencil, scribbling pad, white board/flip chart and marker.

Duration: 1 hour 30 minutes

Instructions:

- Initiate all the participants to start the panel discussion
- All participants are requested to take part in the discussion as this is an open house discussion
- Ask them to give their views and suggestions
- Quickly write their responses and suggestions on the white board/flip chart and lead the discussion with the help of reference material or use power point presentation, if possible
- Keep track of time and wind up the session.

Tips for the Facilitators/Resource Persons:

- This session is important to make the participants understand their role with other stakeholders in the Act
- The panel discussion for this session will help the participants to know convergence and coordination issues with other stakeholders for the better implementation of the Act.
- Keep track of the time as it is an extensive session

Reference Material for Technical Session VIII

CONTENTS

Challenges for effective implementation and monitoring of POCSO Act/Rules, 2012 – coordination, support, compensation, legal aid to victims, etc

- Function of NCPCR under Section 44 of the Protection of Children from Sexual Offences (POCSO) Act and Rule 6 of POCSO Rules, 2012
- Challenges for effective implementation and monitoring
- Analysing the POCSO Act, 2012

Sharing of case examples / studies on violence against children and related strategies

- 6 case examples

Importance of advocacy - addressing societal attitudes and responses to gender issues and crimes against children etc.

An interface, in general, may be termed as:

1. surface regarded as the common boundary of two bodies, spaces, or phases
2. the facts, problems, considerations, theories, practices, etc., shared by two or more disciplines, procedures, or fields of study
3. a common boundary or interconnection between systems, equipment, concepts, or human beings
4. communication or interaction
5. a thing or circumstance that enables separate and sometimes incompatible elements to coordinate effectively

In this session we are going to discuss about the interface between the people belonging to different disciplines who have come together to share their views on the Act so that they can coordinate effectively for the better implementation of the Act.

Challenges for effective implementation and monitoring of POCSO Act / Rules, 2012 – coordination, support, compensation, legal aid to victims, etc

One of the functions of NCPCR is

Under Section 44 of the Protection of Children from Sexual Offences (POCSO) Act and Rule 6 of POCSO Rules, 2012:

Under the POCSO Act, the National Commission for Protection of Child Rights and the State Commissions for Protection of Child Rights have been vested with the responsibilities of:

- a) To monitor in the implementation of Protection of Children from Sexual Offences (POCSO) Act, 2012;
- b) to monitor the designation of Special Courts by State Governments;
- c) to monitor the appointment of Public Prosecutors by State Governments;
- d) to monitor the formulation of the guidelines described in section 39 of the Act by the State Governments, for the use of non-governmental organisations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child, and to monitor the application of these guidelines;
- e) to monitor the designing and implementation of modules for training police personnel and other concerned persons, including officers of the Central and State Governments, for the effective discharge of their functions under the Act;
- f) to monitor and support the Central Government and State Governments for the dissemination of information relating to the provisions of the Act through media including the television, radio and print media at regular intervals, so as to make the general public, children as well as their parents and guardians aware of the provisions of the Act;
- g) to call for a report on any specific case of child sexual abuse falling within the jurisdiction of a CWC;
- h) to collect information and data on its own or from the relevant agencies regarding reported cases of sexual abuse and their disposal under the processes established under the Act, including information on the following:-
 - i. number and details of offences reported under the Act;
 - ii. whether the procedures prescribed under the Act and rules were followed, including those regarding timeframes; Citizen's Charter of National Commission for Protection of Child Rights (2012-13)

- iii. details of arrangements for care and protection of victims of offences under this Act, including arrangements for emergency medical care and medical examination; and,
 - iv. details regarding assessment of the need for care and protection of a child by the concerned CWC in any specific case.
- i) To assess the implementation of the provisions of the Act and to include a report in a separate chapter in its Annual Report to the Parliament.
 - j) Conduct inquiries into matters relating to an offence under the Act

The Commissions must monitor the designation of Special Courts, appointment of Public Prosecutors, formulation of guidelines for use of NGOs, professionals and experts to be associated with the pre-trial and trial stage, dissemination of information about the Act through media to promote awareness among general public, children, parents and guardians.

The Commissions can also call for a report on any specific case of child sexual abuse falling within the jurisdiction of a CWC. While inquiring into matters relating to an offence under the Act, they can utilize the powers available to them under the Commissions for Protection of Child Rights Act, 2005. Post-inquiry, they can recommend to the government to initiate proceedings for prosecution, recommend interim relief, or make any other recommendations to effectively redress the matter. They can also approach the High Court or Supreme Court for orders, directions, or writs.

Challenges for effective implementation and monitoring

- The POCSO Act, 2012 widely looks into developing support system for the child through the existing machinery i.e. the Child Welfare Officer, CWC and the Commission and in providing child friendly atmosphere in the criminal justice system. The positive aspect of this Act is the appointment of the support person for the child who would assist the child during investigation, pretrial, trial and post trial procedure. The major challenge also would be convergence between different entities under different legislations. Secondly, the tug of war, would erupt as the Act makes it mandatory for all (including professionals) to report to Police about any offence defined under POCSO Act, 2012. The recent decision of the Cabinet in a bill to reduce the age of consent for sex to 16 years will mean that the protection given under this law to protect children from sexual crimes will also be or restricted to the children who are of age 16 years. There is a fear that this would end up taking away safeguards available to victims under the POCSO Act, especially girls in the 16-18 age bracket. The benefits of POCSO Act would trickle down to the child only if this Act implemented in its true sense and spirit by all the agencies.
- As per the norms, emergency medical care would be rendered in such a manner as to protect the privacy of the child, and in the presence of a parent or guardian, whom the child trusts. Moreover, no medical practitioner, hospital or other medical facility giving emergency medical care to a child can demand legal requisition or other documentation before providing care. Only registered medical practitioners would attend to the child for treatment for cuts, bruises and other injuries, including genital injuries. Emergency medical care should be provided for exposure to sexually transmitted diseases (STDs), including prophylaxis for identified STDs. According to the Act, necessary pregnancy and emergency contraceptives should be discussed with the child and her parent/guardian and wherever required, the child should be giving apt psychological counselling.

Analyzing the POSCO Act 2012

The Protection of Children from Sexual Offences (POCSO) Act, 2012 is applicable to the whole of India. The POCSO Act, 2012 defines a child as any person below the age of 18 years and provides protection to all children under the age of 18 years from sexual abuse. It also intends to protect the child through all stages of judicial process and gives paramount importance to the principle of "best interest of the child".

Penetrative and aggravated penetrative sexual assault, sexual and aggravated sexual assault, sexual harassment, and using a child for pornographic purposes are the five offences against children that are covered by this act. This act envisages punishing even abetment or an attempt to commit the offences defined in the act. It recognizes that the intent to commit an offence, even when unsuccessful needs to be penalized. The punishment for the attempt to commit is up to half the punishment prescribed for the commission of the offence.

This act suggests that 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 i.e. media personnel, staff of hotel/ lodges, hospitals, clubs, studios, or photographic facilities. Failure to report attracts punishment with imprisonment of up to six months or fine or both. It is now mandatory for police to register an FIR in all cases of child abuse. A child's statement can be recorded even at the child's residence or a place of his choice and should be preferably done by a female police officer not below the rank of sub-inspector.

As per this act, the child's medical examination can be conducted even prior to registration of an FIR. This discretion is left up to the Investigation Officer (IO). The IO has to get the child medically examined in a government hospital or local hospital within 24 hours of receiving information about the offence. This is done with the consent of the child or parent or a competent person whom the child trusts and in their presence.

Child Welfare Committees (CWCs) play a vital role under the POCSO Act, cases registered under this act need to be reported to the CWC within 24 hours of recording the complaint. The CWC should take into account the opinion of the child to decide on the case within three days and conclude whether the child should remain in an institution or be with the family. The CWC should nominate with the consent of the child, parent / guardian / other person who the child trusts, a support person to assist the child during the investigation and trial of the case.

The State Commissions for Protection of Child Rights (SCPCR) has been empowered and with the responsibility of monitoring the implementation of the provisions of the POCSO Act, 2012, to conduct inquiries and to report the activities undertaken under the POCSO Act, 2012, in its annual report. The commission is also empowered to call for a report on any specific case of child sexual abuse falling within the jurisdiction of a CWC. The commission can also recommend interim relief, or make recommendations to the state government to effectively redress the matter.

The rules laid down in this act also had defined a criteria of awarding the compensations by the special court that includes loss of educational and employment opportunities along with disability, disease or pregnancy as the consequence of the abuse. This compensation would be awarded at the interim stage as well as after the trial ends.

Some of the child-friendly procedures which are envisaged under the POCSO Act are as follows:-

- At night no child to be detained in the police station.
- The statement of the child to be recorded as spoken by the child.
- Frequent breaks for the child during trial.
- Child not to be called repeatedly to testify.

For offences under this act the burden of [proof](#) is shifted on the accused, keeping in view the vulnerability and innocence of children. To prevent misuse of the law, punishment has been provided for false complaints or false information with malicious intent.

The media has been barred from disclosing the identity of the child without the permission of the special court. The punishment for breaching this provision by media may be from six months to one year.

For speedy trial, the evidence of the child is to be recorded within a period of 30 days. Also, the Special Court is to complete the trial within one year.

The act casts duty on state to [spread](#) awareness to the [general public](#), of the provisions of this act through media i.e. television, radio and print at regular intervals.

Sharing of case examples / studies on violence against children and related strategies

Case Example 1

Child A - AGE 14 | Paravoor, Kerala

Occurred 2010 | **Convicted** in 2012

The nightmare began in 2010, when her father filmed this 14-year-old having a bath, and then raped her. After that, he pimped her out to customers across Kerala, before finally selling her. In the span of two years, she was raped by 148 people, of whom 102 were finally arrested and 19 given life sentences.

Case Example 2

Child B - AGE 13 | Delhi

Occurred 2012 | Accused out on bail

This thirteen-year-old came home from school with vaginal bleeding and vomit soaked clothes. Her principal's husband had been raping her, and had threatened to hang her from the fan if she told anyone. The medical examiner ruled out [rape](#) and registered a vague report, and only when local NGOs and political parties got involved did the case come to court.

Case Example 3

Child C - AGE 3 | Bhopal, Madhya Pradesh

Occurred 2012 | **Convicted** in 2013

He would [rape](#) his three-year-old daughter when his wife went to drop their five-year-old son to school. A compounder by profession, he knew how to [rape](#) his daughter in a manner that would cause minimal visible damage. The abuse only came to light when he was caught in the act. He was sentenced to 20 years in prison in January.

Case Example 4

Child D - AGE 7 | Mumbai, Maharashtra

Occurred 1988-99 | **Case never filed**

He was raped regularly between the age of seven and 18 by his uncle. His uncle became more sadistic as time went by, opening him up with tongs when he was not receptive, poking him with needles, inserting foreign objects into his anus. When he told his mother that he was bleeding, she dismissed it, saying he had been eating too many mangoes.

Case Example 5

Child E - AGE 8 | Bhopal, Madhya Pradesh

Occurred 2010 | **Convicted** in 2010

The eight-year-old was raped so brutally by her maternal uncle's 15-year-old son over three months that she had to be hospitalised with severe vaginal bleeding. Her younger sister was also raped. The girls told their mother about the abuse, but she tried to hush it up. They finally complained to their father, who lodged a police complaint. After an inquiry, the rapist was sent to a juvenile justice home.

Case Example 6

Child F – AGE 14 | Maliwada, Maharashtra

Occurred 2006 | **Convicted** in 2010

An auto rickshaw driver approached Child Line when his 14-year-old daughter went missing. It took three years to rescue the girl, during which she had been sold into prostitution and taken to various places in the state and Goa. After a four-year battle, 20 high-profile individuals, including politicians and traders, were sentenced to two life-terms each.

Importance of advocacy - addressing societal attitudes and responses to gender issues and crimes against children etc.

What is advocacy?

Advocacy is defined as any action that speaks in favour of, recommends, argues for a cause, supports or defends, or pleads on behalf of others. In short,

2. advocacy simply means actively supporting a cause, and trying to get others to support it as well.
3. advocacy is speaking up, drawing attention to an important issue and directing decision makers towards a solution.

Advocacy in all its forms seeks to ensure that people, particularly those who are most vulnerable in society, are able to:

- have their voice heard on issues that are important to them.
- defend and safeguard their rights.
- have their views and wishes genuinely considered when decisions are being made about their lives.

Advocacy is a process of supporting and enabling people to:

- express their views and concerns.
- access information and services.
- defend and promote their rights and responsibilities.
- explore choices and options

Purpose/Importance of Advocacy

- The purpose of advocacy as defined by UNFPA is to promote or reinforce a change in policy, programme or legislation.
- Rather than providing support directly to clients or users of services, advocacy aims at winning support from others, i.e. creating a supportive environment.

Issues for Advocacy

- Enhancing Gender Equity, Equality and Empowerment of Women
- Promoting Reproductive Health and Rights
- Population and Development Linkages
- Mobilizing and Monitoring Resources
- Violence against women
- Early marriage of girls
- Gender disparities in education
- Male responsibility
- Gender disaggregated data
- Unequal social and political participation
- Female economic empowerment
- The reproductive health approach
- Reproductive rights
- Maternal and newborn care
- STDs and HIV/AIDS
- Adolescent reproductive health
- RH in conflict situations
- Reorienting national population policies

- Strengthening national data systems
- Integrating population factors into development planning process
- Addressing needs of special population
- Achieving basic social services for all
- Ensuring government commitment
- Eliciting donor support
- Fostering community participation
- Encouraging private sector participation

Major areas of advocacy work

- Leadership development
- Coalition building
- Networking
- Political Lobbying
- Promoting legislative change
- Briefing media
- Counteracting opposition

Stakeholders of Advocacy

- Beneficiaries
- Decision makers
- Allies and partners
- Resistant groups (Adversaries)

Who is an advocate?

An advocate aims to empower a child or young person, and support them to have their say.

An advocate is someone who offers one-to-one support for a young person. They may give advice, raise the child's awareness about their rights, or speak up for the child and represent their views, wishes and feelings. They may simply provide a listening ear.

What the role means

'The role of the advocate has never been to promote the best interests of a child or young person. That is the role of all other professionals and adults in their lives.

'Advocacy is about empowerment. It is about supporting their views or presenting their views for them. It is NOT about pressurising, persuading or taking a course of action WITHOUT being mandated to do so by the child or young person concerned.

'In cases where a child/young person is unable to give instructions for whatever reason, then the best that an advocate can do is to put forward a rights-based perspective – which may or may not be in their perceived best interests.

What is advocacy in child care?

Child advocacy refers to a range of individuals, professionals and advocacy organizations who promote the optimal development of children. An individual or organization engaging in advocacy children's advocate typically represents or gives voice to an individual or group whose concerns and interests are not being heard. A child advocate will try to prevent children from being harmed and may try to obtain justice for those who have already been injured in some way. A child advocate may also seek to ensure that children have access to positive influences or services which will benefit their lives such as education, childcare and proper parenting. Malnutrition is another form of harm-there are many children who go to bed without eating and it is looked over by child welfare or the police.

Another form of child advocacy happens at the policy level and aims at changing the policies of governments or even transnational policies. These advocates do lobbying, policy research, file lawsuits and engage in other types of policy change techniques. Many use Internet based techniques to influence decision makers.

Child Advocacy is considered to be both a methodology, as well an ideology that provides the protection of the rights and freedoms entitled to children. A child, whose legal classification as a minor allows for a multitude of supplementary legislature and requirements with regard to both the institution and the assurance that children are not subjected to abuse, neglect, harm, injury, or exploitation; in essence, the act of advocating for children is considered to be one of the primary precepts within the institution of the protection of children.

Why do children need advocacy?

Children do not have political power. They have limited say in decisions affecting their lives and generally are unable to obtain redress when decisions are taken contrary to their best interests.

Children and young people are a relatively powerless group in society. Adults very often make significant decisions about children without consulting them or seeking to involve their participation in the decision making process. They are rarely informed or consulted about new laws and policies which will impact upon them. They are frequently denied rights and opportunities which other members of the community take for granted. Many laws treat children and young people not as people but as the property of their parents or as objects of concern. Many protectionist laws and policies are based on outdated paternalistic notions. There is a

considerable imbalance between children and young people and government agencies such as the police and schools.

Decisions are often made by professionals with children's views not being sought or, if ascertained being ignored or discounted. Children are the passive recipients of decisions made on their behalf by powerful adults. This has been described by Michael Freeman as "entrenched processes of domination" and by Penelope Leach as "benevolent authoritarianism" but, more simply, it is a modern day manifestation of the old adage "Children should be seen and not heard".

Children rely to a large extent on adults to speak on their behalf and protect their rights. The vulnerability of children tends to be reinforced by societal attitudes and legal processes.

Children need advocates, because they cannot look after their own interests. Parents are supposed to do this for them: some don't, or can't. Children aren't heard by many of the adults who make the decisions that affect them most — teachers and school administrators; governments who decide what resources will and won't be available to their families, or to the children themselves; by welfare workers, magistrates and by the police.

...children are grossly disadvantaged in protecting their interests, rights and freedoms. Our legal system denies them a voice — bullied into silence as witnesses, lost in care, expelled without recourse from schools, exploited and abused on the streets and in the systems designed to protect them. In principle children, as *people*, have the legal right and interest in having a say in decisions that are likely to affect them; children, as citizens, should have better access to the processes of government that directly affect them; children, as *human beings with social rights*, ought to have equal access to the law, and that the community has a duty to take their rights, and children seriously.

Children, who claimed that they were abused, assaulted, raped and imprisoned, were disbelieved: the systems did not permit them to speak and be heard. Institutions refused to accept that their staff could act so disgracefully. Police gave priority to "operational requirements", were unduly deferent to religious bodies and respectable men, and education and child protection systems were "slack". Children did not know and could not claim their rights, even their right to bodily integrity. They lacked institutional or any advocacy. That is the problem. Our social and legal systems do not legitimate child advocacy.

Many young people say that they do not have a sufficient voice in the legal processes affecting them. For example, in the Inquiry's survey of young people, 70% with experience of the juvenile justice system indicated that the magistrate or judge did not let them have a say in the case. Among those who had been involved in welfare proceedings, 62% did not know what was happening and 78% did not have enough say in the decisions made.

Even where there is a reasonable standard of services for children, advocacy plays an important role. One submission to this Inquiry spoke of the role of advocacy in 'humanising the bureaucracies' and assisting children and their families to navigate their way through the complex maze of bureaucratic processes to gain access to services.

Children require both systemic advocacy and advocacy as individuals. Children as a group are helped to take an active role in matters affecting all children through broad-based, systemic advocacy. Advocacy of individual children remains necessary and important. However, scrutiny and monitoring of government services and programmes, lobbying of government on behalf of

all children and dealing with complaints to ensure accountability have all become important advocacy functions.

Child Advocacy is considered to be of primary importance due to the fact that children are not considered to be responsible for their respective self-sufficiency. The classification of children as individuals who require [guardianship](#) in order to substantiate a sufficient quality of life is considered to be a facilitator for supplementary measures undertaken in order to provide protection from harm, in addition to the substantiation of the rights and entitlements granted to children.

Child Advocacy is considered to exist in tandem with the advocacy of human rights; however, the lack of presumed autonomy and agency latent within the classification of a child is perceived by many Child Advocacy groups and lobbies as a potential for exploitation – as a result, the implementation of Child Advocacy provides reinforced protection.

An expressed 'age of consent' implemented within areas of residence and respective jurisdictions provides for statutory legislation that prohibits the participation of children in events and activities presumed to require an elevated level of maturity and presumed experience; this activities include labor, administrative and procedural activity, and sexual activity - Child Advocacy [laws](#) serve to oversee the prevention of the exploitation of children with regard to such prohibited activities.

Child Advocacy protects the rights of children, which are considered to include the provision of safety, wellbeing, food, water, and shelter; furthermore, these rights express that children are entitled to the participation in community-based programs and the receipt of education.

The Goals of child Advocacy

While Child Advocacy groups aim to serve the best interest of children, these types of groups will primarily focus on the prevention of [abuse](#) and neglect suffered by children. The prevention of mistreatment including neglect, physical abuse, sexual abuse, emotional abuse, psychological abuse, and exploitation allows for the rights of children to be preserved, as well as availing children with legal and administrative institutions acting as advocates.

Children who have neither guardians nor a place of residence are considered to be targeted by individuals undertaking unlawful and illegal activity rooted in the exploitation of children for who are considered to be helpless and vulnerable.

Child Advocacy groups allow for the vast expanse of children to undergo the protection of rights and the prevention of harm; Child Advocacy groups exist on both governmental levels, as well as private levels.

Child Advocacy groups oftent work closely with [law](#) enforcement and legal officials with regard to an investigation involving a potential case of child abuse; these institutions may specialize in measures ranging from the provision of a new place of residence to the development of charities and programs for children.

The Importance of Child Advocacy Centers

Many may be unaware of the important work that child advocacy centers provide for our community. The typical notion is that once a child is suspected of being abused or neglected, they would be immediately directed to law enforcement. However, with an overwhelming amount of equally important cases, the police department is not always able to provide the unique and special care that it takes to protect a child.

For instance, the Georgia Center for Child Advocacy (GACFCA) is able to facilitate the needs of community's children. For over 25 years, GACFCA has provided numerous services to support the optimal development and well-being of children.

When a case of abuse or neglect is first reported, the GACFCA is able to immediately take action. Through a forensic interview and a child-friendly environment, the trained staff of GACFCA can work with children to make them feel comfortable disclosing their history of abuse. If the child has already disclosed a case of abuse, the GACFCA specialized clinicians will conduct an interview to be used as official evidence in developing a child's case.

The emotions that arise from abuse and neglect are life altering. Beyond obtaining justice, GACFCA works to ensure positive growth for the children we serve. Through therapy, a licensed professional works with victims helping them to heal after such a traumatic experience. In addition, GACFCA also provides family advocacy and therapy services to the non-offending caregiver, in order to preserve a positive family unit.

Through trainings and presentations, the GACFCA aspires to end child abuse and neglect, advocating for a better tomorrow. From Darkness to Light trainings to annual fundraisers, GACFCA hopes to shed light on a wide-spread epidemic of abuse, by informing the community to take notice and promoting action at both an individual and institutional level.

As you can see child advocacy centers, such as the GACFCA, are crucial to protecting children.

Advocacy as a supportive technique to help a client to handle their problems of social functioning effectively

Social workers do not use coercion or threats for changing client's behaviour. Nevertheless, the social worker does have the authority emanating from his/her own knowledge and skills, from the declared functions of the agency and from the society in general in terms of its sanction. Though it is in the form of unwritten authority, it has certain by-products that are advantageous. One by-product is the respect that is given to the social worker and the profession. There are people among the public who acknowledge the personalized service content of the social work and give credence to the reports and requests of social workers. There are times when social workers find it necessary to use advocacy. Advocacy involves making a request to a third person in support and on behalf of the client.

This session can also be utilized as an open house discussion. Any issue/problem which the participants may like to discuss can be discussed in this session. The facilitator may use his/her strategies as to how to conduct this session.

E. ANNEXURE

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

INTRODUCTION

Sexual Offences against children are not adequately addressed by the existing laws. A large number of such offences are neither specifically provided for nor are they adequately penalized. Such offences against children need to be defined explicitly and countered through adequate penalties as an effective deterrence. This Act provides for protection of children from offences of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and well being of children.

STATEMENT OF OBJECTS AND REASONS

Article 15 of the Constitution, *inter alia*, confers upon the State powers to make special provision for children. Further, article 39, *inter alia*, provides that the State shall in particular direct its policy towards securing that the tender age of children are not abused and their childhood and youth are protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity.

2. The United Nations Convention on the Rights of Children, ratified by India on 11th December, 1992, requires the State Parties to undertake all appropriate national, bilateral and multilateral measures to prevent (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; and (c) the exploitative use of children in pornographic performances and materials.

3. The data collected by the National Crime Records Bureau shows that there has been increase in cases of sexual offences against children. This is corroborated by the 'Study on Child Abuse; India 2007' conducted by the Ministry of Women and Child Development. Moreover, sexual offences against children are not adequately addressed by the existing laws. A large number of such offences are neither specifically provided for nor are they adequately penalized. The interests of the child, both as a victim as well as a witness, need to be protected. It is felt that offences against children need to be defined explicitly and countered through commensurate penalties as an effective deterrence.

4. It is, therefore, proposed to enact a self contained comprehensive legislation *inter alia* to provide for protection of children from the offense of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and well being of the child at every stage of the judicial process, incorporating child-friendly procedures for reporting, recording of evidence, investigation and trials of offense and provision for establishment of Special Court for speedy trial of such offences.

5. The Bill would contribute to enforcement of the right of all children to safety, security and protection from sexual abuse and exploitation.

6. The notes on clauses explain in details the various provisions contained in the Bill.

7. The Bill seeks to achieve the above objectives.

ACT 32 OF 2012

The Protection of Children from Sexual Offences Bill having been passed by both the Houses of Parliament received the assent of the President on 19th June, 2012, It came on the

Statute Book as THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 (32 OF 2012).

AMENDING ACT

The Criminal Law (Amendment) Act, 2013 (13 of 2013) (w.r.e.f. 3-2-2013).

**AMENDMENT TO THE PROTECTION OF
CHILDREN FROM SEXUAL OFFENCES
ACT, 2012 (32 OF 2012)**

BY

**THE CRIMINAL LAW (AMENDMENT)
ACT, 2013 (13 OF 2013)**

An Act further to amend the Indian Penal Code, the Code of Criminal Procedure, 1973, the Indian Evidence Act, 1872 and the Protection of Children from Sexual Offences Act, 2012.

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:-

CHAPTER I
PRELIMINARY

- 1. Short title and commencement.-** (1) This Act may be called the Criminal Law (Amendment) Act, 2013
(2) It shall be deemed to have come into force on the 3rd day of February, 2013.

CHAPTER V
**AMENDMENT TO THE PROTECTION OF CHILDREN
FROM SEXUAL OFFENCES ACT, 2012**

29. Substitution of new sections for section 42.-For section 42 of the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), the following sections shall be substituted, namely:-

*"42. Alternate punishment.-*Where an act or omission constitutes an offence punishable under this Act and also under section 166A, 354A, 354B, 354C, 354D, 370, 370A, 376, 376A, 376C, 376D, 376E or section 509 of the Indian Penal Code, then, notwithstanding anything contained in any law for the time being in force, this offender found guilty of such offence shall be liable to punishment under this Act or under the Indian Penal Code as provides for punishment which is greater in degree.

*42A. Act not in derogation of any other law.-*The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and , in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency."

**THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES
ACT, 2012
[No. 32 OF 2012]**

[19th June, 2012]

An Act to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected there with or incidental thereto.

WHEREAS clause (3) of article 15 of the Constitution, *inter alia*, empowers the State to make special provisions for children;

AND WHEREAS, the Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, which has prescribed a set of standards to be followed by all State parties in securing the best interests of the child;

AND WHEREAS it is necessary for the proper development of the child that his or her right to privacy and confidentiality be protected and respected by every person by all means and through all stages of a judicial process involving the child;

AND WHEREAS it is imperative that the law operates in a manner that the best interest and well being of the child are regarded as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child;

AND WHEREAS the State parties to the Convention on the Rights of the Child are required to undertake all appropriate national, bilateral and multilateral measures to prevent-

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity
- (b) the exploitative use of children in prostitution or other unlawful sexual practices;
- (c) the exploitative use of children in pornographic performances and materials;

AND WHEREAS sexual exploitation and sexual abuse of children are heinous crimes and need to be effectively addressed.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:-

**CHAPTER 1
PRELIMINARY**

1. Short title, extent and commencement. - (1) This Act may be called the Protection of Children from Sexual Offences Act, 2012.

(2) It extends to the whole of India, except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions. - (1) In this Act, unless the context otherwise requires, -

(a) "aggravated penetrative sexual assault" has the same meaning as assigned to it in section 5;

(b) "aggravated sexual assault" has the same meaning as assigned to it in section 9;

- (c) "armed forces or security forces" means armed forces of the Union or security forces or police forces, as specified in the Schedule;
- (d) "child" means any person below the age of eighteen years;
- (e) "domestic relationship" shall have the same meaning as assigned to it in clause V) of section 2 of the Protection of Women from Domestic Violence Act, 2005;
- (f) "penetrative sexual assault" has the same meaning as assigned to it in section 3;
- (g) "prescribed" means prescribed by rules made under this Act;
- (h) "religious institution" shall have the same meaning as assigned to it in the Religious Institutions (Prevention of Misuse) Act, 1988;
- (i) "sexual assault" has the same meaning as assigned to it in section 7;
- (j) "sexual harassment" has the same meaning as assigned to it in section 11;
- (k) "shared household" means a household where the person charged with the offence lives or has lived at any time in a domestic relationship with the child;
- (l) "Special Court" means a court designated as such under section 28;
- (m) "Special Public Prosecutor" means a Public Prosecutor appointed under section 32.

(2) The words and expressions used herein and not defined but defined in the Indian Penal Code, the Code of Criminal Procedure, 1973, the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Information Technology Act, 2000 shall have the meanings respectively assigned to them in the said Codes or the Acts.

CHAPTER II

SEXUAL OFFENCES AGAINST CHILDREN

A.- PENETRATIVE SEXUAL ASSAULT AND PUNISHMENT THEREFOR

3. Penetration sexual assault.—A person is said to commit "penetrative sexual assault" if-

- (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with **him** or any other person; or
- (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or **anus** of the child or makes the child to do so with him or any other person; or
- (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or
- (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

4. Punishment for penetrative sexual assault.—Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.

B. – Aggravated Penetrative Sexual Assault And Punishment Therefore

5. Aggravated penetrative sexual assault.-(a) Whoever, being a police officer, commits penetrative sexual assault on a child—

- (i) within the limits of the police station or premises at which he is appointed; or
 - (ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or
 - (iii) in the course of his duties or otherwise; or
 - (iv) where he is known as, or identified as, a police officer; or
- (b)** whoever being a member of the armed forces or security forces commits penetrative sexual assault on a child-
- (i) within the limits of the area to which the person is deployed; or
 - (ii) in any areas under the command of the forces or armed forces; or
 - (iii) in the course of his duties or otherwise; or
 - (iv) where the said person is known or identified as a member of the security or armed forces; or
- (c) whoever being a public servant commits penetrative sexual assault on a child; or
- (d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or
- (e) whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or
- (f) whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution; or
- (g) whoever commits gang penetrative sexual assault on a child.

Explanation.-When a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

- (h) whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or
- (i) whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or
- (j) whoever commits penetrative sexual assault on a child, which-
 - (i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (b) of section 2 of the Mental Health Act, 1987 or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or

- (ii) in the case of female child, makes the child pregnant as a consequence of sexual assault;
- (iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or
- (k) whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or
- (l) whoever commits penetrative sexual assault on the child more than once or repeatedly; or
- (m) whoever commits penetrative sexual assault on a child below twelve years; or
- (n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or
- (o) whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or
- (p) whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or
- (q) whoever commits penetrative sexual assault on a child knowing the child is pregnant; or
- (r) whoever commits penetrative sexual assault on a child and attempts to murder the child; or
- (s) whoever commits penetrative sexual assault on a child in the course of communal or sectarian violence; or
- (t) whoever commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or
- (u) whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public,

is said to commit aggravated penetrative sexual assault.

6. Punishment for aggravated penetrative sexual assault.—Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.

C.-Sexual Assault And Punishment Therefore

7. Sexual Assault.—Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

8. Punishment for sexual assault.—Whoever, commits sexual assault, shall be punished with imprisonment of either description 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.

D.—Aggravated Sexual Assault And Punishment Therefore

9. Aggravated Sexual Assault.—(a) Whoever, being a police officer, commits sexual assault on a child--

- (i) within the limits of the police station or premises where he is appointed; or
- (ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or
- (iii) in the course of his duties or otherwise; or
- (iv) where he is known as, or identified as a police officer; or

(b) whoever, being a member of the armed forces or security forces, commits sexual assault on a child-

- (i) within the limits of the area to which the person is deployed; or
- (ii) in any areas under the command of the security or armed forces; or
- (iii) in the course of his duties or otherwise; or
- (iv) where he is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits sexual assault on a child; or

(d) whoever being on the management or on the staff of a jail, or remand home or protection home or observation home, or other place of custody or care and protection established by or under any law for the time being in force commits sexual assault on a child being inmate of such jail or remand home or protection home or observation home or other place of custody or care and protection; or

(e) whoever being on the management or staff of a hospital, whether Government or private, commits sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution or religious institution, commits sexual assault on a child in that institution; or

(g) whoever commits gang sexual assault on a child.

Explanation.—When a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

(h) whoever commits sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) whoever commits sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

(j) whoever commits sexual assault on a child, which-

- (i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (l) of section 2 of the Mental Health **Act**, 1987 or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or
- (ii) inflicts the child with Human Immunodeficiency Virus or **any** other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or

- (k) whoever, taking advantage of a child's mental or physical disability, commits sexual assault on the child; or
 - (l) whoever commits sexual assault on the child more than once or repeatedly; or
 - (m) whoever commits sexual assault on a child below twelve years; or
 - (n) whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or household with the child, commits sexual assault on such child; or
 - (o) whoever, being in the ownership or management or staff, of any institution providing services to the child, commits sexual assault on the child in such institution; or
 - (p) whoever, being in a position of trust or authority of a child, commits sexual assault on the child in an institution or home of the child or anywhere else; or
 - (q) whoever commits sexual assault on a child knowing the child is pregnant; or
 - (r) whoever commits sexual assault on a child and attempts to murder the child; or
 - (s) whoever commits sexual assault on a child in the course of communal or sectarian violence; or
 - (t) whoever commits sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or
 - (u) whoever commits sexual assault on a child and makes the child to strip or parade naked in public,
- is said to commit aggravated sexual assault.

10. Punishment for aggravated sexual assault.—Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description 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.

E.-Sexual Harassment And Punishment Therefor

11. Sexual harassment.—A person is said to commit sexual harassment upon a child when such person with sexual intent,-

- (i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or
- (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or
- (iii) shows any object to a child in any form or media for pornographic purposes; or
- (iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or
- (v) 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 the involvement of the child in a sexual act; or
- (vi) entices a child for pornographic purposes or gives gratification therefor.

Explanation.—Any question which involves "sexual intent "shall be a question of fact.

12. Punishment for sexual harassment.—Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall be liable to fine.

CHAPTER III

USING CHILD FOR PORNOGRAPHIC PURPOSES AND PUNISHMENT THEREFOR

13. Use of child for pornographic purpose.—Whoever, uses a child in any form of media (including programme or advertisement telecast by television channels or internet or any other electronic form or printed form, whether or not such programme or advertisement is intended for personal use or for distribution), for the purposes of sexual gratification, which includes--

- (a) representation of the sexual organs of a child;
- (b) usage of a child engaged in real or simulated sexual acts (with or without penetration);
- (c) the indecent or obscene representation of a child,

shall be guilty of the offence of using a child for pornographic purposes.

Explanation.—For the purposes of this section, the expression "use a child" shall include involving a child through any medium like print, electronic, computer or any other technology for preparation, production, offering, transmitting, publishing, facilitation and distribution of the pornographic material.

14. Punishment for using child for pornographic purposes.—(1) Whoever, uses a child or children for pornographic purposes shall be punished with imprisonment of either description which may extend to five years and shall also be liable to fine and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also be liable to fine .

(2) If the person using the child for pornographic purposes commits an offence referred to in section 3, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(3) If the person using the child for pornographic purposes commits an offence referred to in section 5, by directly participating in pornographic acts, he shall be punished with rigorous imprisonment for life and shall also be liable to fine.

(4) If the person using the child for pornographic purposes commits an offence referred to in section 7, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than six years but which may extend to eight years, and shall also be liable to fine.

(5) If the person using the child for pornographic purposes commits an offence referred to in section 9, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than eight years but which may extend to ten years, and shall also be liable to fine.

15. Punishment for storage of pornographic material involving child.—Any person, who stores, for commercial purposes any pornographic material in any form involving a child shall be punished with imprisonment of either description which may extend to three years or with fine or with both.

CHAPTER IV

ABETMENT OF AND ATTEMPT TO COMMIT AN OFFENCE

16. Abetment of an offence. – A person abets an offence, who-

First.—Instigates any person to do that offence; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that offence, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that offence; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that offence.

Explanation I.—A person who, by willful misrepresentation, or by willful; concealment of a material fact, which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure a thing to be done, is said to instigate the doing of that offence.

Explanation II.—Whoever, either prior to or at the time of commission of an act, does any thing in order to facilitate the commission of that act, and there by facilitates the commission thereof, is said to aid the doing of that act.

Explanation III.—Whoever employ, harbours, receives or transports a child, by means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position, vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of any offence under this Act, is said to aid the doing of that act.

17. Punishment for abetment.—Whoever abets any offence under this Act, if the act abetted is committed in consequence of the abetment, shall be punished with punishment provided for that offence.

Explanation II.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy or with the aid, which constitutes the abetment.

18. Punishment for attempt to commit an offence.—Whoever attempts to commit any offence punishable under this Act or to cause such an offence to be committed, and in such attempt, does any act towards the commission of the offence, shall be punished with imprisonment of any description provided for the offence, for: a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest terms imprisonment provided for that offence or with time or with both.

CHAPTER V PROCEDURE FOR REPORTING OF CASES

19. Reporting of offences.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), 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, he shall provide such information to,—

- (a) the Special Juvenile Police Unit, or
- (b) the local police.

(2) Every report given under sub-section (1) shall be—

- (a) ascribed an entry number and recorded in writing;
- (b) be read over to the informant;
- (c) shall be entered in a book to be kept by the Police Unit.

(3) Where the report under sub-section (1) is given by a child, the same shall be recorded under sub-section (2) in a simple language so that the child understands contents being recorded.

(4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same.

(5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection (including admitting the child into shelter home or to the nearest hospital) within twenty-four hours of the report, as may be prescribed.

(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.

(7) No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub-section (1).

20. Obligation of media, studio and photographic facilities to report cases.—Any personnel of the media or hotel or lodge or hospital or club or studio or photographic facilities, by whatever name called, irrespective of the number of persons employed therein, shall, on coming across any material or object which is sexually exploitative of the child (including pornographic, sexually-related or making obscene representation of a child or children) through the use of any medium, shall provide such information to the Special Juvenile Police Unit, or to the local police, as the case may be.

21. Punishment for failure to report or record a case.—(1) Any person, who fails to report the commission of an offence under sub-section (1) of section 19 or section 20 or who fails to record such offence under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

(2) Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.

(3) The provisions of sub-section (1) shall not apply to a child under this Act.

22. Punishment for false complaint or false information.—(1) Any person, who makes false complaint or provides false information against any person, in respect of an offence committed under sections 3, 5, 7 and section 9, solely with the intention to humiliate, extort or threaten or defame him, shall be punished with imprisonment for a term which may extend to six months or with fine or with both.

(2) Where a false complaint has been made or false information has been provided by a child, no punishment shall be imposed on such child.

(3) Whoever, not being a child, makes a false complaint or provides false information against a child, knowing it to be false, thereby victimizing such child in any of the offences under this Act, shall be punished with imprisonment which may extend to one year or with fine or with both.

23. Procedure for media.—(1) No person shall make any report or present comments on any child form of media or studio or photographic facilities without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy.

(2) No reports in any media shall disclose, the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child:

Provided that for reasons to be recorded in writing, the Special Court, competent to try the case under the Act, may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

(3) The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omissions of his employee.

(4) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be liable to be punished with imprisonment of either description for a period which shall not be less than six months but which may extend to one year or with fine or with both.

CHAPTER VI

PROCEDURES FOR RECORDING STATEMENT OF THE CHILD

24. Recording of statement of a child.—(1) The statement of the child shall be recorded at the residence of the child or at a place where he usually resides or at the place of his choice and as far as practicable by a woman police officer not below the rank of sub-inspector.

(2) The police officer while recording the statement of the child shall not be in uniform.

(3) The police officer making the investigation, shall while examining the child, ensure that at no point of time the child come in the contact in any way with the accused.

(4) No child shall be detained in the police station in the night for any reason.

(5) The police officer shall ensure that the identity of the child is protected from the public media, unless otherwise directed by the Special Court in the interest of the child.

25. Recording of statement of a child by Magistrate.—(1) If the statement of the child is being recorded under section 164 of the Code of Criminal Procedure, 1973 (2 of 1974) (herein referred to as the Code), the Magistrate recording such statements shall, notwithstanding anything contained therein, record the statement as spoken by the child:

Provided that the provisions contained in the first proviso to sub-section (1) of section 164 of the Code shall, so far it permits the presence of the advocate of the accused shall not apply in this case.

(2) The Magistrates shall provide to the child and his parents or his representative, a copy of the document specified under section 207 of the Code, upon the final report being filed by the police under section 173 of that Code.

26. Additional provisions regarding statement to be recorded.—(1) The Magistrate or the police officer, as the case may be, shall record the statement as spoken by the child in the presence of the parents of the child or any other person in whom the child has trust or confidence.

(2) Wherever necessary, the Magistrate or the police officer, as the case may be, may take the assistance of a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, while recording the statement of the child.

(3) The Magistrate or the police officer, as the case may be, may, in the case of a child having a mental or physical disability, seek the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed, to record the statement of the child.

(4) Wherever possible, the Magistrate or the police officer, as the case may be, shall ensure that the statement of the child is also recorded by audio-video electronic means.

27. Medical examination of a child.—(1) The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a First information Report or complaint has not been registered for the offences under this Act, be conducted in accordance with section 164A of the Code of Criminal Procedure, 1973

(2) In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.

(3) The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.

(4) Where, in case the parent of the child or other person referred to in sub-section (3) cannot be present, for any reason, during the medical examination of the child, the medical examination shall be conducted in the presence of a woman nominated by the head of the medical institution.

CHAPTER VII **SPECIAL COURTS**

28. Designation of Special Courts.—(1) For the purposes of providing a speedy trial, the State Government shall in Consultation with the Chief Justice of the High Court ,by notification in the Official Gazette, Designate for each district, a Court of Session to be a Special Court to try the offence under the Act:

Provided that if a Court of Session is notified as a children's court under the Commissions for Protection of Child Rights Act, 2005 or a Special Court designated for similar purposes under any other law for the time being in force, then, such court shall be deemed to be a Special Court under this section.

(2) While trying an offence under this Act, a Special Court shall also try an offence [other than the offence referred to in sub-section (1)] ,with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

(3) The Special Court constituted under this Act, notwithstanding anything in the Information Technology Act, 2000, shall have jurisdiction to try offences under section 67B of that Act in so far as it relates to publication or transmission of sexually explicit material depicting children in any act, or conductor manner or facilitates abuse of children online.

29. Presumption as to certain offences. —Where a person is prosecuted for committing or abetting or attempting to commit any offence under section 3,5,7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be ,unless the contrary is proved.

30. Presumption of culpable mental state.—(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation.—In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

31. Application of Code of Criminal Procedure, 1973 to proceedings before a Special Court.—Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.

32. Special Public Prosecutors.—(1) The State Government shall, by notification in the Official Gazette, appoint a Special Public Prosecutor for every Special Court for conducting cases only under the provisions of this Act.

(2) A person shall be eligible to be appointed as a Special Public Prosecutor under sub-section (1) only if he had been in practice for not less than seven years as an advocate.

(3) Every person appointed as a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 (2 of 1974) and provision of that Code shall have effect accordingly.

CHAPTER VIII

PROCEDURE AND POWERS OF SPECIAL COURTS AND RECORDING OF EVIDENCE

33. Procedure and powers of Special Court.—(1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.

(2) The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.

(3) The Special Court may, if it considers necessary, permit frequent breaks for the child during the trial.

(4) The Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court.

(5) The Special Court shall ensure that the child is not called repeatedly to testify in the court.

(6) The Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial.

(7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial:

Provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

Explanation.—For the purposes of this sub-section, the identity of the child shall include the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed.

(8) In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.

(9) Subject to the provisions of this Act, a Special Court shall, for the purpose of the trial of any offence under this Act, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, and as far as may be, in accordance with the procedure specified in the Code of Criminal Procedure, 1973 (2 of 1974) for trial before a Court of Session.

34. Procedure in case of commission of offence by child and determination of age by Special Court.—(1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000).

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.

(3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section(2) was not the correct age of that person.

35. Period for recording of evidence of child and disposal of case.—(1) The evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court.

(2) The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.

36. Child not to see accused at the time of testifying.—(1) The Special Court shall ensure that the child is not exposed in any way to the accused at the time of recording of the evidence, while at the same time ensuring that the accused is in a position to hear the statement of the child and communicate with his advocate.

(2) For the purposes of sub-section (1), the Special Court may record the statement of a child through video conferencing or by utilizing single visibility mirrors or curtains or any other device.

37. Trials to be conducted in camera.—The Special Court shall try cases in *camera* and in the presence of the parents of the child or any other person in whom the child has trust or confidence:

Provided that where the Special Court is of the opinion that the child needs to be examined at a place other than the court, it shall proceed to issue a commission in accordance with the provisions of section 284 of the Code of Criminal Procedure, 1973 (2 of 1974).

38. Assistance of an interpreter or expert while recording evidence of child.—(1) Wherever necessary, the Court may take the assistance of a translator or interpreter having such qualifications, experience and on payment of such fees as may be prescribed, while recording the evidence of the child.

(2) If a child has a mental or physical disability, the Special Court may take the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed to record the evidence of the child.

CHAPTER IX MISCELLANEOUS

39. Guidelines for child to take assistance of experts, etc.—Subject to such rules as may be made in this behalf, the State Government shall prepare guidelines for use of non-governmental organisation, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child.

40. Right of child to take assistance of legal practitioner.—Subject to the provision to section 301 of the Code of Criminal Procedure, 1973 (2 of 1974) the family or the guardian of the child shall be entitled to the assistance of a legal counsel of their choice for any offence under this Act:

Provided that if the family or the guardian of the child are unable to afford a legal counsel, the Legal Services Authority shall provide a lawyer to them.

41. Provisions of sections 3 to 13 not to apply in certain cases.—The provisions of sections 3 to 13 (both inclusive) shall not apply in case of medical examination or medical treatment of a child when such medical examination or medical treatment is undertaken with the consent of his parents or guardian.

1[42. Alternate punishment.—Where an act or omission constitute an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376C, 376D, 376E or section 509 of the Indian Penal Code (45 of 1860), then notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under such law or this Act as provides for punishment which is greater in degree].

2[42A. Act not in derogation of any other law. —The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.]

43. Public awareness about Act.—(1) The Central Government and every State Government, shall take all measures to ensure that--

- (a) the provisions of this Act are given wide publicity through media including the television, radio and the print media at regular intervals to make the general, public, children as well as their parents and guardians aware of the provisions of this Act;
- (b) the officers of the Central Government and the State Governments and other concerned persons (including the police officers) are imparted periodic training on the matters relating to the implementation of the provisions of the Act

44. Monitoring of implementation of Act.—(1) The National Commission for Protection of Child Rights constituted under section 3, or as the case may be, the State Commission for Protection of Child Rights constituted under section 17, of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) ,shall, in addition to the functions assigned to them under that Act, also monitor the implementation of the provisions of this Act in such manner as may be prescribed.

(2) The National Commission or, as the case may be, the State Commission, referred to in sub-section (1) shall, while inquiring into any matter relating to any offence under this Act, have the same powers as are vested in it under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006).

(3) The National Commission or, as the case may be, the State Commission, referred to in sub-section (1), shall, also include, its activities under this section, in the annual report referred to in section 16 of the Commissions for Protection of Child Rights Act, 2005.

45. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

- (a) the qualifications and experience of, and the fees payable to, a translator or an interpreter, a special educator or any person familiar with the manner of communication of the children an expert in that field, under sub-section(4) of section 19; sub-sections (2) and(3) of section 26 and section 38;
- (b) care and protection and emergency medical treatment of the child under sub-section (5) of section 19;
- (c) the payment of compensation under sub-section (8) of section 33;
- (d) the manner of periodic monitoring of the provisions of the Act under sub-section (l) of section 44.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

46. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for removal of the difficulty:

Provided that no order shall be made under this section after the expiry of the period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

THE SCHEDULE

[See section 2(c)]

ARMED FORCES AND SECURITY FORCES CONSTITUTED UNDER

- (a) The Air Force Act, 1950(45 of 1950);
- (b) The Army Act, 1950 (46 of 1950);
- (c) The Assam Rifles Act, 2006(47 of 2006);
- (d) The Bombay Home Guard Act, 1947(3 of 1947);
- (e) The Border Security Force Act, 1968(47 of 1968);
- (f) The Central Industrial Security Force Act, 1968(50 of 1968);
- (g) The Central Reserve Police Force Act, 1949 (66 of 1949);
- (h) The Coast Guard Act, 1978(30 of 1978);
- (i) The Delhi Special Police Establishment Act, 1946(25 of 1946);
- (j) The Indo-Tibetan Border Police Force Act, 1992 (35 of 1992);
- (k) The Navy Act, 1957(62 of 1957);
- (l) The National Investigation Agency Act, 2008(34 of 2008);
- (m) The National Security Guard Act, 1986 (47 of 1986);
- (n) The Railway Protection Force Act, 1957 (23 of 1957);
- (o) The Sashastra Seema Bal Act, 2007(53 of 2007);
- (p) The Special Protection Group Act, 1988 (34 of 1988);
- (q) The Territorial Army Act, 1948(56 of 1948);
- (r) The State police forces (including armed constabulary) constituted under the State laws to aid the civil powers of the State and empowered to employ force during internal disturbances or otherwise including armed forces as defined in clause (a) of section 2 of the Armed Forces (Special Powers) Act, 1958(28 of 1958).

Y K. BHASIN,
Secretary to the Govt. of India.

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES RULES, 2012¹

In exercise of the powers conferred by sub-section (1), read with clauses (a) to (d) of sub-section (2), of section 45 of the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), the Central Government hereby makes the following rules, namely –

1. Short title and commencement – (1) These rules may be called the Protection of Children from Sexual Offences Rules, 2012.

(2) These rules shall come into force on the date of their publication in the Official Gazette.

2. Definitions – (1) In these rules, unless the context otherwise requires, -

- (a) “Act” means the Protection of Children from Sexual Offences Act, 2012 (32 of 2012);
- (b) “District Child Protection Unit” (DCPU) means the District Child Protection Unit established by the State Government under section 62A of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006;
- (c) “Expert” means a person trained in mental health, medicine, child development or other related discipline, who may be required to facilitate communication with a child whose ability to communicate has been affected by trauma, disability or any other vulnerability;
- (d) “Special educator” means a person trained in communication with children with special needs in a way that addresses the child’s individual differences and needs, which include challenges with learning and communication, emotional and behavioural disorders, physical disabilities, and developmental disorders;
- (e) “Person familiar with the manner of communication of the child” means a parent or family member of a child or a member of his shared household or any person in whom the child reposes trust and confidence, who is familiar with that child’s unique manner of communication, and whose presence may be required for or be conducive to more effective communication with the child;
- (f) “Support person” means a person assigned by a Child Welfare Committee, in accordance with sub-rule (8) of rule 4, to render assistance to the child through the process of investigation and trial, or any other person assisting the child in the pre-trial or trial process in respect of an offence under the Act;

(2) Words and expressions used and not defined in these rules but defined in the Act shall have the meanings respectively assigned to them under the Act.

3. Interpreters, translators and Special educators – (1) In each district, the DCPU shall maintain a register with names, addresses and other contact details of interpreters, translators and special educators for the purposes of the Act, and this register shall be made available to the Special Juvenile Police Unit (hereafter referred to as “SJPU”), local police, magistrate or Special Court, as and when required.

(2) The qualifications and experience of the interpreters, translators, Special educators, and experts, engaged for the purposes of sub-section (4) of section 19, sub-sections (3) and (4) of section 26 and section 38 of the Act, shall be as indicated in these rules.

(3) Where an interpreter, translator, or Special educator is engaged, otherwise than from the list maintained by the DCPU under sub-rule (1), the requirements prescribed under sub-rules (4) and (5) of this rule may be relaxed on evidence of relevant experience or formal education or training or demonstrated proof of fluency in the relevant languages by the interpreter, translator, or special educator, subject to the satisfaction of the DCPU, Special Court or other authority concerned.

(4) Interpreters and translators engaged under sub-rule (1) should have functional familiarity with language spoken by the child as well as the official language of the state, either by virtue of such language being his mother tongue or medium of instruction at school at least up to primary school level, or by the interpreter or translator having acquired knowledge of such language through his vocation, profession, or residence in the area where that language is spoken.

(5) Sign language interpreters, Special educators and experts entered in the register under sub-rule (1) should have relevant qualifications in sign language or special education, or in the case of an expert, in the relevant discipline, from a recognized University or an institution recognized by the Rehabilitation Council of India.

(6) Payment for the services of an interpreter, translator, Special educator or expert whose name is enrolled in the register maintained under sub-rule (1) or otherwise, shall be made by the State Government from the Fund maintained under section 61 of the Juvenile Justice Act, 2000, or from other funds placed at the disposal of the DCPU, at the rates determined by them, and on receipt of the requisition in such format as the State Government may prescribe in this behalf.

(7) Any preference expressed by the child at any stage after information is received under sub-section (1) of section 19 of the Act, as to the gender of the interpreter, translator, Special educator, or expert, may be taken into consideration, and where necessary, more than one such person may be engaged in order to facilitate communication with the child.

(8) The interpreter, translator, Special educator, expert, or person familiar with the manner of communication of the child engaged to provide services for the purposes of the Act shall be unbiased and impartial and shall disclose any real or perceived conflict of interest. He shall render a complete and accurate interpretation or translation without any additions or omissions, in accordance with section 282 of the Code of Criminal Procedure, 1973.

(9) In proceedings under section 38, the Special Court shall ascertain whether the child speaks the language of the court adequately, and that the engagement of any interpreter, translator, Special educator, expert or other person familiar with the manner of communication of the child, who has been engaged to facilitate communication with the child, does not involve any conflict of interest.

(10) Any interpreter, translator, Special educator or expert appointed under the provisions of the Act or its rules shall be bound by the rules of confidentiality, as described under section 127 read with section 126 of the Indian Evidence Act, 1872.

4. Care and Protection – (1) Where an SJPU or the local police receives any information under sub-section (1) of section 19 of the Act from any person including the child, the SJPU or local police receiving report of such information shall forthwith disclose to the person making the report, the following details:-

- (i) his name and designation;
- (ii) the address and telephone number;
- (iii) the name, designation and contact details of the officer who supervises the officer receiving the information.

(2) Where an SJPU or the local police, as the case may be, receives information in accordance with the provisions contained under sub-section (1) of section 19 of the Act in

respect of an offence that has been committed or attempted or is likely to be committed, the authority concerned shall, where applicable, -

- (a) proceed to record and register a First Information Report as per the provisions of section 154 of the Code of Criminal Procedure, 1973, and furnish a copy thereof free of cost to the person making such report, as per sub-section (2) of section 154 of the Code;
- (b) where the child needs emergency medical care as described under sub-section (5) of section 19 of the Act or under these rules, arrange for the child to access such care, in accordance with rule 5;
- (c) take the child to the hospital for the medical examination in accordance with section 27 of the Act;
- (d) ensure that the samples collected for the purposes of the forensic tests are sent to the forensic laboratory at the earliest;
- (e) inform the child and his parent or guardian or other person in whom the child has trust and confidence of the availability of support services including counselling, and assist them in contacting the persons who are responsible for providing these services and relief;
- (f) inform the child and his parent or guardian or other person in whom the child has trust and confidence as to the right of the child to legal advice and counsel and the right to be represented by a lawyer, in accordance with section 40 of the Act.

(3) Where the SJPU or the local police receives information under sub-section (1) of section 19 of the Act, and has a reasonable apprehension that the offence has been committed or attempted or is likely to be committed by a person living in the same or shared household with the child, or the child is living in a child care institution and is without parental support, or the child is found to be without any home and parental support, the concerned SJPU, or the local police shall produce the child before the concerned Child Welfare Committee (hereafter referred to as "CWC") within 24 hours of receipt of such report, together with reasons in writing as to whether the child is in need of care and protection under sub-section (5) of section 19 of the Act, and with a request for a detailed assessment by the CWC.

(4) Upon receipt of a report under sub-rule (3), the concerned CWC must proceed, in accordance with its powers under sub-section (1) of section 31 of the Juvenile Justice Act, 2000, to make a determination within three days, either on its own or with the assistance of a social worker, as to whether the child needs to be taken out of the custody of his family or shared household and placed in a children's home or a shelter home.

(5) In making determination under sub-rule (4), the CWC shall take into account any preference or opinion expressed by the child on the matter, together with the best interests of the child, having regard to the following considerations:

- (i) the capacity of the parents, or of either parent, or of any other person in whom the child has trust and confidence, to provide for the immediate care and protection needs of the child, including medical needs and counselling;
- (ii) the need for the child to remain in the care of his parent, family and extended family and to maintain a connection with them;
- (iii) the child's age and level of maturity, gender, and social and economic background
- (iv) disability of the child, if any;
- (v) any chronic illness from which a child may suffer;

- (vi) any history of family violence involving the child or a family member of the child; and,
- (vii) any other relevant factors that may have a bearing on the best interests of the child:

Provided that prior to making such determination, an inquiry shall be conducted in such a way that the child is not unnecessarily exposed to injury or inconvenience.

(6) The child and his parent or guardian or any other person in whom the child has trust and confidence and with whom the child has been living, who is affected by such determination, shall be informed that such determination is being considered.

(7) The CWC, on receiving a report under sub-section (6) of section 19 of the Act or on the basis of its assessment under sub-rule (5), and with the consent of the child and his parent or guardian or other person in whom the child has trust and confidence, may provide a support person to render assistance to the child through the process of investigation and trial. Such support person may be a person or organisation working in the field of child rights or child protection, or an official of a children's home or shelter home having custody of the child, or a person employed by the DCPU:

Provided that nothing in these rules shall prevent the child and his parents or guardian or other person in whom the child has trust and confidence from seeking the assistance of any person or organisation for proceedings under the Act.

(8) The support person shall at all times maintain the confidentiality of all information pertaining to the child to which he has access. He shall keep the child and his parent or guardian or other person in whom the child has trust and confidence, informed as to the proceedings of the case, including available assistance, judicial procedures, and potential outcomes. He shall also inform the child of the role he may play in the judicial process and ensure that any concerns that the child may have, regarding his safety in relation to the accused and the manner in which he would like to provide his testimony, are conveyed to the relevant authorities.

(9) Where a support person has been provided to the child, the SJPU or the local police shall, within 24 hours of making such assignment, inform the Special Court in writing.

(10) The services of the support person may be terminated by the CWC upon request by the child and his parent or guardian or person in whom the child has trust and confidence, and the child requesting the termination shall not be required to assign any reason for such request. The Special Court shall be given in writing such information.

(11) It shall be the responsibility of the SJPU, or the local police to keep the child and his parent or guardian or other person in whom the child has trust and confidence, and where a support person has been assigned, such person, informed about the developments, including the arrest of the accused, applications filed and other court proceedings.

(12) The information to be provided by the SJPU, local police, or support person, to the child and his parents or guardian or other person in whom the child has trust and confidence, includes but is not limited to the following:-

- (i) the availability of public and private emergency and crisis services;
- (ii) the procedural steps involved in a criminal prosecution;
- (iii) the availability of victims' compensation benefits;
- (iv) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;
- (v) the arrest of a suspected offender;
- (vi) the filing of charges against a suspected offender;

- (vii) the schedule of court proceedings that the child is either required to attend or is entitled to attend;
- (viii) the bail, release or detention status of an offender or suspected offender;
- (ix) the rendering of a verdict after trial; and
- (x) the sentence imposed on an offender.

5. Emergency medical care – (1) Where an officer of the SJPU, or the local police receives information under section 19 of the Act that an offence under the Act has been committed, and is satisfied that the child against whom an offence has been committed is in need of urgent medical care and protection, he shall, as soon as possible, but not later than 24 hours of receiving such information, arrange to take such child to the nearest hospital or medical care facility centre for emergency medical care:

Provided that where an offence has been committed under sections 3, 5, 7 or 9 of the Act, the victim shall be referred to emergency medical care.

(2) Emergency medical care shall be rendered in such a manner as to protect the privacy of the child, and in the presence of the parent or guardian or any other person in whom the child has trust and confidence.

(3) No medical practitioner, hospital or other medical facility centre rendering emergency medical care to a child shall demand any legal or magisterial requisition or other documentation as a pre-requisite to rendering such care.

(4) The registered medical practitioner rendering emergency medical care shall attend to the needs of the child, including –

- (i) treatment for cuts, bruises, and other injuries including genital injuries, if any;
- (ii) treatment for exposure to sexually transmitted diseases (STDs) including prophylaxis for identified STDs;
- (iii) treatment for exposure to Human Immunodeficiency Virus (HIV), including prophylaxis for HIV after necessary consultation with infectious disease experts;
- (iv) possible pregnancy and emergency contraceptives should be discussed with the pubertal child and her parent or any other person in whom the child has trust and confidence; and,
- (v) wherever necessary, a referral or consultation for mental or psychological health or other counselling should be made.

(5) Any forensic evidence collected in the course of rendering emergency medical care must be

collected in accordance with section 27 of the Act.

6. Monitoring of implementation of the Act – (1) The National Commission for the Protection of Child Rights (hereafter referred to as “NCPCR”) or the State Commission for the Protection of Child Rights (hereafter referred to as “SCPCR”), as the case may be, shall in addition to the functions assigned to them under the Commissions for Protection of Child Rights Act, 2005, perform the following functions for implementation of the provisions of the Act:-

- (a) to monitor the designation of Special Courts by State Governments;
- (b) to monitor the appointment of Public Prosecutors by State Governments;
- (c) to monitor the formulation of the guidelines described in section 39 of the Act by the State Governments, for the use of non-governmental organisations, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child, and to monitor the application of these guidelines;

- (d) to monitor the designing and implementation of modules for training police personnel and other concerned persons, including officers of the Central and State Governments, for the effective discharge of their functions under the Act;
 - (e) to monitor and support the Central Government and State Governments for the dissemination of information relating to the provisions of the Act through media including the television, radio and print media at regular intervals, so as to make the general public, children as well as their parents and guardians aware of the provisions of the Act.
- (2) The NCPCR or the SCPCR, as the case may be, may call for a report on any specific case of child sexual abuse falling within the jurisdiction of a CWC.
 - (3) The NCPCR or the SCPCR, as the case may be, may collect information and data on its own or from the relevant agencies regarding reported cases of sexual abuse and their disposal under the processes established under the Act, including information on the following:-
 - (i) number and details of offences reported under the Act;
 - (ii) whether the procedures prescribed under the Act and rules were followed, including those regarding timeframes;
 - (iii) details of arrangements for care and protection of victims of offences under this Act, including arrangements for emergency medical care and medical examination; and,
 - (iv) details regarding assessment of the need for care and protection of a child by the concerned CWC in any specific case.
 - (4) The NCPCR or the SCPCR, as the case may be, may use the information so collected to assess the implementation of the provisions of the Act. The report on monitoring of the Act shall be included in a separate chapter in the Annual Report of the NCPCR or the SCPCR.

7. Compensation - (1) The Special Court may, in appropriate cases, on its own or on an application filed by or on behalf of the child, pass an order for interim compensation to meet the immediate needs of the child for relief or rehabilitation at any stage after registration of the First Information Report. Such interim compensation paid to the child shall be adjusted against the final compensation, if any.

(2) The Special Court may, on its own or on an application filed by or on behalf of the victim, recommend the award of compensation where the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified, and in the opinion of the Special Court the child has suffered loss or injury as a result of that offence.

(3) Where the Special Court, under sub-section (8) of section 33 of the Act read with sub-sections (2) and (3) of section 357A of the Code of Criminal Procedure, makes a direction for the award of compensation to the victim, it shall take into account all relevant factors relating to the loss or injury caused to the victim, including the following:-

- (i) type of abuse, gravity of the offence and the severity of the mental or physical harm or injury suffered by the child;
- (ii) the expenditure incurred or likely to be incurred on his medical treatment for physical and/or mental health;
- (iii) loss of educational opportunity as a consequence of the offence, including absence from school due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;
- (iv) loss of employment as a result of the offence, including absence from place of employment due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;

- (v) the relationship of the child to the offender, if any;
- (vi) whether the abuse was a single isolated incidence or whether the abuse took place over a period of time;
- (vii) whether the child became pregnant as a result of the offence;
- (viii) whether the child contracted a sexually transmitted disease (STD) as a result of the offence;
- (ix) whether the child contracted human immunodeficiency virus (HIV) as a result of the offence;
- (x) any disability suffered by the child as a result of the offence;
- (xi) financial condition of the child against whom the offence has been committed so as to determine his need for rehabilitation;
- (xii) any other factor that the Special Court may consider to be relevant.

(4) The compensation awarded by the Special Court is to be paid by the State Government from the Victims Compensation Fund or other scheme or fund established by it for the purposes of compensating and rehabilitating victims under section 357A of the Code of Criminal Procedure or any other laws for the time being in force, or, where such fund or scheme does not exist, by the State Government.

(5) The State Government shall pay the compensation ordered by the Special Court within 30 days of receipt of such order.

(6) Nothing in these rules shall prevent a child or his parent or guardian or any other person in whom the child has trust and confidence from submitting an application for seeking relief under any other rules or scheme of the Central Government or State Government.

A SONG FOR A CHILD

There are some people
Who'll say
Don't cry, cause
That was yesterday
There are others
Who'll question if it's true
But, don't worry darling
I believe in you
I know how the anger
Devours every part
Of your soul, your spirit
Your mind, your very heart
I know how you live with the abuse
Every single day
I know how hard it is
To just push the pain away
I feel it when you scream
Though you sit and stare
I feel the walls push me away
Though you long for me to be there
I don't know what to do
What could I ever say
To erase the years gone by
And make it go away
Please darling
Before you turn to stone
Always, always remember, You are not alone

Cherry Kingsley