

**Training Manual on Protection of Children from Sexual Offences
(POCSO) Act & Rules, 2012, for Judicial Officers**



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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	AIDS	Acquired Immuno Deficiency Syndrome
2	AIR	All India Radio
3	CCIs	Child Care Institutions
4	CEDAW	The Convention on the Elimination of all forms of Discrimination Against Women
5	CPCR	Commission for Protection of Child Rights
6	Cr. PC	Criminal Procedure Code
7	CRIN	Child Rights Information Network
8	CWC	Child Welfare Committee
9	DAVP	Directorate of Advertising and Visual Publicity
10	DCPU	District Child Protection Unit
11	DD	Doordarshan
12	FIR	First Information Report
13	FGM	Female Genital Mutilation
14	GOI	Government of India
15	HIV	Human Immunodeficiency Virus
16	ICDS	Integrated Child Development Services Scheme
17	ICPS	Integrated Child Protection Scheme
18	ILO	International Labour Organisation
19	IO	Investigation Officer
20	IPC	Indian Penal Code
21	JJ Act	Juvenile Justice (Care and Protection of Children) Act
22	NCPCR	National Commission for Protection of Child Rights
23	NGO	Non-Governmental Organisation
24	OP3CRC	Third Optional Protocol to the Convention on the Rights of the Child on a communications procedure
25	OPs	Optional Protocols
26	POCSO	Protection of Children from Sexual Offences Act
27	PTSD	Post-Traumatic Stress Disorder
28	RTE	Right to Education
29	SCPCR	State Commission for Protection of Child Rights
30	SJPU	Special Juvenile Police Unit
31	STDs	Sexually Transmitted Diseases
32	UNCRC	United Nations Convention on the Rights of the Child
33	UNFPA	United Nations Fund for Population Activities
34	UNICEF	United Nations Children's Fund
35	UOI	Union of India
36	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 Judicial Officers.

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. develop an understanding of their role in implementation of the Act;
- iii. enable them to understand and contextualize the rights of children;
- iv. orient them about different support and rehabilitation services available for victims of sexual offence under POCSO Act & Rules 2012; and
- v. 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: Violence against Children; Child Rights: Overview of UNCRC & Constitutional Obligations; Provisions of POCSO Act, 2012 & POCSO Rules, 2012; Special Courts under POCSO Act, 2012: Powers and Procedures; Role of SJPU / Police and CWCs under POCSO Act, 2012; Investigating Sexual Offences against Children: Responsive and Sensitive Medical & Forensic Services; Role and Responsibility of Media in Cases of Sexual Offences against Children; Rehabilitation & Compensation for Child Victims of Sexual Offences: State Obligations and Recommendations by special Courts

Participants

About 25-30 officials comprising judicial officers 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 judicial officers. It describes the issues to be covered during the training programme delineating the inter-linkages of various stakeholders.

The two-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 Special Courts 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 One

9:30 a.m. –10.00 a.m.	Session I – Registration/Pre-Training Assessment
10.00 a.m. – 11.00a.m.	Session II – Inaugural Session
11.00 a.m. – 11.15a.m.	Tea / Coffee
11.15 a.m. – 12.30p.m.	Technical Session I – Violence Against Children
12.30 p.m. – 1.45 p.m.	Technical Session II – Child Rights: Overview of UNCRC & Constitutional Obligations
1:45 p.m. –2:30 p.m.	Lunch
2.30 p.m. –3.45 p.m.	Technical Session III – Provisions of POCSO Act, 2012 & POCSO Rules, 2012
3.45 p.m. – 4.00 p.m.	Tea / Coffee
4:00 p.m.- 5:15 p.m.	Technical Session IV – Special Courts under POCSO Act, 2012: Powers and Procedures

Day Two

10.00 a.m. – 11.15 a.m.	Technical Session V – Role of SJPU / Police and CWCs under POCSO Act, 2012
11.15 a.m.–11.30 a.m.	Tea / Coffee
11.30 a.m. – 12.45 p.m.	Technical Session VI – Investigating Sexual Offences against Children: Responsive and Sensitive Medical & Forensic Services
12.45p.m. – 2.00 p.m.	Technical Session VII – Role and Responsibility of Media in Cases of Sexual Offences against Children
2:00 p.m. – 2:45 p.m.	Lunch
2.00 p.m. – 4:00 p.m.	Technical Session VIII – Rehabilitation & Compensation for Child Victims of Sexual Offences: State Obligations and Recommendations by special Courts
4.00 p.m. –4.15 p.m.	Tea / Coffee
4.15 p.m. – 5.00 p.m.	Technical Session IX – Open House Discussion on experiences of Judicial officers on cases under POCSO Act, 2012
5.00 p.m. – 5.15 p.m.	Post-Training Assessment
5.15 p.m. – 6.00 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 police/SJPU 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 judicial officers 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

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

I. 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:

II. 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 program.
- 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 Child Sexual Abuse and the counseling needs, initiatives and interventions.
- Be well versed in psychological concepts and theories related to approaches to counseling with children.

The facilitators must ensure that they:-

- DON'T cut off discussion because it is uncomfortable to them.
- DON'T skip any discussions and questions.
- DON'T dominate the discussion or lead them from their own reference point and perspective.
- 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**
- **Pre-Training Assessment**
- **Reference Material**

**Registration
Introductory/Inaugural Session
Pre-Training Assessment**

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: 1 Hour

Instructions for Sessions I & II:

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.

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.

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.	Any idea about POCSO Act 2012?	(a) Yes <input type="checkbox"/> (b) No <input type="checkbox"/> (c) Somewhat <input type="checkbox"/>
2.	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"/>
3.	The Act was passed in the Indian Parliament in May 2012	(a) Yes <input type="checkbox"/> (b) No <input type="checkbox"/>
4.	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"/>
5.	Is the Act gender neutral?	(a) Yes <input type="checkbox"/> (b) No <input type="checkbox"/>
6.	The Act have a clear definition for all types of sexual abuses like sexual assault, sexual harassment and pornography.	(a) Yes <input type="checkbox"/> (b) No <input type="checkbox"/>
7.	What is an "aggravated" offence?	When an offence is committed by: (a) Police Officer <input type="checkbox"/> (b) Armed Forces Or Security Forces <input type="checkbox"/> (c) Public Servant <input type="checkbox"/> (d) All the above <input type="checkbox"/>
8.	According to POCSO Act, if someone fails/hides the information of the commission/apprehension of the offence shall be punishable with imprisonment for a term which may extend to one year with fine.	(a) Yes <input type="checkbox"/> (b) No <input type="checkbox"/>
9.	Sexual offences are currently covered under different sections of IPC. How is the POCSO Act different from other IPC provisions?	The IPC does not (a) provide for all types of sexual offences against children <input type="checkbox"/> (b) distinguish between adult and child victims <input type="checkbox"/> (c) both <input type="checkbox"/>
10.	Match the punishments and fine for various offences in the POCSO Act 2012? Answer: Offence a) Penetrative Sexual Assault	Punishment there for i) 5 years and fine (Section 14)

	(Section 3) b) Aggravated Penetrative Sexual Assault (Section 5) c) Sexual Assault (Section 7) d) Aggravated Sexual Assault (Section 9) e) Sexual Harassment (Section 11) f) Using Child for Pornographic Purposes (Section 13)	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)	
11.	Where are the cases of the POCSO Act 2012 are tried?	(a) Special Courts (b) High Courts (c) District Courts	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
12.	Whether the POCSO Act 2012 has incorporated the child friendly procedures for reporting, recording of evidence, investigation and trial of offences?	(a) Yes (b) No	<input type="checkbox"/> <input type="checkbox"/>
13.	Whether the POCSO Act 2012 has recognized the intent to commit an offence, even when unsuccessful for whatever reason and be penalized?	(a) Yes (b) No	<input type="checkbox"/> <input type="checkbox"/>
14.	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		
15.	Whether the abetment of the offence is punishable in the POCSO Act 2012?	(a) Yes (b) No	<input type="checkbox"/> <input type="checkbox"/>
16.	On whom lies the burden of proof in the heinous cases of POCSO Act 2012?	(a) Accused (b) Children (c) Both (d) None	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
17.	Where the cases under this Act reported?	(a) Special Juvenile Police Unit (SJPU) (b) Local Police (c) Both	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
18.	Who will monitor the implementation of	(a) NCPDR & SCPCR	<input type="checkbox"/>

	the Act?	(b) NCW & SCW	<input type="checkbox"/>
19.	Whether documentation or magisterial requisition is demanded before treatment in the emergency medical facility to the child?	(a) Yes (b) No	<input type="checkbox"/> <input type="checkbox"/>
20.	The Act provides for Interpreters, translators and Special educators for convenience.	(a) Yes (b) No	<input type="checkbox"/> <input type="checkbox"/>
21.	The District Court, in appropriate cases on its own or on an application filed by or on behalf of the child, can pass an order for interim compensation to meet the immediate needs of the child for the relief or rehabilitation at any stage after registration of the FIR.	(a) True (b) False	<input type="checkbox"/> <input type="checkbox"/>
22.	When is a child referred to emergency medical care under POCSO Act, 2012?	Situations as spelt out in: (a) section 3 and 5 (b) section 3 and 7 (c) section 9 (d) section 3,5,7 and 9	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
23.	The compensation awarded by the Court is to be paid by the _____	a) State Government b) Central Government c) State Government from the Victims Compensation Fund d) Central Government from the Victims Compensation Fund	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
24.	The Magistrate 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 the code.	(a) True (b) False	<input type="checkbox"/> <input type="checkbox"/>

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

Key:

- 1) The answer is up to participant
- 2) (a)
- 3) Yes
- 4) Any person below the age of 18 years
- 5) Yes
- 6) Yes
- 7) (d)
- 8) Yes
- 9) (c)
- 10) a-vi, b-v, c-iv, d-iii, e-ii, f-i
- 11) (a)
- 12) Yes
- 13) Yes
- 14) Correct-1, 4, 5, 6, 8, 11, 12
Wrong-2, 3, 7, 9, 10
- 15) Yes
- 16) (a)
- 17) (c)
- 18) (a)
- 19) No
- 20) Yes
- 21) False
- 22) (d)
- 23) (c)
- 24) True

Minimum Score: 0
Maximum Score: 24

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	0-4
Poor	4-8
Average	8-12
Good	12-16
Very Good	16-20
Excellent	20-24

D. Technical Sessions

Technical Session I: Violence Against Children

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

Duration: 1 hour 15 minutes

Outcome

- Participants will develop an understanding of situation of abuse and violence against children in India

Contents

- Demographic scenario of children
- Vulnerability, abuse and violence against children – analysis & trend with emphasis on gender-based violence in India
- Safeguards for protection of children

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 point 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 I

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Demographic scenario of 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 Children	According to UNICEF a 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”.	No specific categories of Children.	<ul style="list-style-type: none"> ➤ Tender Age ➤ 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	Conflict is a situation where two or more groups of people do not agree with each other, cannot find a solution	Civil wars/ Droughts floods/ Earthquake/ Cyclones/ Tsunamis/	<ul style="list-style-type: none"> ➤ Loss of stability ➤ Adverse impact on child’s access to health and nutrition,

	Situations	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 everyone in the environment.	Hurricanes	schooling and welfare services ➤ Psychological damage ➤ Trauma ➤ Permanent loss of a sense of 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	➤ 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).	➤ Born to HIV positive mothers ➤ Children addicted to drugs ➤ Children who are sexually abused and exploited ➤ Children	➤ Prejudice and social exclusion leading to exploitation and abuse ➤ Denial of access to schooling ➤ The infected parent's earning capacity reduces and often the

			needing blood transfusions	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 System.	Burglary, stealing and petty thefts/ murder/ rape/ molestation & sexual abuse/ causing grievous hurt or injury to another/ Other minor offences	<ul style="list-style-type: none"> ➤ Poverty ➤ Lack of appropriate guidance and discipline ➤ Disintegration of the family ➤ School dropouts ➤ 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 II: Child Rights: An Overview of UNCRC & Obligations

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 II

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- Historical Definition of Children's Rights
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- What is Convention?
- Understanding Wants, Needs and Rights
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- 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 pre-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 scarce 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 children's needs	All adults can play a role in achieving 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 Development	Every child has the inherent right to life. 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	Governments must take steps to prevent children being taken out of their own country

	Trafficking	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 144 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 III: Provisions 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: 1 hour 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 III

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 do?

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	<p>Section 3 Penetrative Sexual Assault Inserting body part or object in a child, or making a child does this with another.</p>	<p>Section 4 Not less than seven years of imprisonment which may extend to imprisonment for life, and fine</p>
2	<p>Section 5 Aggravated Penetrative Sexual Assault</p> <p>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 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>	<p>Section 6 Not less than ten years of imprisonment which may extend to imprisonment for life, and fine</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</p> <p>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	<p>Section 14 (3) Aggravated penetrative sexual assault by directly participating in pornographic acts</p>	<p>Section 14 (3) Rigorous imprisonment for life and fine</p>
9	<p>Section 14 (4) Sexual assault by directly participating in pornographic acts</p>	<p>Section 14 (4) Not less than six years of imprisonment which may extend to eight years, and fine</p>
10	<p>Section 14 (5) Aggravated sexual assault by directly participating in pornographic acts</p>	<p>Section 14 (5) Not less than eight years of imprisonment which may extend to ten years, and fine</p>
11	<p>Section 15 Storage of pornographic material involving a child for commercial purposes</p>	<p>Section 15 Three years of imprisonment and / or fine</p>
12	<p>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)</p>	<p>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</p>

		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	<p>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)</p>	<p>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.</p>

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

Technical Session IV: Special Courts under POCSO Act, 2012: Powers and Procedures

Learning Objectives:

- To enable Judicial Officers to effectively implement protection of child rights in cases tried by them
- To Orient them about their roles and responsibilities in protecting rights of children while dealing with different stakeholders under various circumstances under the Act.

Methodology:

- Presentation, lecture and discussion

Material Required:

Projector, computer, presentation on 'Special Courts under POCSO Act, 2012: Powers and Procedures', marker

Duration: 1 hour 15 minutes

Outcomes:

- Participants will develop an understanding of the key role delineated for Judicial Officers in Special Courts.

Contents:

- Recording of Statement by the Magistrate
- Trial before the Special Court: examination, cross-examination, and re-examination
- Recording of evidence
- Responsibilities of the Special Court

Tips for the Facilitators/Resource Persons:

- This session is important as it makes the participants clarify their roles as judicial officers, the powers and procedures in special courts
- 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 those issues specified in the POCSO Act, 2012.
- Keep a track of the time as it is an extensive session

I. Recording of Statement by the Magistrate

How must the statement be recorded?

Recording statement of a child by a Magistrate: The statement should be recorded by a Magistrate as spoken by the child: (i) in the language of the child; (ii) using qualified and experienced translator, interpreter or special educator necessary on payment of fees prescribed, (iii) recording the statement when possible by audio-video electronic means, and (iv) recording it in the presence of the parents or person having the trust and confidence of the child.

A Magistrate recording the statement of a child under Section 164 of the Code of Criminal Procedure (CrPC) must record it 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 means. The Magistrate must also provide the child and his or her parents or representative, a copy of the police report on 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.

The child can be confronted with a previous statement made under section 164 of the Code, section 161 of the Code or the FIR at the time of cross-examination. Hence, the proper procedure must be followed to avoid any contradictions.

II. Trial before the Special Court

All trials before the Special Court must be conducted *in camera* and in the presence of the parents of the child or any other person the child trusts.

Examination, cross-examination, and re-examination

In the course of recording the examination-in-chief, cross-examination or re-examination, all questions to the child by the Special Public Prosecutor or the counsel for the accused must be communicated to the Special Court which must then put the questions to the child.

Statement of accused: The Special Court shall, after conclusion of the prosecution evidence, record the statement of each accused person under section 313 of the Code. In order to prepare relevant questions the Special Court may take the help of the special public prosecutor and the defence counsel. The Special Court may permit any of the accused to file written statement which would be taken by the Special Judge, in accordance with sub-section (5), section 313 of the Code, as sufficient compliance with law.

In *State of Maharashtra Vs. Praful B. Desai* [2003 SCC (Cr) 827] the Supreme Court interpreted the law and accepted the argument that evidence of witness through video conferencing is permissible. The procedure for conducting trial and recording evidence is contained in the Code and the Evidence Act, 1872, and other pre-evidence procedure in conformity with the spirit of the POCSO Act, given hereinafter and suitable for recording evidence, may be adopted by the Special Court, and in respect of a child witness a child friendly procedure not prohibited by law should be taken as permissible. In particular:

- i. There should be video-conferencing/video-link facilities between the courtroom and the children's room.
- ii. The child should identify the accused, by entering the courtroom for the limited purpose of identifying the accused or by observing the live image of the accused on video-link. When the child so enters the courtroom for identification he/she should be accompanied by a family member or guardian or friend or relative in whom the child has trust or

confidence, or by the support person appointed by the Child Welfare Committee or parent or guardian.

- iii. Over and above the practice by courts in recording evidence of witnesses, the deposition of a child shall be preserved on video-tape, digital disc or other similar devices.
- iv. Children deposing directly before the Special Court shall do so in the courtroom. In such case –
 - (a) screen, curtain/one-way mirror or such arrangement should be made in the courtroom so that the child does not see the accused, ensuring at the same time that the accused can hear the child and instruct her/his advocate; and
 - (b) the child may be allowed to depose from a place other than the witness-box.
- v. *Testimonial aids*, such as, dolls, anatomically correct dolls, puppets, drawings, mannequins or appropriate demonstrative device should be available with the Special Court to provide a child with appropriate assistance during its deposition. The testimonial aids should be kept in the children's room.
- vi. *Children's room*:
 - (a) child witness awaiting her/his turn to depose before the Special Court should be in the children's waiting room, which should be equipped with toys, books, drawing and painting material, indoor games and recreational equipment;
 - (b) the children's waiting room should have attached toilet and facilities for drinking water, electricity, light and ventilation, and cooling or heating arrangement [depending on the climate], and arrangements to provide the child with appropriate food so that the child is comfortable;
 - (c) the children's waiting room should have security for the protection of children, and the entry of the accused, defense lawyer or other person detrimental to the interest of the child should be barred.
- vii. *Miscellaneous*:
 - (a) *Other child friendly measures* – for example, a pre-trial tour to familiarize the child to the environment and the basic process of adjudication and roles of each court official may be conducted, descriptive aids may be used, and that the waiting room should have toys, books, TV etc. to lower anxiety levels or a child during deposition should be allowed to have emotional security item, such as, blanket, toy or doll.
 - (b) The presiding judge of the Special Court should not be dressed in judicial robes and should sit on an appropriate platform so that the child is able to take him/her as a friend/well wisher and no artificial psychological barrier is created.

14. *Burden of proof (section 29)*: In a prosecution under sections 3, 5 7 and 9 of the POCSO Act or for abetting or attempting such offence, the Special Court shall presume that the accused committed or abetted or attempted such offence unless contrary is proved. *Thus, during the trial for any such offence, the child-victim should give evidence first and then shall be cross-examined by the lawyer of the accused.* The evidence should be concluded, if possible, on that

very day. Thereafter, the medical and forensic evidence should be led by the prosecution and it should plead in such prosecution that under section 29 of the POCSO Act, there is a presumption that the accused committed the offence and, the burden to prove the innocence, as per the special law, is upon the accused.

15. Presumption of culpable mental state: Section 30 of the Act raises rebuttable presumption against an accused in a prosecution of an offence under the Act and presumes the existence of “culpable mental state” which includes intention, motive or knowledge or reason to believe a fact. A closer look at the above expressions dealing with the state of mind of an accused may be of some advantage, and they read:

(a) *Motive* prompts a person to form an intention but it is not a necessary ingredient of every offence— but is taken into judicial consideration to decide upon the sentence to be imposed on a convict.

(b) *Intention* is commonly understood as aim, design or will etc. This culpable state of mind of individual or a group of persons is generally ascertained from how individual committed an offence or group of people committed one or more acts constituting such offence and whether the offence committed was the intended result of an individual or members of such group.

(c) *Knowledge* is the acquisition of facts retained by the mind of a person. Such knowledge can be shared with another person or that other person may acquire the knowledge from the original or other sources.

Common criminal intention and knowledge: Under section 34, IPC, when a crime is a pursuit of common intention of several persons, and the commission of crime involved one or more acts constituting the offence, each person committing one or more such acts would be liable for the offence as if committed by him alone. Under section 35, IPC, whenever criminal knowledge or intention is a necessary ingredient of offence and the offence is committed by several accused, any accused who joins other accused in doing one or more acts constituting the offence would be guilty of the offence as if the crime was committed by him alone with necessary intention or knowledge.

The Supreme Court held (in *State of Maharashtra v Mayer Hans George* AIR 1965 SC 722) that the legislature can legislate an offence without an ingredient of *mens rea* and the requirement of actual knowledge/*mens rea* that the act is in contravention of law can be done away with in respect of an offence. Thus, the presumption, under section 30 of the Act, as to the existence of motive, intention, knowledge etc., is far short of removing such consideration altogether, and each presumption can be rebutted by an accused. It may be noticed that under section 30 (2) of the Act a fact must be proved, like in all criminal prosecutions, beyond reasonable doubt.

Value of the testimony of a child witness: It was observed by the Supreme Court in *Suryanarayana v State of Karnataka* (2001) 9 SCC 129 that: “...*(the witness) who at the time of occurrence was about four years of age, is the only solitary eye-witness who was rightly not given the oath. The time and place of the occurrence and the attending circumstances of the case suggest no possibility of there being any other person as an eye-witness. The evidence of the child witness cannot be rejected per se, but the Court, as a rule of prudence, is required to consider such evidence with close scrutiny and only on being convinced about the quality of the statements and its reliability, base conviction by accepting the statement of the child witness. ...If she is shown to have stood the test of cross-examination and there is no infirmity in her*

evidence, the prosecution can rightly claim a conviction based upon her testimony alone. Corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. Some discrepancies in the statement of a child witness cannot be made the basis for discarding the testimony. Discrepancies in the deposition, if not in material particulars, would lend credence to the testimony of a child witness who, under the normal circumstances, would like to mix up what the witness saw with what he or she is likely to imagine to have seen. While appreciating the evidence of the child witness, the Courts are required to rule out the possibility of the child being tutored. In the absence of any allegation regarding tutoring or using the child witness for ulterior purposes of the prosecution, the Courts have no option but to rely upon the confidence inspiring testimony of such witness for the purposes of holding the accused guilty or not.”

III. Recording of Evidence

The evidence of the child must be recorded within 30 days of the Special Court having taken cognizance of the offence. If it is delayed, reasons will have to be recorded by the Special Court explaining the delay. At the time of recording evidence, the Special Court will have to ensure that the child is not exposed to the accused and also that the accused is in a position to hear the statement of the child and communicate with his advocate. This can be done by recording the evidence through video-conferencing or by using single visibility mirrors or curtains. Assistance of a qualified translator or interpreter or special educator can be sought while recording the evidence of a child including a child with mental or physical disability.

Conduct of trial and recoding evidence of child:

The following measures have been incorporated in The Delhi High Court Committee ‘Guidelines for Recording of Evidence of Vulnerable Witnesses in Criminal Matters.’¹ *All High Courts must be encouraged to develop similar guidelines for Special Courts. All trials before the Special Court should begin by informing the child, if not represented by a counsel, of its entitlement to avail the services of a private lawyer or a legal-aid lawyer. The role of child’s lawyer in the trial is subject to section 301(2) of the Code:*

- (i) to act under the instructions of the special public prosecutor;
- (ii) after the evidence of all the witnesses is recorded to submit written arguments to the Special Court with its permission. Further, the permission of the Special Court to assist the prosecution, fulfilling the provisions of the proviso to sub-section (8), section 24 of the Code would also be necessary.

Must be *in camera* and in the presence of the parents of the child or other person the child trusts. No media report shall disclose any details of a child which may lead to the disclosure of its identity without the Special Court’s permission given in the interest of the child.

¹ The ‘Guidelines for Recording of Evidence of Vulnerable Witnesses in Criminal Matters’ are available at: http://delhihighcourt.nic.in/notifications_practice_directions.asp

- Shall record evidence of the child by the Presiding Judge putting questions, by reformulation if necessary, of the special public prosecutor or the counsel for an accused whether during the examination-in-chief, cross-examination or re-examination.
- Must record the evidence of the child within 30 days of the Special Court's taking cognizance of the offence, and if delayed, the Court shall give reasons.
- Shall ensure while recording evidence of the child that it is not exposed to the accused ensuring that the accused is in a position to hear the deposition and communicate with his advocate, and may record evidence through video-conferencing or using single visibility mirrors or curtains. The following procedures should be adhered to when recording such evidence through videoconferencing or video-link—
 - (i) *Connect the courtroom and the children's room by live videolink and video-conference facilities.* This will ensure that a traumatised or a child of tender age is able to depose without being overwhelmed by the court surroundings and/or the accused. The video-link/video-conferencing shall be so arranged that the child does not see the accused, though those present in the courtroom are able to see the child depose in the children's room, and the going-on in each room can be heard by those in the other.
 - (ii) The persons who can remain in the room during the deposition of a child witness are parents or guardian, or friend or relative in whom the child has trust or confidence; support person appointed by the Child Welfare Committee; translator or interpreter or special educator or person familiar with the manner of communication of child or an expert in the field; any other person representing NGO/professionals/experts/persons having knowledge of psychology, social work, physical health, mental health and child development deemed necessary by the Court for the welfare and well-being of the child; an officer of the court; and persons necessary to operate the live video-link and video-conferencing equipment;
 - (iii) When the child witness is examined and cross-examined, a video monitor will record and transmit the child's deposition to those in the courtroom; and
 - (iv) When such evidence is not recorded by video-conferencing the Judge, accused, the special public prosecutor, the defence lawyer, the child's lawyer, police personnel other than witnesses in the case, the administrative staff of the Court can remain in the Court.
- May be conducted, while recording evidence of the child, with the assistance of a translator, interpreter or special educator if it is suffering from mental or physical disability.
- Must be conducted by undertaking following child friendly measures under the POCSO Act—
 - a) Permitting frequent breaks for the child during the trial.
 - b) Allowing family member, guardian, friend or relative, in whom the child has trust or confidence, to be present.
 - c) Ensuring that the child is not called repeatedly to testify in court and its evidence is concluded on the day it began.

- d) Allowing significant and relevant omissions in previous statements of the child whether recorded under section 19 (1) of the Act, or in FIR, or under section 161 of the Code or otherwise to be brought on record, and not any and every omission.
- e) Disallowing aggressive questioning or character assassination of the child and ensuring that its dignity is maintained at all times.
- f) Ensuring speedy conclusion of a trial within one year from the date of taking cognizance of the offence, as far as possible.

IV. Responsibilities of the Special Court

The POSCO Act is a special law and it has not specified which offences are cognizable and, therefore, to determine which of the POCSO Act offences are cognizable and non-bailable, reliance must be placed exclusively on Part II (“Classification Of Offences Against Other Laws”), First Schedule of the Code of Criminal Procedure, 1973. *Whenever the punishment is less than 3 years of imprisonment, the offence would be non-cognizable and bailable. Any higher term of imprisonment beginning from 3 years and above would make such offence cognizable and non-bailable.* Hence all sections are cognizable, with the exception of section 21 and 22 which are non-cognizable and bailable offences.

Special Courts are set up under special laws. Section 6 of the Code lays down the classes of criminal courts, specifically, (i) Courts of Session; (ii) Judicial Magistrate of the first class, and in metropolitan area, Metropolitan Magistrate, (iii) Judicial Magistrate of the second class and (iv) Executive Magistrates.

The Code confers powers on each of the above courts, but no power to conduct inquiry into or trial of offences has been conferred on executive magistrates. A special court may be created to try offences under a special law and such court may also try offences under the IPC, if permissible by such special law. Normally, special courts are created to deal with special offences. For example, special courts have been set up in India to deal with sexual crimes against women, sexual abuse of children, corruption cases, atrocities against women and so on. A special court is created to expeditiously prosecute special offences committed by any person or group of persons or specified offenders. The normal procedures provided under the provisions of the Indian Evidence Act and the Code of Criminal Procedure, 1973 (Cr.P.C) are modified to enable expeditious and early conclusion of prosecutions.

The Special Court must take the following measures while conducting the trial under the Act:

- If required, permit frequent breaks for the child during the trial.
- 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.
- Ensure that the child is not called repeatedly to testify in court.
- Not allow aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times.
- Ensure that the identity of the child is not disclosed at any time during the course of investigation or trial. Such disclosure can be permitted if it is in the interest of the child after reasons are recorded in writing.
- Ensure that trial is completed, as far as possible, within one year from the date of taking cognizance of the offence.

The Special Court can also order interim compensation to meet the immediate needs of the child for relief and rehabilitation at any stage after registration of the FIR. Such an order can be passed based on an application by or/ on behalf of the victim or by the court on its own. It can also recommend the award of compensation if the child has suffered loss or injury and where the accused is convicted, discharged, acquitted, or is not traceable or identifiable. The compensation awarded is payable by the State Government from the Victims Compensation Fund or other schemes or funds established for the purpose of compensating and rehabilitating victims under Section 357A of the CrPC. Such compensation is payable within 30 days of the receipt of the order.

Technical Session V: Role of SJPU/Police and CWCs under POCSO Act, 2012

Learning Objectives:

- To develop an understanding of role of Police & CWC members in implementation of POCSO Act & Rules, 2012
- To sensitize the participants on the procedures laid down for registering and investigating cases, while providing emergency and on-the-spot assistance including information to victim's family of the progress of the case and the role of CWCs in care and protection of child victim/witness/offender under POCSO Act 2012

Methodology:

- Presentation, lecture and discussion

Material Required:

Projector, computer, presentation on 'Role of SJPU/Police and CWCs under POCSO Act, 2012', marker

Duration: 1 hour 15 minutes

Outcomes:

- Participants will develop an understanding of the key role delineated for Police / SJPU and CWCs under the POCSO Act & Rules, 2012

Contents:

Role of Police in:

- mandatory reporting and recording of child's statement
- observing child friendly procedures at the time of reporting of offences and recording of child's statement, as well as questioning the child
- establishing regular contact with NGOs to facilitate speedy trials
- ensuring the best interest of the child
- acting as child protectors for the care and protection of the child during the investigation process
- obtaining medical treatment for child
- placing the child in shelter home
- informing availability of support services, including counselling
- providing a support person to help the child or his/her family through trial and pre-trial process
- facilitating Interpreter/Translator/Special Educator (in case of a child bearing a mental/physical disability) or any person familiar with the manner of communication of the child

Role of CWCs in:

- 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

Tips for the Facilitators/Resource Persons:

- c) This session is important to make the participants clarify their roles as Police/SJPU as well as CWC members as per the POCSO Act 2012.
- d) Encourage the participants to share their experiences while dealing with cases
- e) 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.

Role of the Police

The POCSO Act, 2012 recognises almost every known form of sexual abuse against children as punishable offence and makes the different agencies of the State, such as the police, judiciary and child protection machinery, collaborators in securing justice for a sexually abused child.

There is thus a need for prompt and systematic multi-sectoral intervention that will be conducive to the justice delivery process, minimise the risks of health problems, enhance the recovery of the child and prevent further trauma. The prevention of child sexual abuse, protection of victims, justice delivery, and rehabilitation of victims are not isolated issues. The achievement of these objectives requires a co-ordinated response of all the key players, which include the police, prosecution, Courts, medical institutions, psychologists and counsellors, as well as institutions that provide social services to the children. The protection of children from violence and abuse thus requires an integrated and coordinated approach. It is envisaged that such an approach will ensure support for the child and his/her family, including assistance with police and court proceedings, arrangements for emergency shelter for children, arrangements for counselling, therapy, and training courses, appropriate rehabilitative services including protective custody and foster care, if necessary; information on and access to financial assistance, where appropriate, and monitoring of family involvement.

- (i) In case an offence is committed, or apprehended that it is likely to be committed, the police must act immediately. A Daily Diary entry must be made in all cases and read over to the informant. This report will then be entered in the book/Register.
- (ii) An F.I.R. will be registered under the relevant Section of POCSO and a free copy will be handed over to the person making such report.
- (iii) The medical examination of the child should be conducted in accordance with Section 164 CrPC. The medical examination must be in the presence of a parent/guardian/support person or a woman nominated by the Head of the hospital. In case of a girl child, the examination must be conducted by a woman doctor.
- (iv) If the child is a CNCP, the Investigation Officer shall, after recording the reasons in writing, make immediate arrangements to give him such care and protection (including admitting him into the nearest shelter home or hospital) within 24 hours of making the report.
- (v) The victim cannot be called to a police station; if at all, the statement of the victim is to be recorded at the victim's residence or any other place by women police officers.
- (vi) The IO must submit a report to the CWC and Special Court without unnecessary delay but within 24 hours for all cases under POCSO.
- (vii) Only the following categories of children are required to be produced before the CWC:
 - a. If the offence is committed by a person living in the same or shared

- household with the child.
- b. If the child is living in a child care institution and is without parental support.
- c. The child is found to be without any home or parental support.
- (viii) Only a S.I. or above can handle cases under POCSO.
- (ix) The following information is to be given to a child and parent/guardian/support person by the IO:
 - a. The availability of private and public emergency and crises centres
 - b. The procedural steps involved in a criminal prosecution
 - c. The availability of victim compensation benefits
 - d. The status of the investigation of the crime to the extent it will not interfere with the investigation
 - e. The arrest of a suspected offender
 - f. The filing of charges against suspected offenders
 - g. The schedule of court proceedings that the child is required to attend or is entitled to attend
 - h. The bail, release or detention status of an offender or suspected offender
 - i. The rendering of a verdict after trial
 - j. The sentence imposed on an offender

Mandatory reporting and recording of child's statement

The said Act casts the police in the role of child protectors during the investigative process. Thus, the police personnel receiving a report of sexual abuse of a child are given the responsibility of making urgent arrangements for the care and protection of the child, such as obtaining emergency medical treatment for the child and placing the child in a shelter home, should the need arise. The police are also required to bring the matter to the attention of the Child Welfare Committee (CWC) within 24 hours of receiving the report, so the CWC may then proceed where required to make further arrangements for the safety and security of the child.

Mandatory Reporting: When a doctor has reason to suspect that a child has been or is being sexually abused, he/she is required to report this to the appropriate authorities (i.e. the police or the relevant person within his/her organization who will then have to report it to the police). Failure to do this would result in imprisonment of up to six months, with or without fine.

Sexual Offences against Women and Children Guidelines to Police issued by Mumbai Police Commissioner Special Police Circular No. 27/2013, Dated 12.8.2013

Sexual offences against:

- a person (boy or girl) under 18 years of age shall be registered under POCSO Act, 2012
- a woman above 18 years of age shall be registered under IPC

First Information Report

- Any person having information of an offence can lodge an FIR. It is not necessary that the information must be given by the aggrieved person. As soon as information is given

to the Police, an FIR shall be recorded without waiting for the appearance of aggrieved party. (S. 19 (1), POCSO Act, 2012, Maharashtra Police Guidelines Part 3 rule 113)

- If an aggrieved woman gives information herself then the FIR shall be registered by a woman police officer or any woman officer. (S. 154 (1) Cr. PC Proviso)
- If a mentally or physically disabled (temporary or permanent) victim wants to report the commission of an offence or an attempt to commit an offence, the information shall be recorded by the police officer at her residence or at any place of her choice in the presence of an interpreter or a special educator. (S. 154 (1) (a) Cr. PC Proviso)
- If a mentally or physically disabled (temporary or permanent) victim wants to report the commission of an offence or an attempt to commit an offence, the recording of such information should be video graphed. (S. 154 (1) (b) Cr. PC)
- A copy of the FIR should be given immediately and free of cost to the informant. (S.154 (2) Cr. PC)
- If a police officer refuses to register an FIR, it is a cognizable offence. (S.166A (c) IPC)
- If information of an offence committed is given to a police station within whose jurisdiction the offence was not committed, that police station must register a 'Zero' FIR and immediately transfer the same to the concerned police station. (Mumbai Police Rulebook Part 3 Rule no. 119-A)

First Aid and Medical Examination

- If an offence has been committed, then the victim shall be provided first aid or medical treatment free of cost by all hospitals (public and private). (IPC 357 (c) Cr.PC)
- Even if an offence committed on a child under any section of POCSO Act, 2012 has not been registered at a police station, the medical examination of the child shall be conducted in accordance with S.164A Cr. PC. (S. 27 (1), POCSO Act, 2012)
- Within 24 hours of receiving information of an offence under POCSO Act, 2012 or Rape under IPC it is mandatory for the Police to send the victim for medical examination to a registered medical practitioner. (S. 164A, Cr. P.C.)

Victim Statement

- The statement of the victim shall be recorded by a woman police officer or any woman officer. The statement shall be recorded at her residence or at a place of her choice in the presence of her parents or guardians or relatives or social worker of the locality or any other person in whom the victim has trust. (S. 161 Proviso 2 Cr. PC and S. 157 (1) (b) Proviso Cr. PC)
- The statement of a mentally or physically disabled (temporarily or permanently) child shall be recorded with the assistance of a special educator or any person that the child can communicate with. The police officer can take the help of professionals and experts in the field. (S. 26 (3) POCSO Act, 2012)
- The statement of a victim shall be recorded by a Judicial Magistrate in accordance with S. 164 (5A) (a) Cr. PC. (S. 154 (1) (c) of Cr. PC)
- The statement of the child victim shall be recorded at her/his residence or at the place of her/his choice. The statement shall be recorded by a woman police officer not below the rank of sub inspector in presence of the child's parents or any person in whom the child has trust. (S. 24 (1) POCSO Act, 2012)
- While recording the statement of the child victim the woman police officer shall not be in uniform. (S. 24 (2) POCSO Act, 2012)

- While recording / investigating an offence under POCSO Act, 2012 the police officer shall ensure that the child victim does not come in contact with the accused at any point of time. (S. 24 (3) POCSO Act, 2012)

Shelter Home and Child Welfare Committee

On receiving information of an offence under POCSO Act, 2012, if the police officer is satisfied that the child victim is in need of care and protection, then she/he shall record the reason in writing and provide protection to the child immediately within 24 hours; this includes admitting the child in a Shelter Home or Hospital. (S. 19 (5) POCSO Act, 2012) Information about an offence under POCSO Act, 2012 as well as steps taken to provide protection to the child shall be reported within 24 hours by the police officer to Child Welfare Committee and the designated Special/Session Court. (S. 19 (6) POCSO Act, 2012)

Observing child friendly procedures at the time of reporting of offences and recording of child's statement, as well as questioning the child

Children who have been sexually abused are not only traumatised as a result of their experience, but are also more vulnerable to further and repeated abuse and at risk of secondary victimisation at the hands of the justice delivery process. A common example is the handling of cases of child victims by unspecialized police, prosecutors and judges who are not trained in justice for children, children's rights or how to deal and communicate with victim children and their families. The lack of clear guidelines and procedures on how to deal with child victims and their families in a child - sensitive manner during the court process affects the quality of trial and evidence and trial process; the child is subjected in such cases to repeated probing and questioning, made to relive the traumatic incident again and again, and thereby suffer in the retelling.

Child-friendly procedures

The Act provides for child-friendly pre-trial and trial procedures to minimise the trauma felt by child victims and to eliminate the possibility of revictimisation at the time of trial. The child friendly pre-trial procedures cast duties on the police and are to be implemented at the time of reporting of offences and recording of the child's statement. These are given in detail in Sections 19-26 of the Act.

The child-friendly procedures during the trial are to be followed by the Special Courts set up under Section 28(1) to try offences under the Act. They aim to ensure that the child is protected from intimidation, whether intentional or not. All legal representatives, whether representing the accused or the child, must be aware of these provisions. Given the particular vulnerabilities of children, additional measures should also be made available and utilised even in normal circumstances. The child-friendly trial provisions are detailed in Section 33 – 38 of the Act.

Establishing regular contact with NGOs to facilitate speedy trials

Relevant legal provisions

The POCSO Act, 2012 and POCSO Rules, 2012 envisage under various other provisions.

- i. Making report to police under Section 19(1) of POCSO Act, 2012 - any person, including a member of an NGO, may make a report under this section. Many NGOs work closely with vulnerable children and are in a position to detect child abuse. In many cases, a child may feel more comfortable disclosing abuse to an NGO worker rather than someone in his/her own family. An NGO that has knowledge of the sexual abuse of a child is also bound by the principle of mandatory reporting under section 21(1) of POCSO Act, 2012.
- ii. An NGO worker is included in the term “person of trust and confidence”. Thus, such person’s presence can be requested at the time of recording a statement before the Police or Magistrate [section 26(1)], medical examination [section 27(3)] and Special Court proceedings [section 33(4) and 37].

It has been noted that victims of child sex abuse, and often their families, prefer to approach and seek advice from an NGO even before they report the matter to the police. Thus, in such situations, the NGO becomes a first point of contact for the child, providing counselling, legal advice and assistance to report the matter.

NGOs must maintain regular contact with the SJPU and local police stations in their areas of operation. Cooperation between the police and NGOs would facilitate speedy action and reduction of secondary trauma. Where an NGO is approached by a child and/or his/her parents or guardian or other person in whom the child has trust and confidence before the latter approaches the police, the NGO can arrange contact with the police. On the other hand, where the child and/or his/her parents or guardian or other person in whom the child has trust and confidence approach the police on their own, the police can inform and refer them to NGOs that offer support and guidance. This course of action has been recommended for the police in many districts, and is followed in some.

Acting as child protectors for the care and protection of the child during the investigation process

Legal Representation

The abused child should be provided with such care and protection as required by law. Any such action shall be in accordance with the procedures established by the State Legal Services Authority and the National Legal Services Authority. The Form for Application for Legal Services should be provided to the child by the police at the time of making the report under Section 19(1).

Ensuring Care and Protection of the Child

The police or the SJPU must take the following steps within 24 hours of the report of the case:

1. Upon recording the case, if the police or SJPU is satisfied that the child is in need of care and protection, it must record its reasons in writing and immediately arrange to give the child necessary care and protection. This would include admitting the child into a shelter home or to the nearest hospital. The police must produce the child before the CWC if the child is found to be in need of care and protection or has no parental support.
2. If the medical examination was not conducted prior to reporting the case, it must be done in accordance with Section 164A of the Code of Criminal Procedure.²Samples must be collected for the purpose of the forensic tests and sent to the forensic laboratory at the earliest.
3. If the child is in need of urgent medical care and protection, she or he must be taken for emergency medical care to the nearest hospital or medical care facility centre. Such care should be administered in the presence of the parent/guardian/other person in whom the child has trust and confidence. A medical practitioner, hospital or medical facility centre providing such emergency medical care cannot demand legal or magisterial requisition or documentation before providing such care.
4. The police or the SJPU must report the matter to the CWC and the Special Court and also indicate the steps taken to extend care and protection to the child. If a Special Court has not been designated the matter must then be reported to the Sessions Court.

Placing a child in shelter home

Section 19(5) states, “*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.*”

Informing availability of support services, including counselling

Rule 4(2) (e): *Where an SJPU or the local police receives any information under sub-section (1) of section 19 of the Act, they must inform the child and his/her 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.*

Rule 4(2) (e) of the POCSO Rules, 2012 states that it shall be the duty of the police official who receives a report of an offence to inform the child and his/her 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. The police official should therefore inform the child and his/her parent, guardian or other person in whom the child has trust and confidence of the provision for engaging a support person to help him and his/her family through the trial and pre-trial process and assist them in accessing these services.

While the police or other investigative agency may have already obtained a disclosure from the child about the main incident of abuse, the child’s sessions with the counsellor may reveal new

incidents. It is thus advisable to get the counsellor involved as early as possible into the pre-trial process.

Thus, the rules made under the POCSO Act, 2012 provide that the child may be referred for counselling either by the police or by a doctor.

Providing a support person to help the child or his/her family through trial and pre-trial process

The child must have access to support services which provide information, emotional and psychological support and practical assistance which are often crucial to the recovery of the child and help him to cope with the aftermath of the crime and with the strain of any criminal proceedings. The Protection of Children from Sexual Offences Act, 2012 introduces the concept of a support person, to provide support to the child through the pre-trial and trial process. The support person is thus, in a way, a guardian for a child. He can be a useful intermediary between the authorities and the child.

Rule 4(7) of the POCSO Rules states:

The Child Welfare Committee, 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/her 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/her 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.

Thus, the support person may be appointed either by the Child Welfare Committee or by the child and his/her family themselves.

Rule 4(9) and (10) of the POCSO Rules states:

Under Rule 4(9) and (10) of the POCSO Rules, 2012 the Special Court is to be informed by the SJPU or local police station about the appointment and termination of support person. This reflects that the support person also has a role to play before the Special Court. The support person may be called upon by the Special Court to ascertain information about the child, such as whether the child is in a safe and protective environment, preferences of the child in a given situation, etc. As the support person is required to assist the child through the entire process, s/he should also be present each time the child is required to attend before the Special Court.

Facilitating Interpreter/Translator/Special Educator (in case of a child bearing a mental/physical disability) or any person familiar with the manner of communication of the child

Assistance of an interpreter or expert while recording evidence of child:

Section 26(2) states, *“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”*.

Section 26(3) states, *“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.*

Section 38(1) states, *“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”*.

Section 38(2) states, *“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”*.

Thus, the Act envisages a role for child development experts at the stage of taking evidence from the child and recording his/her statement for the purpose of investigation and trial under the Act. The role of this expert is to facilitate communication between the child and the authority concerned. 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.

Vital Information that must be provided to the Child

The police or the SJPU must inform the child and his or her parent, guardian, support person, or other person whom the child trusts about the following:

- Availability of support services including counselling. If required, they must also assist in connecting the child and his or her family to persons providing support services.
- Child’s right to legal aid and legal representation.
- Developments, including the arrest of the accused, applications filed, and court proceedings.
- Availability of public and private emergency and crisis services.
- Procedural steps involved in a criminal prosecution.
- Availability of victims’ compensation benefits.
- 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.
- Filing of charges against a suspected offender.
- Schedule of court proceedings that the child is either required to attend or is entitled to attend.
- Bail, release or detention status of an offender or suspected offender.
- Rendering of a verdict after trial.
- Sentence imposed on an offender.

Role of Child Welfare Committee

(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:-

- a) 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.
- b) 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.
- c) 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.
- d) 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.
- e) 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.
- f) 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.
- g) 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.
- h) 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 :-

- (i) 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.
- (ii) In cases where the child is placed in an institution the Committee shall monitor the condition of the victim closely
- (iii) 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.
- (iv) 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.
- (v) 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.
- (vi) 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.
- (vii) 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 Line 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 are 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:

- i. hear the parent or guardian likely to be affected by the decision,
- ii. place on record the wish of the child after speaking to it,
- iii. the wishes of the child in favour of living in the family or with parents must be accorded priority,
- iv. allow a parent or guardian of such child to place material on record showing institutionalized care unnecessary,
- v. take the decision as provided based upon material on record,
- vi. 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 2007,³ 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

³ 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.

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.

□ 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: Investigating Sexual Offences against Children: Responsive and Sensitive Medical & Forensic Services

Learning Objectives:

- To discuss with the participants about the process of medical examination for investigation of crimes against children

Methodology:

- Presentation, lecture and discussion

Material Required:

- Projector, computer, presentation on 'Investigating Sexual Offences against Children: Responsive and Sensitive Medical & Forensic Services', marker

Duration: 1 hour 15 minutes

Outcomes:

- Participants will get acquainted with the routines, procedures, Do's & Don'ts for Medical & Forensic services under POCSO Act / Rules, 2012

Contents:

- Procedures for medical examination of victims under the POCSO Act & Rules, 2012
- Prompt and Sensitive Response by Medical Personnel
- Precautions, do's & don'ts for preservation of evidence
- Age-verification procedures
- Importance & need for Support Persons

Tips for the Facilitators/Resource Persons:

- This session is important to make the participants understand the important and sensitive role of medical professionals in the Act.
- As the session is theoretical, make it interactive by encouraging participants to share their experiences.
- Prepare a set or guide of questions and answers to be asked from the participants in between the session.
- Keep a track of the time as it is an extensive session

❖ **Procedures for medical examination of victims under the POCSO Act & Rules, 2012:**

Section 27 – Medical Examination:

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.*

Emergency Medical care:

The child may be brought to the hospital for emergency medical care as soon as the police receive a report of the commission of an offence against the child. In such cases, the rules under the POCSO Act, 2012 prescribe that the child is to be taken to the nearest hospital or medical care facility. This may be a government facility or a private one.

This is reiterated by Section 23 of the Criminal Law Amendment Act, which inserts Section 357C into the Code of Criminal Procedure, 1973. This section provides that all hospitals are required to provide first-aid or medical treatment, free of cost, to the victims of a sexual offence.

Medical Examination:

Medical examination is to be conducted as per the provisions of Section 27 of the POCSO Act, 2012 and Section 164A of the CrPC, 1973 which states:

1. *Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of a such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.*
2. *The registered medical practitioner, to whom such woman is sent shall, without delay, examine her and prepare a report of her examination giving the following particulars, namely:-*

- i. *the name and address of the woman and of the person by whom she was brought;*
 - ii. *the age of the woman;*
 - iii. *the description of material taken from the person of the woman for DNA profiling*
 - iv. *marks of injury, if any, on the person of the woman;*
 - v. *general mental condition of the woman; and*
 - vi. *other material particulars in reasonable detail.*
3. *The report shall state precisely the reasons for each conclusion arrived at.*
 4. *The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.*
 5. *The exact time of commencement and completion of the examination shall also be noted in the report.*
 6. *The registered medical practitioner shall, without delay forward the report to the investigation officer who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.*
 7. *Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf.*

In the above legal provision, the term “woman” may be substituted by the term “child”, and applied in the context of the POCSO Act, 2012.

❖ Prompt and Sensitive Response by Medical Personnel

Rule 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.*

Thus, doctors and support medical staff are involved both at the time of rendering emergency medical care as well as at the time of medical examination.

- **If the child resists the examination**

- (i) If a child of any age refuses the genital-anal examination, it is a clinical judgment of how to proceed. A rule of thumb is that the physical exam should not cause any trauma to the child. It may be wise to defer the examination under these circumstances.
- (ii) It may be possible to address some of the child's fears and anxieties (e.g. a fear of needles) or potential sources of unease (e.g. the sex of the examining health worker). Further, utmost comfort and care for the child should be provided e.g., examining very small children while on their mother's (or caregiver's) lap or lying with her on a couch.
- (iii) If the child still refuses, the examination may need to be deferred or even abandoned. Never force the examination, especially if there are no reported symptoms or injuries, because findings will be minimal and this coercion may represent yet another assault to the child.
- (iv) The child should not be held down or restrained for the examination (exception for infants or very young toddlers).

- **Techniques to help the child relax**

- (i) Offer clear age-appropriate explanations for the reasons for each procedure, and offer the child some control over the exam process.
- (ii) Proceed slowly, explain each step in advance.
- (iii) Use curtains to protect privacy, if the child wishes.
- (iv) Explain to parent or support person that their job is to talk to and distract the child, and the findings of the exam will be discussed with them after the exam is completed.
- (v) Position the parent near the child's head.

- (vi) Use distracters. For example, ask the parent to sing a song, or tell a familiar story, or read a book to the child. A nurse or other helper can do this if the parent is unable.
- (vii) Use TV, cell phone game, or other visual distraction.
- (viii) Do not forcibly restrain the child for the examination

- **Sedation for Medical Treatment**

- (i) Sedation is rarely needed if the child is informed about what will happen and there is adequate parental support for the child.
- (ii) Consider sedation or a general anesthetic only if the child refuses the examination and conditions requiring medical attention, such as bleeding or a foreign body, are suspected.
- (iii) If it is known that the abuse was drug-assisted, the child needs to be told that he/she will be given a sedative or be put to sleep, that this may feel similar to what he/she has experienced in the past.
- (iv) Reassure the child about what will take place during the time under sedation and that he/she will be informed of the finding.
- (v) However, conscious sedation is an option if examination and evidence collection is required, and the child is not able to cooperate.
- (vi) Speculum exam on a pre-pubertal girl should be done under anaesthesia, not conscious sedation.

- **The following pieces of information are essential to the medical history:**

- (i) Last occurrence of alleged abuse (younger children may be unable to answer this precisely). When do you say this happened?
- (ii) First time the alleged abuse occurred. When is the first time you remember this happening?
- (iii) Threats that were made.
- (iv) Nature of the assault, e.g. anal, vaginal and/or oral penetration. What area of your body did you say was touched or hurt? (The child may not know the site of penetration but maybe able to indicate by pointing. This is an indication to examine both genital and anal regions in all cases.)
- (v) Whether or not the child noticed any injuries or complained of pain.
- (vi) Vaginal or anal pain, bleeding and/or discharge following the event. Do you have any pain in your bottom or genital area? Is there any blood in your panties or in the toilet? (Use whatever term is culturally acceptable or commonly used for these parts of the anatomy.)
- (vii) Any difficulty or pain with voiding or defecating. Does it hurt when you go to the bathroom? (indication to examine both genital and anal regions in all cases)
- (viii) Any urinary or faecal incontinence.
- (ix) Whether or not the child noticed any injuries or complained of pain.
- (x) In case of children, illustrative books, body charts or a doll can be used if available, to elicit the history of the assault. When it is difficult to elicit history from a child, please call an expert.

- **When performing the head-to-toe examination of children, the following points are particularly noteworthy:**

- (i) Record the height and weight of the child (neglect may co-exist with sexual abuse). Note any bruises, burns, scars or rashes on the skin. Carefully describe the size, location, pattern and colour of any such injuries.
- (ii) Check for any signs that force and/or restraints were used, particularly around the neck and in the extremities.
- (iii) Record the child's sexual development stage and check the breasts for signs of injury.
- (iv) If the survivor is menstruating at the time of examination then a second examination is required on a later date in order to record the injuries clearly.
- (v) Some amount of evidence is lost because of menstruation. Hence it is important to record whether the survivor was menstruating at the time of assault/examination.
- (vi) The same applies to bathing, douching, defecating, urinating and use of spermicide after the assault.

❖ **Precautions, do's and don'ts for preservation of evidence: Medical Professionals as Expert Witnesses**

Deciding cases of child sexual abuse would be much easier if it left clear-cut physical evidence. Unfortunately, child sexual abuse often leaves no such evidence. Child sexual abuse is often exceedingly difficult to prove. It usually occurs in secret, often over a prolonged period of time, and does not always leave physical marks; in addition to this, the child is usually the only eyewitness. While many children are capable witnesses, some cannot give conclusive testimony, and consequently, children's testimony is sometimes ineffective. In such cases, the testimony of an expert medical witness can be useful.

Physicians can provide opinion testimony that is based upon the child's history, statements, and medical examination, even if the physician's examination of the child reveals no concrete physical evidence supportive of the child's allegations.

- (i) Courts in India in their judgments described an expert as a person who has acquired special knowledge, skill or experience in any art, trade or profession. Experts have knowledge, skill, experience, or training concerning a particular subject matter that is generally beyond the knowledge of the average person. Such knowledge may have been obtained by practice, observation or careful study. The expert thus operates in a field beyond the range of common knowledge.
- (ii) Expert evidence is covered under Ss.45-51 of Indian Evidence Act. The subjects of expert testimony mentioned by the section are foreign law, science, art and the identity of handwriting or finger impressions.
- (iii) In general, whether or not the testimony of an expert will be useful in any given case is almost always left to the discretion of the trial judge before whom the testimony is proffered. However, even where the Court has some degree of knowledge or familiarity with the subject, an expert's testimony may be valuable to add insight and depth its understanding of the matter, or to educate them as to commonly held prejudices and misconceptions which might negatively impact upon an impartial and just decision.
- (iv) In general, the opinions of medical professionals are admissible upon questions such as insanity, the causes of diseases, the nature of the injuries, the weapons which might have been used to cause injuries or death, medicines, poisons, the conditions of gestation, etc. In the case of questions pertaining to age determination, positive evidence furnished by birth register, by members of the family, with regard to the

- age, will have preference over the opinion of the doctor: but, if the evidence is wholly unsatisfactory, and if the ossification test in the case is complete, such a test can be accepted as a surer ground for determination of age.
- (v) In their testimony regarding a forensic examination, medical professionals typically describe the process of examining the victim, the physical findings that were observed, and their interpretation. It is important to remember that the medical professional cannot be asked to testify to “diagnose” sexual abuse. The doctor cannot make any definitive conclusions regarding the degree of force used by the abuser or whether the victim consented to any sexual activity. What he/she can appropriately conclude is whether there is evidence of sexual contact and/or recent trauma. He/she can state whether the medical history and examination are consistent with sexual abuse.
 - (vi) In many child abuse cases, experts have firsthand knowledge of the child because the expert treated or examined the child. However, an expert may be called upon to render an opinion concerning a child without personally examining the child.
 - (vii) However, it is important to remember that doctors are rarely expert in interviewing, and often assume the truth of what the patient tells them. The testimony is presented as if the doctor's opinion is based on physical findings when it is not. It is often largely or wholly based on statements made, a far different and less scientific basis than objective findings upon examination.
 - (viii) In addition to this, opinions may be sought from mental health experts as to the psychological effects of child sexual abuse, such as Post Traumatic Stress Disorder and Child Sexual Abuse Accommodation Syndrome.
 - (ix) It is for the legal representative who proposes the use of expert testimony to establish his/her credentials, preferably listing his/her formal qualifications. The adequacy of the qualification of the expert and the admissibility of his/her testimony are within the discretion of the Special Court.
 - (x) Before giving evidence the expert will usually have prepared a report, either assessing one or more parties to the case or assessing other experts' reports. His/her report should be reliable on the basis of the following criteria:
 - a) It should provide a context in layman's terms from which to understand the basis of his/her opinion.
 - b) It should be clear when the expert is stating corroborated fact and when he/she is merely repeating what he/she has been told by the alleged offender. Assertions which are based entirely on the alleged offender's perception are likely to be misleading.
 - c) The expert must review the information impartially rather than ignore matters which are inconvenient to his/her conclusions.
 - d) The report should avoid restating incidental trivia and give preference to examining and analysing the crucial issues of the case.
 - e) The expert should demonstrate knowledge of the process and dynamics of child sexual abuse and help to make sense of the child's and non-abusing parent's experiences and perceptions. Victims and non-abusing partners of offenders often do not act rationally and can appear collusive with the offender, whereas their behavior results from the control the offender exercises over them. It is useful to have this explained in the expert report.
 - f) All professions have their exclusive language, but it is best that the expert present the issues in language that the court, advocate and parties can understand.
 - g) The expert must not rely solely on quoted research to support his/her arguments, and should refer to clinical experience as well.

An expert opinion must be premised on a reasonable degree of certainty. The expert cannot speculate or guess. It is clear, however, that an expert need not be absolutely certain about a subject before offering an opinion. All that is required is reasonable clinical certainty.

It is important to remember that while an expert's testimony may be deemed relevant, necessary, reliable, and therefore admissible under the aforementioned guidelines, it is ultimately the prerogative of the judge to determine what weight should be afforded to the testimony. No matter how qualified the expert, the court is not bound by an expert's conclusions and can exercise its discretion in this regard, keeping in mind all the other evidence presented to it.

❖ Importance & need for Support Persons

The child must have access to support services which provide information, emotional and psychological support and practical assistance which are often crucial to the recovery of the child and help him to cope with the aftermath of the crime and with the strain of any criminal proceedings.

The Protection of Children from Sexual Offences Act, 2012 introduces the concept of a support person, to provide support to the child through the pre-trial and trial process. The support person is thus, in a way, a guardian *ad litem* for a child. He can be a useful intermediary between the authorities and the child.

Rule 4(7) of the POCSO Rules states:

The Child Welfare Committee, 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/her 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/her 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.

Thus, the support person may be appointed either by the Child Welfare Committee or by the child and his/her family themselves.

Rule 4(2) (e) of the POCSO Rules, 2012 states that it shall be the duty of the police official who receives a report of an offence to inform the child and his/her 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. The police official should therefore inform the child and his/her parent, guardian or other person in whom the child has trust and confidence of the provision for engaging a support person to help him and his/her family through the trial and pre-trial process, and assist them in accessing these services.

Under Rule 4 (9) and (10) of the POCSO Rules, 2012 the Special Court is to be informed by the SJPU or local police station about the appointment and termination of support person. This reflects that the support person also has a role to play before the Special Court. The support

person may be called upon by the Special Court to ascertain information about the child, such as whether the child is in a safe and protective environment, preferences of the child in a given situation. As the support person is required to assist the child through the entire process, s/he should also be present each time the child is required to attend before the Special Court.

The CWC may appoint any professional or any other person as a support person in the best interest of a particular child. However, in such cases, the CWC must ensure that there is no conflict of interest in the appointment of the support person, and must also give its reasons in writing for having appointed as support person such professional or person.

The duties and role of a support person are given under Rule 4 of the POCSO Rules, 2012. The support person is instrumental in maintaining the link between the child and law enforcement authorities by providing information to the child and his/her family about the progress of the case. Further, the successful rehabilitation of the child is dependent on the degree of sensitivity and level of understanding with which the support persons deals with him the child while addressing his/her problems.

- (i) Establishing trust with the support person is important and may only happen over a period of time. It is therefore advisable to appoint a support person at an early stage and to have the same person accompany the child throughout the whole proceedings. The more the child feels familiar with his/her support person, the more he will feel at ease.
- (ii) It would also be useful to this end if the selection of the support person is done via a process involving the child.
- (iii) Decisions on when to carry out any interviews should as far as possible take account of the child's situation and needs.
- (iv) It is important to prevent secondary victimisation by ensuring that the child is interviewed as early as possible. Interaction with authorities should be as easy as possible, whilst limiting the number of unnecessary interactions the child has with them.
- (v) Appropriate steps should be taken to ensure that the child does not have to come into contact with accused or suspected persons.

Technical Session VII: Role and Responsibilities of Media in Cases of Sexual Offences against Children

Learning Objectives:

- To develop an understanding of role of Media Professionals in POCSO Act & Rules, 2012

Methodology:

- Presentation, lecture and discussion

Material Required:

- Projector, computer, presentation on 'Investigating Sexual Offences against Children: Responsive and Sensitive Medical & Forensic Services', marker

Duration: 1 hour 15 minutes

Outcomes:

- Participants will develop an understanding of the key role delineated for Media Professionals under the POCSO Act & Rules,2012

Contents:

Role of Media Professionals in:

- providing information to the SJPU/local police if coming across any sexually exploitative material or object related to a child (including pornographic, sexually related or making obscene representation of a child or children) through the use of any medium, shall
- ensuring non-reporting of cases without having complete and authentic information
- ensuring non-disclosure of the identity of a child including his/her name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child and it is the responsibility of the Police Officer to ensure this. However, the Special Court may permit such disclosure in the interest of the child, provided that for reasons to be recorded in writing. Any person who contravenes this provision shall be liable to be punished with imprisonment of either description for a period which shall not be less than 6 months but may extend to one year or with fine or with both
- generating public awareness of the provisions of this Act are given wide publicity through media through different forms of media

Tips for the Facilitators/Resource Persons:

- This session is important to make the participants understand the critical role played by media in cases of child sexual abuse.
- As the session is theoretical, make it interactive by encouraging participants to share their experiences.
- Keep a track of the time as it is an extensive session

Guidelines for Media Reporting

GUIDELINES FOR MEDIA REPORTING ON CHILDREN:

Media coverage on matters relating to children may have long term consequences on their overall development (physical, mental, psychological, emotional, moral, social, economic etc.), life and dignity and lack of care by Media in this regard may entail real risk of children facing harm, stigma, disqualification, retribution etc. The privacy, dignity, physical and emotional development of children is of the utmost importance, which are to be preserved and protected at all times, while reporting/broadcasting/publication of news/programs/ documentaries etc. on and for children.

The guidelines are in the backdrop of the existing legal framework, as detailed in SCHEDULE hereto, to secure and protect the rights of children and to set-out the minimum parameters of responsibility to be borne by print and electronic media (hereinafter referred to as Media) in relation to reporting/broadcasting/ publication of news/programs/documentaries etc. on and for children.

❖ **Meaning of terms used:**

- Child or children shall mean a person(s) who has/have not completed 18 years of age.
- Media shall include, but not be limited to, any newspaper, magazine, news-sheet or electronic media.

❖ **Principles:** Involvement of children in news/programs/documentaries etc. must evidently be editorially justified including from a child rights perspective.

- Media shall ensure that child victims of rape, other sexual offences, trafficking, drug/substance abuse, elopement, organized crimes, children used in armed conflicts, children in conflict with law and child witnesses etc. are automatically guaranteed anonymity for life.
- Media must ensure that due consideration is given to a child's right to privacy and to prevent the child from being exposed to anxiety, distress, trauma, social stigma, risk to life and safety and further suffering in relation to reporting/ broadcasting/ publication of news/ programs/ documentaries etc. on and for children.
- Media shall ensure that a child's identity is not revealed in any manner, including but not limited to, disclosure of personal information, photograph school/institution/locality and information of the family including their residential/official address.
- Media shall not sensationalize issues or stories, especially those relating to children, and should be conscious of the pernicious consequences of disclosing/highlighting information in a sensational form and the harm it may cause to children.
- *INTERVIEWING A CHILD BY THE MEDIA:*

This shall be governed by the following principles:

- a) That the interview is in the child's best interest.
- b) That the interview does not aggravate the child's situation further.

- c) That the manner and content of the interview doesn't affect/interfere with the child's right to privacy.
 - d) That if the interview is in the child's best interest, the same shall be done under supervision and consent of the child's parent(s) or legal guardian, or in the alternative, the competent authorities for the child.
 - e) That while interviewing a child, his/her consent may be obtained, depending upon his/her age and maturity.
 - f) Frequent interviewing of a child must be avoided.
 - g) The child's refusal to be interviewed must be honoured.
 - h) Before interviewing the child he/she must be duly informed about the purpose and manner of the interview
 - i) The child and/or his/her parents/guardian or any person having control over him/her shall not be coerced or enticed in any manner including financial or other inducement to secure consent for the interview.
- Media must verify the credentials and authority of individuals/organizations whose consent is sought on behalf of the child.
 - Media shall not give any financial or other inducement to the child or parent/guardian or others in relation to reporting/broadcasting/ publication of news/programmes/ documentaries etc. on and for children.
 - Media must balance its responsibility to protect children from unsuitable content with the right to freedom of expression and the right to know.
 - To protect the identity of the child media shall ensure that any visual showing the face of the child must be completely morphed in cases where privacy /anonymity is required.
 - Media shall orient/sensitize its editorial personnel, including editors/ editorial team / reporters/correspondents/producers/photographers etc. about laws, rules, regulations and guidelines related to reporting/broadcasting/publication of news/programs/documentaries etc. on and for children.
 - The media shall proactively promote the children's right to information and freedom of expression.
- **PUBLICITY:** The Department of Information and Public Relations of all State Governments and U.T. Administrations, the Directorate of Field Publicity, Directorate of Advertising and Visual Publicity (DAVP) of Ministry of Information and Broadcasting, Prasar Bharati (AIR and DD), Self Regulatory Bodies etc. shall give due publicity at appropriate intervals to the laws, rules, regulations and guidelines (including the Guidelines) related to reporting/broadcasting /publication of news/programmes/documentaries etc. on and for children.
 - **MONITORING:** The compliance with the applicable laws, rules, regulations and Guidelines (including these ones) related to reporting/broadcasting/publication of news/programmes/ documentaries etc. on and for children shall be monitored by the following:
 - a) the self-regulatory bodies.
 - b) the regulatory mechanisms of Ministry of Information and Broadcasting, such as, Electronic Media Monitoring Center (EMMC) and Inter-Ministerial Committee (IMC).
 - c) Press Council of India through their respective procedures.

- STATUS REPORT: NCPCR / SCPCRs shall file a report in this Court on yearly basis regarding the compliance level of the applicable laws, rules, regulations and Guidelines (including these ones) by all concerned. The foregoing are only broad Guidelines and are not meant to be exhaustive.

Technical Session VIII: Rehabilitation & Compensation for Child Victims of Sexual Offences: State Obligations and Recommendations by Special Court

Learning Objectives:

- To make the participants aware of support/rehabilitation provisions in the POCSO Act,2012
- Link JJ Act/ICPS to support the victims and families for legal aid, compensation and reintegration mechanisms, when needed established by state governments

Methodology:

- Presentation, lecture and discussion

Material Required:

- Projector, computer, presentation on 'Investigating Sexual Offences against Children: Responsive and Sensitive Medical & Forensic Services', marker

Duration: 2 hours

Outcomes:

The participants will learn about various support/rehabilitation services available under POCSO Act & Rules, 2012

Contents:

- Counseling/Trauma Counselling Services to victims
- Prompt action on application of victims/parents or guardian of victim to Central and / or State Government for Compensation
- Compensation disbursement including interim and final
- Compensation as per court orders
- Parameters for deciding/recommending interim and final quantum of compensation

Tips for the Facilitators/Resource Persons:

- This session is meant to make the participants aware of counselling, facilitation, legal aid and compensation services available to victims of sexual abuse under the Act.
- As this is theoretical session try to seek as much participation as possible.
- Link the participants view point 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.

Counselling/Trauma Counselling Services to victims

Counselling can be difficult for children because of the nature of being a child and the difficulty in relating to an adult, especially an adult that they don't know. Counselling for abused children therefore requires that the counsellor is trained in the subject and understands how children communicate. Children who have been sexually abused are not only traumatised as a result of their experience, but are also more vulnerable to further and repeated abuse and at risk of secondary victimisation at the hands of the justice delivery process. A common example is the handling of cases of child victims by unspecialized police, prosecutors and judges who are not trained in justice for children, children's rights or how to deal and communicate with victim children and their families. The lack of clear guidelines and procedures on how to deal with child victims and their families in a child - sensitive manner during the court process affects the quality of trial and evidence and trial process; the child is subjected in such cases to repeated probing and questioning, made to relive the traumatic incident again and again, and thereby suffer in the retelling. Another instance is that of child victims not receiving proper medical support and counselling, causing physical and mental distress to the child and his/her family and hampering the healing process for the child. In addition to this, families and child victims are unable to benefit from legal aid as the appropriate agencies are not involved at the right stage in the procedure. Child victims do not receive timely advice and assistance so as to be free from a fear of family breakdowns and social isolation if the offender is a relative and/or the breadwinner of the family. There is also no system of supervision for checking the welfare and well-being of child victims during and after the court process, particularly when the abuser is the parent or guardian of the child.

There is thus a need for prompt and systematic multi-sectoral intervention that will be conducive to the justice delivery process, minimise the risks of health problems, enhance the recovery of the child and prevent further trauma. This can be achieved through action that addresses the needs of the child effectively, not only to protect him from further abuse and help him deal with his/her trauma but also to ensure that he is not revictimised in the course of the justice delivery process. In addition to this, it also has to be ensured that the child is steered towards the path of healing, recovery and rehabilitation.

The prevention of child sexual abuse, protection of victims, justice delivery, and rehabilitation of victims are not isolated issues. The achievement of these objectives requires a co-ordinated response of all the key players, which include the police, prosecution, courts, medical institutions, psychologists and counsellors, as well as institutions that provide social services to the children. The protection of children from violence and abuse thus requires an integrated and coordinated approach. Needless to say, the identification and understanding of the roles of each of these professionals is crucial to avoid duplication and promote effective convergence.

A multi-sectoral approach, while mindful of children's rights, would address the problems related to uncoordinated interagency mechanisms that child victims face in the legal and social service process. It will provide a frame work within which the service providers will work, and provide a mechanism for information-sharing to help the victim. The process of investigation and referral of cases will also improve. It is envisaged that such an approach will ensure support for the child and his/her family, including assistance with police and court proceedings, arrangements for emergency shelter for children, arrangements for counselling, therapy, and training courses, appropriate rehabilitative services including protective custody and foster care, if necessary; information on and access to financial assistance, where appropriate, and monitoring of family involvement.

The responsibility of supporting children who have been sexually abused should be embraced by the whole community, but it is the professionals that work in this field who play an important role in enabling the healing process.

Sexually abused children are traumatised and vulnerable. They may show certain identifiable behavioural signs of abuse, but often, these are not immediately obvious and will reveal themselves only over a period of time. As a counsellor, one must be aware of the signs of sexual abuse as children often find it very difficult to disclose sexual abuse. Counsellors have a very important role to play in limiting the short-term and long term effect of child sexual abuse. If childhood sexual abuse is not treated, long-term symptoms can go on through adulthood. The counsellor should be aware that the effects of child sexual abuse are long-term and can change the world view and the course of life of the child. The first step in the healing process is for the child to talk about the abuse, and it is the counselor's duty to facilitate this; however, the process of recovery may be long and the child will have other needs that the counsellor can attend to.

In all cases of penetrative sexual assault and all aggravated cases, arrangements should be made as far as possible to ensure that the child is provided counselling support. The rules made under the POCSO Act, 2012 provide that the child may be referred for counselling either by the police or by a doctor. Where a counsellor is not available within the existing ICPS framework, the State Government may secure the engagement of external counsellors on contract basis. In order to enable the engagement of counsellors from outside the ICPS, including senior counsellors for the more aggravated cases, the DCPU in each district shall maintain a list of persons who may be appointed as counsellors to assist the child. These could include mental health professionals employed by Government or private hospitals and institutions, as well as NGOs and private practitioners outside the ICPS mechanism, chosen on the basis of objective criteria.

The counsellor is therefore a very important tool for the child in rebuilding his or her life after he has been sexually abused.

Prompt action on application of victims/parents or guardian of victim to Central and/or State Government for Compensation

The POCSO Act, 2012 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 said Act defines a child as any person below eighteen years of age, and defines different forms of sexual abuse, including penetrative and non-penetrative assault, as well as sexual harassment and pornography, and 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, like 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 said Act. The said 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 said 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 also casts the police in the role of child protectors during the investigative process. Thus, the police personnel receiving a report of sexual abuse of a child are given the responsibility of making urgent arrangements for the care and protection of the child, such as obtaining emergency medical treatment for the child and placing the child in a shelter home, should the need arise. The police are also required to bring the matter to the attention of the Child Welfare Committee (CWC) within 24 hours of receiving the report, so the CWC may then proceed, where required, to make further arrangements for the safety and security of the child.

The said Act makes provisions for the medical examination of the child in a manner designed to cause as little distress as possible. The examination is to be carried out in the presence of the parent or other person whom the child trusts, and in the case of a female child, by a female doctor.

The said Act provides for Special Courts that conduct the trial in-camera and without revealing the identity of the child, in a child-friendly manner. Hence, the child may have a parent or other trusted person present at the time of testifying and can call for assistance from an interpreter, special educator, or other professional while giving evidence; further, the child is not to be called repeatedly to testify in court and may testify through video-link rather than in a courtroom. Above all, the said Act stipulates that a case of child sexual abuse must be disposed of within one year from the date the offence is reported. It also provides for the Special Court to determine the amount of compensation to be paid to a child who has been sexually abused, so that this money can then be used for the child's medical treatment and rehabilitation.

The said Act recognises almost every known form of sexual abuse against children as punishable offences, and makes the different agencies of the State, such as the police, judiciary and child protection machinery, collaborators in securing justice for a sexually abused child. Further, by providing for a child-friendly judicial process, the Act encourages children who have been victims of sexual abuse to report the offence and seek redress for their suffering, as well as to obtain assistance in overcoming their trauma. In time, the said Act will provide a means not only to report and punish those who abuse and exploit the innocence of children, but also prove an effective deterrent in curbing the occurrence of these offences.

The said Act is to be implemented with the active participation of the State Governments. Under Section 39 of the Act, the State Government is required to frame guidelines for the use of persons including non-governmental organisations, professionals and experts or persons trained in and having knowledge of psychology, social work, physical health, mental health and child development to assist the child at the trial and pre-trial stage.

The fundamental principles to be followed in the determination of a case involving a sexual offence against a child have been laid down in various international instruments and in the Preamble to the POCSO Act, 2012 itself. The State Governments, the Child Welfare Committee, the Police, the Special Courts, all other Government functionaries as well as Non-Government Organisations, and all professionals and experts assisting the child at the trial and pre-trial stages are bound to abide by these principles.

In the context of the POCSO Act, 2012 interviews may need to be conducted by a variety of professionals, including police or investigative agencies. These are forensic rather than therapeutic interviews, with the objective being to obtain a statement from the child in a manner that is developmentally sensitive, unbiased, and truth-seeking, that will support accurate and fair decision-making in the criminal justice and child welfare systems. Information obtained from an investigative or forensic interview may be useful for making treatment decisions, but the interview is not part of a treatment process.

Mandatory Reporting: When a doctor has reason to suspect that a child has been or is being sexually abused, he/she is required to report this to the appropriate authorities (i.e. the police or the relevant person within his/her organization who will then have to report it to the police). Failure to do this would result in imprisonment of up to six months, with or without fine.

Medical or health history: The purpose of this is to find out why the child is being brought for health care at the present time and to obtain information about the child's physical or emotional symptoms. It also provides the basis for developing a medical diagnostic impression before a physical examination is conducted. The medical history may involve information about the alleged abuse, but only in so far as it relates to health problems or symptoms that have resulted there from, such as bleeding at the time of the assault, or constipation or insomnia since that time.

Inquiry: Inquiry under the Act is facilitated either by the CWC itself or with the assistance of a Social Worker/Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC to be appointed for this purpose. Where a support person has been appointed for the child, the same person may be engaged to conduct the inquiry. Upon receiving the report of the Social worker/ Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC, the CWC has to make a determination as to whether the child must be removed from the custody of his/her parents/guardian/ care giver and placed in a Children's Home or Shelter Home.

Thus, where the child or his/her parent or guardian or person in whom the child has trust and confidence have reason to believe that the support person is not acting in the best interest of the child, they may request his/her removal. In such a case, a new support person may be provided by CWC with the consent of the child and his/her parents or guardian or other person in whom the child has trust and confidence. The DCPU must arrange for periodic training modules to impart this knowledge to those registered with it or with the CWC for engagement as support persons.

After the support person has had an opportunity to interact with the child, the support person should formulate a Child Protection Plan (CPP) in respect of the child. CPP may be submitted to the CWC and can serve as a working tool that should enable the family and professionals to understand what is expected of them and what they can expect of others. The aims of the plan are to safeguard the interests of the child, to support the child's wider family and to care for the child and promote his/her welfare.

Civil society organisations (independent institutions, non-governmental organisations (NGOs) and independent experts) have a positive role to play in the effective implementation of the POCSO Act, 2012 not only in raising public awareness on children's rights and in disseminating a new culture of child-adult relationships, but also in preventing and responding to violence and sexual abuse against children by providing active support to reported cases through individual and group counselling and services for rehabilitation of abused children. An NGO worker can

also be appointed as the designated support person. Under the Act, NGOs are the primary channels for proactive monitoring of government policies, technical support to institutions in developing child protection policies, training to professionals, setting up education and training programmes and holding consultations for children and youth, monitoring media coverage, developing and disseminating position papers, creating alliances with other NGOs, etc.

The Act envisages a role for child development experts at the stage of taking evidence from the child and recording his/her statement for the purpose of investigation and trial under the Act. The role of this expert is to facilitate communication between the child and the authority concerned.

The POCSO Act, 2012 provides for the appointment of a Special Public Prosecutor for every Special Court for conducting cases only under the provisions of this Act. The act confirms the right to free legal aid, providing that the child or his family shall be entitled to a legal counsel of their choice, and that where they are unable to afford such counsel, they shall be entitled to receive one from the Legal Services Authority. The Act also provides for child-friendly pre-trial and trial procedures to minimize the trauma felt by child victims and to eliminate the possibility of revictimisation at the time of trial. Various services provided by the Legal Aid Authorities under the Act are legal representation, legal counselling, legal advice and other services like

- i) Payment of court and other process fee;
- ii) Charges for preparing, drafting and filing of any legal proceedings;
- iii) Charges of a legal practitioner or legal advisor;
- iv) Costs of obtaining decrees, judgments, orders or any other documents in a legal proceeding;
- v) Costs of paper work, including printing, translation etc.

Furthermore, guidance is given to the legal representatives of a child who has been a victim of an offence under the Act at pre-trial and at trial stages. Role of lawyer under the Act is specified in accordance with the child's welfare and best interests.

Payment to Support Person

Officials of Children's Homes and Shelter Homes and persons employed by the DCPU are entitled to receive their monthly salaries at the pre-determined rates. They will be performing the functions of support persons as part of the scope of their work and will not receive additional remuneration for this work, except reimbursement of local travel costs and other miscellaneous expenditure.

Child rights/ child protection experts and NGOs may be remunerated from the Fund constituted by the State Government under Section 61 of the JJ Act, or under any other State Government Fund at rates set up by the State Government including DCPU for this purpose.

Compensation disbursement including Interim and Final Compensation as per Court Orders etc.

Compensation for medical expenses:

Section 33(8) provides:

“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.”

Rule 7 provides further details in relation to the payment of this compensation. It specifies that the Special Court may order that the compensation be paid not only at the end of the trial, but also on an interim basis, to meet the immediate needs of the child for relief or rehabilitation at any stage after registration of the First Information Report [Rule 7(1)]. This could include any immediate medical needs that the child may have. Further, Rule 7(3) provides that the criteria to be taken into account while fixing the amount of compensation to be paid include the severity of the mental or physical harm or injury suffered by the child; the expenditure incurred or likely to be incurred on his/her medical treatment for physical and/or mental health; and any disability suffered by the child as a result of the offence. Hence, the child may recover the expenses incurred on his/her treatment in this way.

Counsellors engaged externally may be remunerated from the Fund constituted by the State Government under Section 61 of the JJ Act, or under any other Fund set up by the State Government for this purpose. The rates for payment shall be as fixed by the DCPU.

Parameters deciding/recommending interim and final quantum of compensation

The police or the special juvenile police unit, as the case may be, are obliged to report to the Special Court within 24 hours of recording the information under section 19 of the POCSO Act. Upon the receipt of such report or an application of the victim, the Court has powers to order interim compensation to meet the immediate needs of the child for relief or rehabilitation at any stage after the registration of FIR. This interim compensation shall be adjusted against the final compensation.

Compensation: Special Courts can direct the State to pay compensation to a child victim out of the Victims Compensation Fund, established under section 357A of the Code. If no such fund exists, compensation can be paid by the State for any loss or injury suffered, whether physical or mental, for rehabilitation. Compensation can be paid while the case is pending at the interim stage as well as after the conclusion of trial, irrespective of whether the accused is discharged, acquitted or untraceable.

After the conviction of the accused and before sentencing him a plea can be raised on behalf of the victim-child before the Special Court for:

- (i) an order of adequate compensation out of the fine imposed on the convict under section 357 (1) or
- (ii) such compensation under section 357 (3) of the Code without imposing any fine on the convict. Under the law the Special Court may also order such compensation on its own accord.

Technical Session IX: Open House Discussion on Experiences of Judicial Officers on cases under POCSO Act, 2012

Learning Objective:

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

Methodology: Open House Discussion

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

Duration: 45 minutes

Content:

- Challenges for effective implementation of POCSO Act / Rules, 2012 and suggestions to overcome these challenges
- Sharing of case examples on violence against children

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

Open House Discussion

An open house is an informal setting in which people get information about a plan or project. It has no set, formal agenda. Unlike a meeting, no formal discussions and presentations take place. Instead, people get information informally from the participants and are encouraged to give opinions, comments, and preferences on the subject being discussed.

In this session, the participants are expected to share their free and frank opinion and views on various aspects of the POCSO Act & Rules, 2012 and suggest/recommend possible ways to strengthen the Act. They may all share their own experiences in handling cases under POCSO Act.

Sharing of case examples on violence against children

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.

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.

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.

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

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.

Child F – AGE 14 | Maliwada, Maharashtra

Occurred 2006 | **Convicted** in 2010

An autorickshaw driver approached Childline 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

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 anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Explanation III.—Whoever employs, 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