

# **Training Manual on Protection of Children from Sexual Offences (POCSO) Act & Rules 2012 for Media Professionals**



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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	DAVP	Directorate of Advertising and Visual Publicity
9	CWC	Child Welfare Committee
10	DCPU	District Child Protection Unit
11	DD	Doordarshan
12	FIR	First Information Report
13	FGM	Female Genital Mutilation
14	GACFCA	Georgia Center for Child Advocacy
15	GOI	Government of India
16	HIV	Human Immunodeficiency Virus
17	HRW	Human Rights Watch
18	ICDS	Integrated Child Development Services Scheme
19	ICPS	Integrated Child Protection Scheme
20	ILO	International Labour Organisation
21	IO	Investigation Officer
22	IPC	Indian Penal Code
23	JJ Act	Juvenile Justice (Care and Protection of Children) Act
24	NCPCR	National Commission for Protection of Child Rights
25	NGO	Non-Governmental Organisation
26	OPs	Optional Protocols
27	POCSO	Protection of Children from Sexual Offences Act
28	PTSD	Post-Traumatic Stress Disorder
29	RTE	Right to Education
30	SCPCR	State Commission for Protection of Child Rights
31	SJPU	Special Juvenile Police Unit
32	STDs	Sexually Transmitted Diseases
33	UNCRC	United Nations Convention on the Rights of the Child
34	UNFPA	United Nations Fund for Population Activities
35	UNICEF	United Nations Children's Fund
36	UOI	Union of India

37	UTs	Union Territories
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## **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 percent 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, reprehensible 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 percent 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 14<sup>th</sup> 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 media professionals.

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 Cr PC or any other law for the time being in force.
- (v) training and awareness programmes for child protection functionaries.

## **Objectives**

The main objectives of the Orientation Workshop are to:

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

## **Programme Contents**

The contents of the Orientation Workshop would broadly include Sharing of experience by media personnel on sexual offence against children; Child Rights: An Overview; Role of Stakeholders in cases of Sexual Offences against Children; Impact of Trauma, Abuse and Threat on Child Victims/Witness; Salient features of Protection of Children from Sexual Offences (POCSO) Act and Rules, 2012;; Role of Media Professionals in implementation of POCSO Act and Rules, 2012.

## **Participants**

About 25-30 officials representing Media Professionals 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 Media Professionals. 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 media professionals 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. – 10.45a.m.	Session II – Inaugural session
10.45 a.m. – 11.00a.m.	Tea / Coffee
11.00 a.m. – 11.45 a.m.	Technical Session I – Sharing of experiences by media personnel on sexual offences against children
11.45 a.m. – 1.15 p.m.	Technical Session II – Child Rights: An Overview with special references to sexual offences against children
1:15 p.m. –2:15 p.m.	Lunch
2.15 p.m. –3.30 p.m.	Technical Session III – Role of Stakeholders in cases of sexual offences against children
3.30 p.m. – 3.45 p.m.	Tea / Coffee
3:45 p.m.- 5:00 p.m.	Technical Session IV – Impact of Trauma, Abuse and Threat on child victim / witness

### **Day Two**

9.00 a.m. – 9.15 a.m.	Recap of the Previous Day
9.15 a.m. – 11.15 a.m.	Technical Session V – Salient Features of Protection of Children from Sexual Offences (POCSO) Act and Rules, 2012
11.15 a.m.–11.30 a.m.	Tea / Coffee
11.30 a.m. – 1.30 p.m.	Technical Session VI – Role of Media Professionals in Implementation of POCSO Act and Rules, 2012
1:30 p.m. – 2:30 p.m.	Lunch
2.30 p.m. – 4:30 p.m.	Technical Session VII – Panel Discussion on Interface of Media Professionals with other stakeholders/ Open House Discussion
4.30 p.m. –4.45 p.m.	Tea / Coffee
4.45p.m. – 5.00 p.m.	Post-Training Assessment
5.00 p.m. – 5.30 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 Media Professionals who have 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 Media Professionals 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**
- **Training Innovations  
(Methods and Techniques)**
- **Training Games/Energizers**
- **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:

### **Training Environment**

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

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

## **Setting Ground Rules**

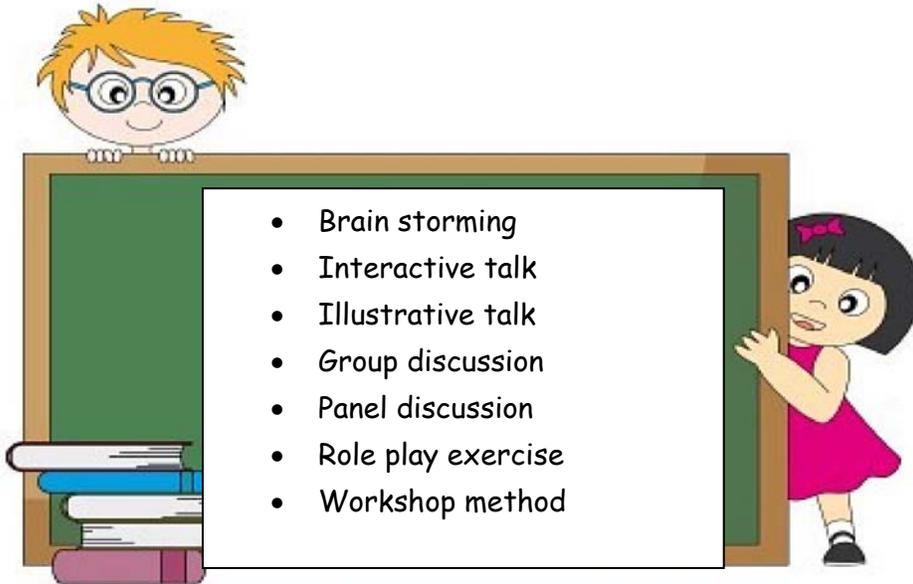
At the beginning of the training ask the participants to help you lay out the ground rules which are generally formed to guide the trainees on certain behavioural pattern so that they treat others equally, support each other, communicate, participate, cooperate and coordinate joint activities. When the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

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

## **Appropriateness of the Training**

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

## II. Training Innovations (Methods and Techniques)

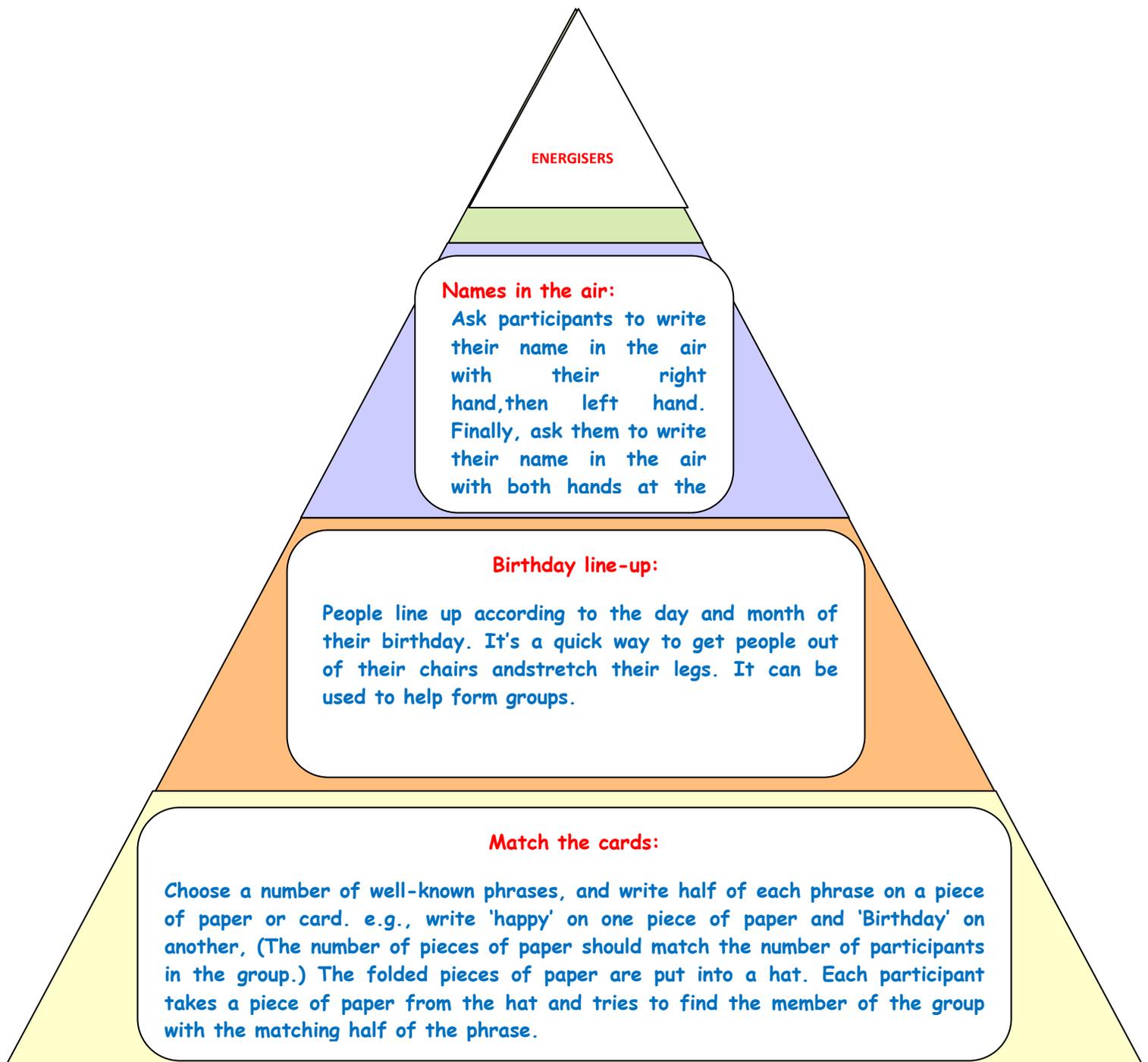


### Training Glossary

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

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

### III. Training Games/Energizers (Some example)



## **IV. 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.
- Make the sessions simple and easy to understand.
- Demonstrate enthusiasm for the topics covered in the training and for the work that the participants are doing.
- Be receptive to each participant's questions and needs.
- Ensure each participant gets a chance to be heard.
- Ensure everyone takes part in the discussion and encourage participants to go beyond one-word responses.
- Practice mock sessions with colleagues before conducting the actual training.
- Be updated on the latest information on Child Sexual Abuse and the counselling needs, initiatives and interventions.
- Be well versed in psychological concepts and theories related to approaches to counselling with children.
- Be available to the participants even after the sessions for answering questions/queries of the participants.
- Think of and be prepared with a lot of energizers to be conducted in between sessions.

### **The facilitators must ensure that they:-**

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

## **C. Inauguration and Introduction**

- **Registration**
- **Introductory/Inaugural Session**
- **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:** 45 Minutes

**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 the running 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 questionnaire to the participants.
- Instruct them to fill the form in 10 minutes.
- Collect the questionnaire for analysis.

## Setting Ground Rules

### What are Ground Rules?

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

### Why are ground rules important?

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

### How to establish ground rules?

- It's important to spend necessary time to come to consensus (an essential precondition) on the specific rules for an ongoing group.
- Each trainee should be encouraged to give his/her suggestions, so as to what all should comprise the ground rules.
- Let the trainees come up with their own protocol/set of rules at the start of the training session. Do not dictate the rules to them. This process will help the participants to have a clear understanding of acceptable behaviour.
- The facilitator/resource person must engage all the trainees in the establishment of ground rules to build up required trust and confidence in them. If trainees have difficulty in developing these rules, the facilitator/resource person may like to guide the process of rule setting with some suggestions as given below:
  - Session will start promptly on time as scheduled. All trainees are expected to be on time. If, for extenuating circumstances, a trainee is late, he/she must catch up on his/her own

- Switch off mobile phones – this could be addressed by asking, “Does anyone need to keep mobile on for family or 'on-call' reasons? OK, then could you put your mobile on silent mode please?” and “when you get a call, take the call after going out of the room”.
- Never refer to someone by name when giving an example.
- Do not interrupt while someone is talking.
- Listen to different ideas without put-downs.
- Everyone has the right to speak and therefore everyone must respect each other's right to participate and share thoughts.
- Each person is responsible for his or her own behaviour.
- Respect other's cultural and religious traditions, beliefs, values and languages.
- Respect other people's contributions.
- Only have one conversation at a time in the class.

## Pre-Training Assessment

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

### Pre-Training Assessment Form

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

S.No.	Question	(Tick the correct option)
1.	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? <b>Answer:</b> <b>Offence</b> a) Penetrative Sexual Assault (Section 3)	<b>Punishment there for</b> i) 5 years and fine (Section 14)

	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 <input type="checkbox"/> (b) High Courts <input type="checkbox"/> (c) District Courts <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 <input type="checkbox"/> (b) No <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 <input type="checkbox"/> (b) No <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 <input type="checkbox"/> (b) No <input type="checkbox"/>
16.	On whom lies the burden of proof in the heinous cases of POCSO Act 2012?	(a) Accused <input type="checkbox"/> (b) Children <input type="checkbox"/> (c) Both <input type="checkbox"/> (d) None <input type="checkbox"/>
17.	Where the cases under this Act reported?	(a) Special Juvenile Police Unit (SJPU) <input type="checkbox"/> (b) Local Police <input type="checkbox"/> (c) Both <input type="checkbox"/> (d) <input type="checkbox"/>

18.	Who will monitor the implementation of the Act?	(a) NCPCR & SCPCR (b) NCW & SCW	<input type="checkbox"/> <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: Sharing of experiences by media personnel on sexual offences against children**

### **Learning Objective**

- To help the participants to share each other's experiences

### **Methodology**

Interactive discussions

### **Duration**

45 minutes

### **Outcome**

- To give the participants an opportunity to share and learn experiences

### **Content**

- Media reporting on victims and survivors of child sexual abuse
- Children sexual abuse Case Studies, if any
- Personal experiences as a media personnel

### **Tips for Resource Persons**

- This session will give practical exposure to the participants for the better implementation of the Act.
- This session is meant to make the participants learn from experiences/solutions that are shared.
- As this is practical session try to seek as much participation as possible.
- Link the participants view point with the available literature.
- Keep track of the time as it is an extensive session with limited time.

### **Media reporting on victims and survivors of child sexual abuse**

*What is the reporter's role?*<sup>1</sup>

Acts of sexual violence are crimes committed without consent, sometimes with violence and coercion, sometimes against the most vulnerable among us. They transform lives forever.

- One can bring the issue forward by covering the untold stories of assault:
  - The cases in which the perpetrator is known to the victim

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<sup>1</sup> Reporting on sexual violence: A guide for journalists

- The people who are particularly vulnerable, such as people with disabilities, children, elderly people, and Native women
- You can add context to individual incidents by:
  - Referring to the whole spectrum of sexual violence
  - Finding data on the prevalence of sexual violence and related issues
  - Contacting experts to make your story more compelling and accurate and to educate your readers/viewers
  - Counteracting myths and outdated attitudes

Journalists play an important role by informing the public about the significant impact of sexual violence in our communities. This guide supports their work by providing:

- Insights into current trends
- Analysis of recent major news stories
- Resources to report on sexual violence with accuracy and sensitivity
- Sources for statistics and information as background to news stories
- Contacts for local, state, and national experts on sexual violence

### ***India Must Do More to Prevent Child Sex Abuse<sup>2</sup>***

One of the more disturbing things to come to light since the December 16 Delhi gang rape is just how many cases of sexual violence in India involve children. In the media's ongoing effort to keep attention on the problem of sexual assault, the fact that children are so frequently the victims of brutal sexual attacks has provided yet another rude wake up call, and a grim reminder that the cases coming to light are only a small part of a much bigger problem. "There is a lot of attention on sexual violence now," said Meenakshi Ganguly, South Asia Director for Human Rights Watch, on Thursday. "We need to focus the attention on the sexual abuse of children."

That is the goal of a new report by Human Rights Watch (HRW). The 7th February report, calls for the government to do more, to protect children from sexual abuse. In more than 100 interviews, case studies of multiple child victims lay bare the pervasive institutional weaknesses and attitudes that have created a "conspiracy of silence" around child sex abuse in India. According to UNICEF, one in three rape victims in India is a child, and more than 7200 children are raped each year, with many more cases believed to go unreported. In 2007, a government-sponsored survey of 12,500 children in 13 states "reported serious and widespread sexual abuse," but found that only 3 per cent of the cases in which children said they had been abused had been reported to the police.

That serious under-reporting is due in large part to how victims are treated once they do make the difficult choice to come forward. In four of the cases documented in the report, victims said doctors had used the much-maligned "finger test" to determine whether they had been raped or not. This type of examination is permitted under current Indian

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<sup>2</sup> Article published on Time World

law but is of little forensic value and risks re-traumatizing the victim. Doctors routinely showed outright insensitivity to the young victims, a fact that regularly discouraged families from pursuing their cases legally, the report found.

Reported cases can be met with callousness by the cops. Indian law mandates that every police station have a trained child welfare officer, and that every district have units to deal with juvenile cases. But the efficacy of the units varies wildly, particularly in under-resourced districts. In one case detailed in the HRW report, a 12-year-old girl named Krishna was raped by a man from a neighboring village in eastern Uttar Pradesh. When she went to report the crime, she says she was detained by police for nearly two weeks. "I was kept in the police station and locked up," she told the rights group. "They kept insisting that I change my statement, otherwise they threatened that something would happen to me." For cases that do make it to court, the legal process can be excruciatingly painful and slow for families, and convictions are rare, according to the Childline India Foundation.

The government has made moves to strengthen its laws on child sex abuse, as well as its institutions protecting the rights of children. Last year, it passed the Protection of Children from Sexual Offences Act, a landmark law that made all forms of sexual abuse against children criminal offenses for the first time in India. Child rights are also overseen by the National Commission for the Protection of Child Rights (NCPCR), a watchdog group set up by the government after the bodies of at least 19 children and young women who had gone missing over a period of months from a slum were found in an affluent neighborhood near New Delhi in 2006.

A large part of the challenge in combating child sex abuse will be making sure that India's laws and recommendations are implemented throughout the legal system. It will also be creating an entirely new way of thinking about the problem. "There is such a culture of silence that even if a child wants to report what happens to her, she doesn't have the words," says Shantha Sinha, the chairperson of the NCPCR. "And it's not just the victim that doesn't have the vocabulary... We need to build a new script.

### ***Child Abuse: Can India afford to remain in denial?*<sup>3</sup>**

Last week in the Indian capital Delhi two men drank, watched porn and then lured a five year old from her play area using a chocolate as bait. They kept her in captivity in a rented room in the same building where she lives with her parents and systematically raped her, in turn. For three days. Her cries led neighbours to find her locked in the room, bruised and bleeding. By then, the two men had fled, thinking they had left the child for dead.

Doctors treating the child say they extricated pieces of candle and glass bottle from the little girl's vaginal orifice. The rapists have confessed to inserting candle parts and a glass bottle into the child in a panicked attempt to stop her bleeding, while confirming

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<sup>3</sup><http://www.newstatesman.com/world-affairs/2013/04/child-abuse-can-india-afford-remain-denial>

that the child was raped even after she began bleeding profusely. She has suffered severe internal injuries as a result and will now need surgery to reconstruct her intestines.

This horrific case has triggered angry protest marches in Delhi, akin to what the city witnessed after the excruciatingly brutal gangrape of a 23-year-old student aboard a bus in December 2012. This time even school children have played a vocal part in the anti-rape demonstrations. Yet rapes and child rapes are continuing unabated.

Just last week the case of a four-year-old girl raped by her neighbour in Haryana – a state that borders Delhi – was reported, along with the rapes of a five-year-old girl in the central Indian state of Madhya Pradesh, a six-year-old girl in the state of Uttar Pradesh, two rapes involving two twelve year olds, and a thirteen-year-old who was gang-raped in Delhi for nine days.

Between 2001 and 2011 there have been 48,000 cases of child sexual abuse. Moreover, there has been a 336 per cent jump in cases between 2001 and now. The Indian media is now calling these numbers an epidemic.

There is a valid argument to be made about woefully inadequate public services fuelling the crisis. Inadequate forensic labs, dysfunctional police training colleges, corruption and a lack of sensitisation are key among factors that exacerbate an institutional apathy that victimises the victim. In this most recent case on the nation's radar, police officers offered the child's family Rs. 2,000 (£20 approx) as a price for their silence.

Yet the most compelling deterrent to such crimes can only come from a change in familial mindsets. India prides itself as a child-friendly country where within families, members of the immediate and extended family are believed to view children as a prime source of their family's joy. But statistics suggest that the home is where the Indian child and woman is most unsafe. "Ninety-seven per cent [of rapes] are committed within homes, three per cent by strangers," Delhi's police commissioner confirmed.

Most cases of sexual abuse happening in domestic environments go unreported. But reported cases alone suggest that rape and child sexual abuse are mostly happening within the home and with a disturbingly increasing frequency. A harsh spotlight ought to be put on prevailing notions of the Indian family. The universal understanding in India that the family system is beyond reproach and family elders are perpetually pristine must be questioned.

In Indian society appearances are paramount and the keeping up of appearances by families is the epicentre of this societal veneer. "Covering up" for family members is an essential part of maintaining this veneer. Moreover, as a culture at large, and within families in particular, elders are considered to be beyond blame and censure. Youngsters are told that elders are the apotheosis of all that is best and beautiful. Accordingly, the young are expected to exhibit an unquestionable reverence to all elders and especially towards relatives.

In Indian culture, every blood relationship has an ascribed moniker such as *aschacha* for father's brother, *mama* for mother's brother and so on. It is under the guise of these sobriquets that relatives commit heinous crimes within their families with impunity. More chillingly, when a child or woman makes abuse known, the social stigma is seen to lie with the victim, not with the perpetrator. A mentality that espouses that children know less, compared with elders who are always right sadly still holds sway. At best, this patronises the child, and at worst labels him or her a repository of shame and discredit. The child is simply put down for his/her audacious attempt to malign a much-respected relative. Hushing up cases of abuse then maintains the status quo of the pride and place of the extended family in the wider culture.

Unsettlingly, the mindset that emanates from traditional notions of the Indian family is seen to empower family members to commit sex crimes towards children, knowing they will be well protected. When tradition serves as a veil behind which atrocities can happen without censure, then tradition must be called up, put in the dock and sent to the gallows. A society that fails its children, has failed entirely. India cannot afford to remain in denial about child sexual abuse any longer. Corrective measures are essential. But shrill chants on the streets in themselves will not herald the urgent change needed. Change has to start with the mindset in every Indian home.

#### **Children sexual abuse Case Studies<sup>4</sup>**

##### ***Settling Privately to Avoid Stigma: Abuse of a Two-year-old near Varanasi***

In an effort to avoid the situation confronting Ahmed and his daughter, families cover up the most horrific treatment of children. A local human rights activist told Human Rights Watch that he had been approached by the parents of a two-year-old girl, who they said had been molested. The girl's mother had walked in on her child being abused by a 17-year-old male second cousin in April 2012, in their village near Varanasi. The parents wanted to file a case with the police but were then persuaded by the extended family, including the victim's grandmother, to settle the matter privately. Rather than having the perpetrator arrested, they instead told him to leave the village. Anand Prakash, the activist, explained that people in the area always try to keep matters like this private: "We know that a lot of abuse is happening but people don't talk about it. It is all related to respect and the dignity of the family. If it comes out, the family will be disrespected.

##### ***Fearing Retaliation: Case of Nikhil***

Nikhil is so scared of the repercussions of revealing his abuse that he does not even want the name of his home state revealed in this report. He says that his abuser, a European man, lived in his village for more than 10 years, sexually abusing numerous boys, some as young as. Nikhil explained to Human Rights Watch how this man

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<sup>4</sup> Case studies taken from Human Rights Watch's study 'Breaking the Silence: Child Sexual in India'

became very popular in his impoverished coastal village by helping poor people out. He would give free English lessons to children and encouraged them to play table tennis in the house he rented from one boy's family. Nikhil said that the man made a point of befriending the boys of the village: He's very brilliant because first of all he finds out what is in a child's mind. Some children want money, so he gives them money. Some children like food, some children like to go to school, so he helps them.

The man paid for Nikhil, a school dropout aged 15, to have lessons in Ayurvedic massage and told him to practice on him. Nikhil said the abuse started when, one day, the European told him he should massage his penis. The man said that if Nikhil refused to do so, he would have to return all the money he had spent on him.

Nikhil said it was impossible to tell anyone about what was happening because the European man had become popular in the village, and many boys had become financially dependent on him. "We are a poor family and we cannot fight with them," said Nikhil. "Even now I am afraid of them. I am afraid of these people."

The man's abuse was eventually reported to the state authorities by a European couple who discovered what was happening. A local NGO persuaded Nikhil and three other boys to go to the police, but after only one day the others withdrew their complaints, leaving Nikhil alone to confront his abuser. The police agreed to file charges against the European and confiscated his passport. A trial began in 2009. He was given bail and has subsequently absconded. Nikhil says he still receives threats:

The village people support him. They believe he is innocent, they don't know what happened inside his house. I am afraid of some people and don't go alone anywhere at night in case they see me. One time they came to my house and said that if I talk against him they will kill me.

### ***Ostracism by Community: Case of a 12-year-old in Varanasi***

Even in cases where an adult does decide to help an abused child, reporting the abuse can result in social stigma. In February 2012 in the city of Varanasi, in northern India, Ahmed's 12-year-old daughter, Abida, said she was gang raped by three men. Ahmed took the case to the police, he says, because he was afraid other girls would be attacked if the men were not stopped. But rather than win the admiration of the community, his decision to make the case public has led to the family being ostracized. The community shunned the child because she was a rape victim and blamed the family for making her so-called disgrace public. The parents of his elder daughter's fiancé cancelled the engagement because they felt that public knowledge of the attack had brought shame to their family. Ahmed is extremely worried about the impact this has all had on the child. "She no longer likes to go out, and she just sits at home, very silent," he said. "She's losing weight and from her face you can read what's going on in her mind."

The People's Vigilance Committee for Human Rights, an NGO, is providing counselling for Abida, but there are no government services she can draw on for rehabilitation and support.

*(Likewise, the participants would share their own experiences so far as sexual offences against children are concerned)*

## **Technical Session II: Child Rights: An Overview with special references to sexual offences against children**

### **Objective**

- To orient participants on UNCRC and other international instruments
- To enable them to understand and contextualize UNCRC to the rights of children
- To understand rights based approach vis-à-vis sexual offences

### **Methodology**

- Presentation, lecture and discussion

### **Material Required**

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

### **Duration**

1 hour 30 minutes

### **Outcome**

Participants will learn the concept of child rights vis-à-vis sexual offences against children as also provisions of UNCRC and its implementation in the Indian context as well as relevance of other international instruments

### **Content**

- Discuss the concept of rights of children
- Discuss the articles of UNCRC and other international instruments concerning child rights
- Contextualize the relevance of UNCRC to rights of children
- Rights-based approach in working with children vis-à-vis sexual offences against children

### **Tips for 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 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

## Reference Material for Technical Session I

### CONTENTS

#### Concept of child rights

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

#### Articles of UNCRC and other international instruments concerning child rights

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

#### Relevance of UNCRC to rights of children

#### Rights-based approach in working with children

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

## Concept of child rights

### Children's Rights

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

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

The field of children's rights spans the fields of law, politics, religion, and morality.

### Justifications

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

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

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

### Historical Definitions of Children's Rights

Consensus on defining children's rights has become clearer in the last fifty years. A 1973 publication by Hillary Clinton (then an attorney) stated that children's rights were a

"slogan in need of a definition". According to some researchers, the notion of children's rights is still not well defined, with at least one proposing that there is no singularly accepted definition or theory of the rights held by children.

Children's rights law is defined as the point where the law intersects with a child's life. That includes juvenile delinquency, due process for children involved in the criminal justice system, appropriate representation and effective rehabilitative services; care and protection for children in state care; ensuring education for all children regardless of their race, gender, sexual orientation, gender identity, national origin, religion, disability, colour, ethnicity, or other characteristics, and health care and advocacy.

## Types of Child Rights

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

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

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

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

environments and that groups of people have the right to cultural, political, and economic development.

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

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

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

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

### **Difference between children's rights and youth rights**

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

### **Parental rights**

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

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

## **Movement**

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

## **Opposition**

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

## **International Law**

The Universal Declaration of Human Rights, 1948 is seen as a basis for all international legal standards for children's rights today. There are several conventions and laws that address children's rights around the world. A number of current and historical documents affect those rights, including the 1923 Declaration of the Rights of the Child, drafted by Eglantyne Jebb and her sister Dorothy Buxton in London, England in 1919, endorsed by the League of Nations and adopted by the United Nations in 1946. It later served as the basis for the Convention on the Rights of the Child.

## **Convention on the Rights of the Child**

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

## **Vienna Declaration and Programme of Action**

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

## **Scenario in India**

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

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

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

## **The History of Child Rights in India**

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

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

### **The National Policy for Children, 2013**

#### *Recognises that:*

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

#### *Reaffirms that:*

- every child is unique and a supremely important national asset
- special measures and affirmative action are required to diminish or eliminate conditions that cause discrimination
- all children have the right to grow in a family environment, in an atmosphere of happiness, love and understanding
- families are to be supported by a strong social safety net in caring for and nurturing their children

The Department of Women and Child Development was set up in the Ministry of Human Resource Development in 1985. This department besides ICDS, implements several

other programmes, undertakes advocacy and inter-sectoral monitoring catering to the needs of women and children. In pursuance of this, the Department formulated a National Plan of Action for Children in 1992.

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

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

### **At the provincial level**

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

### **Networking with experts and NGOs**

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

### **Indian Constitutional provisions:**

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

1. The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them
2. No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to
  - a) access to shops, public restaurants, hotels and palaces of public entertainment; or

- b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public
3. Nothing in this article shall prevent the State from making any special provision for women and children
4. Nothing in this article shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

### **Article 21 Protection of life and personal liberty**

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

### **Article 23 Prohibition of traffic in human beings and forced labour**

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

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

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

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

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

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

## Article 45 **Provision for free and compulsory education for children**

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

Introduction (from Bills of Right Comparative Law Materials):

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

### Cases:

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

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

3. **Lakshmi Kant Pandey v. Union of India: [(1984) 2 SCC 244; AIR 1984 SC 469]** This is an extremely important case relating to the adoption of Indian children by persons inside and outside India. In the absence of legislation, the Supreme Court framed elaborate guidelines in the matter. There was no law to regulate inter-country adoptions and such lack of legal regulation could cause incalculable harm to Indian children. Considering the possibility of child trade for prostitution as well as slave labor, legal regulation of such adoptions was essential. Therefore, Justice Bhagwati created a scheme for regulating both inter-country and intra-country adoptions. The Supreme Court held that any adoption, in violation of or non-compliance with, may lead adoption to be declared invalid and expose person concerned with to strict action including

prosecution. For years, social activists have used these directions to protect children and promote desirable adoptions. The Government of India framed a national policy in this regard. Also Indian Council for Social Welfare v. State of A.P. [(1999) 6 SCC 365]

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

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

**6. Gaurav Jain v Union of India: [(1997) 8 SCC 114; AIR 1997 SC 3021]** The Supreme Court held that the children of the prostitutes have the right to equality of opportunity, dignity, care, protection and rehabilitation so as to be part of the mainstream of social life without any 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:

<b>UNCRC Article</b>	<b>Title of the UNCRC Article</b>	<b>Detail</b>
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 Trafficking	Governments must take steps to prevent children being taken out of their own country illegally or being prevented from returning.
Article 12	Respect for the Views of the Child	Every child who is capable of forming his/her own views has the right to express his/her views freely in all matters affecting them.
Article 13	Freedom of Expression	Every child must be free to seek, receive and impart information and ideas of all kinds either orally, in writing or in print or any other media of the child’s choice.
Article 16	Right to Privacy	Every child has the right to privacy. The law should protect the child’s private, family and home life.
Article 19	Protection from All Forms of Violence	Governments must take all appropriate legislative, administrative, social and educational measures to protect child from all forms of physical and mental violence, injury or abuse.

Article 20	Children Deprived of A Family	The State Govt. shall provide special protection and assistance to those children who are temporarily or permanently deprived of his/her family environment.
Article 21	Adoption	The Govt. shall ensure the best interest of the child as paramount consideration before declaring the child free for adoption.
Article 23	Children with Disability	A child with a disability has the right to live a full and decent life in conditions that promote dignity, independence and an action role in the community.
Article 24	Health and Health Services	Every child has the right to the best possible health.
Article 26	Social Security	Governments must provide extra money for the children of families in need.
Article 28	Right To Education	Every child has the right to an education. Primary education must be free. Secondary education must be available to every child.
Article 30	Children of Minorities	Every child has the right to learn and use the language, customs and religion of their family whether or not these are shared by the majority of the people in the country.
Article 31	Leisure, Play and Culture	Every child has the right to relax, play and join in a wide range of cultural and artistic activities.
Article 33	Drug Abuse	Governments must protect children from the use of illegal drugs.
Article 34	Sexual Exploitation	Governments must protect children from sexual abuse and exploitation.
Article 35	Abduction	Governments must ensure that children are not abducted or sold.
Article 36	Other Forms of Exploitation	Governments must protect children from all other forms of exploitation that might harm them.
Article 37	Detention	No child shall be tortured or suffer from cruel treatment or punishment. Children must not be put in a prison with adults and they must be able to keep in contact with their family.
Article 39	Rehabilitation of Child Victims	Children who are neglected, abused, exploited, tortured or who are victims of war must receive special help to recover their health, dignity and self-respect.
Article 40	Juvenile Justice	A child accused or guilty of breaking the law must be treated with dignity and respect.
The Convention has 54 articles in total. Articles 43-54 are about how adults and governments must work together to make sure all children get all their rights.		

## **Optional Protocols to UNCRC**

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

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

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

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

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

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

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

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

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

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

1. “Emphasize the well-being” of young people and ensure that any reactions should always be in proportion to the circumstances of both the offenders and the offence
2. Encourage the use of diversion programmes which remove young people from the criminal justice process and implement supportive or community services
3. Ensure the right to privacy and procedural safeguards including presumption of innocence
4. Ensure that proceedings are conducive to the best interests of the child and that young people have the opportunity to participate and express themselves freely;
5. Use inquiry reports on social, family, and educational background to identify and provide appropriate social services;
6. Avoid institutionalization as much as possible by using other measures such as counselling, probation or community services;
7. Use institutionalization only as a last resort; and
8. Focus the goal of institutionalization on assisting young people in becoming productive members of society.

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

1. The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young people can develop non-criminogenic attitudes.
2. The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood.
3. For the purposes of the interpretation of the present Guidelines, a child-centered orientation should be pursued. Young people should have an active role and partnership within society and should not be considered as mere objects of socialization or control.
4. In the implementation of the present Guidelines, in accordance with national legal systems, the well-being of young persons from their early childhood should be the focus of any preventive programme.
5. The need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others.
6. The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at social risk and are in need of special care and protection.
7. Specialized philosophies and approaches for delinquency prevention, on the basis of laws, processes, institutions, facilities and a service delivery network

aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, the commission of infractions.

8. Official intervention to be pursued primarily in the overall interest of the young person and guided by fairness and equity.
9. Safeguarding the well-being, development, rights and interests of all young persons.
10. Consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood.
11. Awareness that, in the predominant opinion of experts, labeling a young person as “deviant”, “delinquent” or “pre-delinquent” often contributes to the development of a consistent pattern of undesirable behaviour by young persons.
12. Community-based services and programmes should be developed for the prevention of juvenile delinquency, particularly where no agencies have yet been established. Formal agencies of social control should only be utilized as a means of last resort.

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

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

	<b>The minimum age at which children can start work.</b>	<b>Possible exceptions for developing countries</b>
<b>Hazardous work</b> 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.	<b>18 (16 under strict conditions)</b>	<b>18 (16 under strict conditions)</b>
<b>Basic Minimum Age</b> The minimum age for work should not be below the age for finishing compulsory schooling, which is generally 15.	<b>15</b>	<b>14</b>
<b>Light work</b> 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.	<b>13-15</b>	<b>12-14</b>

## **ILO Declaration on Fundamental Principles and Rights at Work, 1998**

Both Conventions Nos. 138 and 182 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 neighborhoods 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](http://www.wcd.nic.in) .

## **Technical Session III: Role of Stakeholders in cases of sexual offences against children**

### **Learning Objective**

- To develop an insight into the nature and extent of child sexual abuse
- To sensitize the stakeholders as to how they can play a role in preventing and reporting child sexual abuse cases
- To sensitise various stakeholders as to how child sexual abuse is a violation of child rights

### **Methodology**

- Presentation, lecture and discussion

### **Material Required**

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

### **Duration**

1 hour and 15 minutes

### **Outcome**

- Stakeholders will develop an understanding of situation of abuse and violence against children in India and develop insight as to how to generate public awareness to prevent occurrence of child sexual abuse

### **Content**

- What is child sexual abuse
- Forms of child sexual abuse
- Who are the offenders
- Effects of child abuse
- How child sexual abuse is a violation of child rights
- Role and responsibility of various stakeholders in preventing sexual abuse
- Reporting child sexual abuse

### **Tips for Resource Persons**

- Make sure that participants discussion of their cases is brief (5 minutes) so that enough time is available for more sharing of experiences by others
- Do not dwell too long on one particular case and try to cover more issues and concerns
- Do not allow any participant to dominate the discussions and make sure that you encourage maximum participation from all.

## **Role and responsibility of various stakeholders in preventing sexual abuse**

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.

- **ROLE OF POLICE**

### *Mandatory reporting and recording of child's statement*

The said Act casts the police, among others, 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. either directly to the police or to the relevant authorities 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.

### *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.

*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).

### *Obtaining medical treatment for child*

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.

### *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 subsection (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.*

*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.

*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*

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.

- **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 Cr PC. Such compensation is payable within 30 days of the receipt of the order.

#### • **ROLE OF MEDICAL PROFESSIONALS**

Doctors have a dual role to play in terms of the POCSO Act 2012. They are in a position to detect that a child has been or is being abused (for example, if they come across a child with an STD); they are also often the first point of reference in confirming that a child has indeed been the victim of sexual abuse.

The role of the doctor may include:

- i) Having an in-depth understanding of sexual victimization
- ii) Obtaining a medical history of the child's experience in a facilitating, non-judgmental and empathetic manner
- iii) Meticulously documenting historical details

- iv) Conducting a detailed examination to diagnose acute and chronic residual trauma and STDs, and to collect forensic evidence
- v) Considering a differential diagnosis of behavioural complaints and physical signs that may mimic sexual abuse
- vi) Obtaining photographic/video documentation of all diagnostic findings that appear to be residual to abuse
- vii) Formulating a complete and thorough medical report with diagnosis and recommendations for treatment
- viii) Testifying in court when required

There are at least three different circumstances when there is no direct allegation but when the doctor may consider the diagnosis of sexual abuse and have to ask questions of the parent and child. These include but are not limited to:

- (i) when a child has a complaint that might be directly related to the possibility of sexual abuse, such as a girl with a vaginal discharge;
- (ii) when a child has a complaint that is not directly related to the possibility of sexual abuse, such as abdominal pain or encopresis (soiling);
- (iii) when a child has no complaint but an incidental finding, such as an enlarged hymenal ring, makes the doctor suspicious.

*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.<sup>5</sup>

*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.

- **ROLE OF DCPOs OF DCPUs**

*Assisting the child at the pre-trial and trial stages*

All DCPOs of DCPUs assisting the child at the trial and pre-trial stages are bound to abide by the fundamental principles. These 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 itself.

*Maintaining a list of persons/NGOs who may be appointed as Counsellors and support persons to assist the child by DCPU in each district*

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<sup>5</sup>Section 21, Protection of Children from Sexual Offences Act, 2012.

DCPOs of DCPUs in each district shall maintain a list of persons/NGOs who may be appointed as Counsellors and support persons to assist the child.

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. Where a counsellor is not available within the existing ICPS framework, the State Government may secure the engagement of external counsellors on contract basis.

#### *Criteria for engagement as Counsellor*

In order to enable the engagement of counsellors from outside the Integrated Child Protection Scheme (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.

As indicative criteria, for any counsellor engaged to provide services to a sexually abused child, a graduate degree, preferably in Sociology/ Psychology (Child Psychology)/ Social Work is a must. In addition to this, at least 2 to 3 years of work experience related to providing counselling services to children in need of care and protection as well as their parents and families and training on handling cases of child sexual abuse is essential in order to ensure that the child receives counselling from those qualified for and experienced in providing it.

*Facilitating CWC by providing a Support Person employed by DCPU including Legal-cum-Probation Officer, Social Worker or Outreach Worker*

#### *Support persons: Relevant provision*

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.

### *List of Support Persons*

The DCPU and the CWC shall maintain a list of persons/ NGOs who may be appointed as support person to assist the child. This could include the following:

- i. Persons working in the field of child rights/ child protection
- ii. NGO or other organisation working in the field of child rights/ child protection, including Child line and its support organisations
- iii. Officials of a children's home or shelter home
- iv. Persons employed by the DCPU, including:
  - (a) Legal-cum-Probation Officer
  - (b) Social worker
  - (c) Outreach worker
  - (d) Counsellor

v) Students of Social Work or Law, who have completed at least two years of their course of study

The DCPU or 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 DCPU or 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.

Rule 4(10) of the POCSO Rules, 2012 provides that the services of a support person may be terminated by the CWC upon request by the child or his/her parent or guardian or person in whom the child has trust and confidence, and that the child or person requesting the termination is not required to give any reason for this request.

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.

*Invariably arranging for periodic training modules to impart knowledge on legal and court procedures involved in the conduct of a case under the POCSO Act, 2012 to those registered with it or with the CWC for engagement as Support Persons*

### *Training of support persons*

The support person should fulfill the requirements of having basic training in communicating with and assisting children of different ages and backgrounds to prevent the risks of revictimization and secondary victimization. Further, the support person must have an understanding of the legal and Court procedures involved in the conduct

of a case under the POCSO Act, 2012. He has to be able to render concrete support to the child and facilitate his/her active participation, while not disturbing the proceedings by his/her presence.

To ensure this, 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.

- **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:

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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:

- i. 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
- ii. institution.
- iii. 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.
- iv. 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.
- v. 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 / Counsellor who interviewed the child should be placed on record.
- vi. 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.
  - vii. 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.
  - viii. 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.
  - ix. 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 pressurized or 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:

- i. Take cognizance of the children produced by Police/SJPU, NGOs Child Lane or by any person including child himself/herself under the provisions of JJ Act and the POCSO Act.
- ii. 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.
- iii. 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.
- iv. CWC must take into account consent of the child and considerations listed I to VII under Rule 4 (5) of the POCSO Rules 2012.
- v. CWC shall inform the parent/guardian / support person about the decision taken regarding the custody and also explain the reasons.
- vi. 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 counsellor/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.
- vii. 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.
- viii. 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.

#### • **ROLE OF A COUNSELLOR**

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. Children often find it very difficult to disclose sexual abuse.

### *Steps a counsellor can take to help a child disclose*

There are several steps a counsellor can take:

- Take time to get to know the child. Use games, activities or easy conversation to help the child relax.
- Ask if the child would like a family member or guardian to be there during the counselling.
- Check if the child is hungry or thirsty.
- After you have relaxed the child and provided information about what will happen, look carefully to see if he or she is still nervous or scared. If the child is showing a high level of anxiety, see if you can guess what questions he or she may have and try to answer them. You can also ask a family member for help.
- Your questions may bring up subjects that the child cannot easily talk about. Ask questions that are easier to respond to. Once conversation begins again, return to the more difficult questions.
- If the child is becoming too uncomfortable with the conversation, take a break.
- Be patient and provide the child with other means of expression, such as allowing him or her to write the answers, or draw what happened, or use play, etc.

### *Helping the sexually abused child*

Breaking the silence is a way to recover from the trauma of sexual abuse. The first step is to talk. However, sexually abused children will have further needs.

The counsellor can:

- help them to understand that the abuse is not their fault and they should not feel guilty;
- help them develop or regain their self-confidence;
- encourage them to feel good about themselves;
- provide sex education and guidance;
- show them kindness; and
- encourage appropriate social behaviour for their age.

The child also needs to develop a supportive social network from friends teachers, family and the social worker, etc. The counsellor should help the child to identify people who are helpful and supportive.

- **ROLE OF SPECIAL EDUCATORS**

Child development refers to the various stages of physical, social, and psychological growth that occur from birth through young adulthood. A child who has been the victim of a sexual offence is likely to have been severely traumatised, both mentally as well as physically. A child development expert is therefore a person who is trained to work with children with physical or mental disabilities, to evaluate such a child's mental and

physical development in the context of that child's experience, and accordingly facilitate communication with the child.

### *Assisting the Child*

The dynamics of child sexual abuse are such that often, children rarely disclose sexual abuse immediately after the event. Moreover, disclosure tends to be a process rather than a single episode and is often initiated following a physical complaint or a change in behaviour.

In such a situation, when the child finally discloses abuse, and a report is filed under the POCSO Act, 2012 more information will have to be gathered so that the child's statement may be recorded.

Information so obtained will become part of the evidence. However, given the experience that the child has gone through, he is likely to be mentally traumatised and possibly physically affected by the abuse. Very often, law enforcement officers interview children with adult interrogation techniques and without an understanding of child's language or child development. This compromises the quality of evidence to be gathered from the child, and consequently, the quality of the investigation and trial that are based on this evidence.

The interviewing of such a child to gather evidence thus demands an understanding of a range of topics, such as the process of disclosure and child-centred developmentally-sensitive interviewing methods, including language and concept formation. A child development expert may therefore have to be involved in the management of this process. The need for a professional with specialized training is identified because interviewing young children in the scope of an investigation is a skill that requires knowledge of child development, an understanding of the psychological impact sexual abuse has on children, and an understanding of police investigative procedures.

Such a person must have knowledge of the dynamics and the consequences of child sexual abuse, an ability to establish rapport with children and adolescents, and a capacity to maintain objectivity in the assessment process. In the case of a child who was disabled/ physically handicapped prior to the abuse, the expert would also need to have specialised knowledge of working with children with that particular type of disability, e.g. visual impairment, etc.

- **ROLE OF SOCIAL WORKER**

Civil society organisations 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 against children by providing active

support to reported cases through individual and group counselling and services for rehabilitation of abused children.

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

As a social worker one can play a vital role in identifying child sexual abuse concerns. A number of NGOs work with children closely, and are aware of the particular problems and behaviour of each child. A social worker is in a position to keep a watch on these children, and to look out for children who are at risk of sexual abuse as well as for signs of sexual abuse even before the child himself may disclose it. In this manner, a social worker can contribute to the detection of sexual abuse and to the initiation of remedial measures, including judicial processes, in respect of the sexual abuse.

Thus, a social worker can play a vital role in the implementation of the provisions of the POCSO Act, 2012 and in general in combating the problem of child sexual abuse.

As per Section 19(6) of the POCSO Act, 2012 where an F.I.R. has been registered before the Special Juvenile Police Unit (SJPU) or local police station in respect of any offence committed against a child under the said Act, the case should be reported by the SJPU or the local police to the Child Welfare Committee (CWC) within 24 hours.

Additionally, as per Rule 4(3), a child is to be produced before the CWC in the following three situations:

- i) There is 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
- ii) The child is living in a child care institution and is without parental support, or
- iii) The child is found to be without any home and parental support.

Where a child is produced before the CWC in the three situations described above, the relevant CWC must proceed, in accordance with its powers under sub-section (1) of section 31 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (JJ Act), to make a determination within three days, either on its own or with the assistance of a Social Worker /Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC, as to whether the child needs to be taken out of the physical custody of his/her family or shared household and placed in a Children's Home or a Shelter Home.

As per Rule 4(5) of the POCSO Rules, 2012, the CWC should take into account any preference or opinion expressed by the child on the matter together with best interest of the child. Also, prior to making such determination, an inquiry should be conducted in such a way that the child is not unnecessarily exposed to injury or inconvenience.

This inquiry may therefore be conducted 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 under Rule 4(5) to assist the CWC in its inquiry.

The Social Worker/Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC may prepare his/her report after interviewing the child and other affected persons to determine the following:

- i. the child's physical and emotional state;
- ii. whether the child needs any urgent care such as medical/mental health intervention, shelter, etc.;
- iii. to hear the child's version of the circumstances leading to the concern;
- iv. to get an insight into the child's relationship with his/her parents or guardian or other person in whom the child has trust and confidence;
- v. to support the child to participate in decisions affecting him according to his/her age and level of maturity; and

#### • **ROLE OF FACULTY OF EDUCATIONAL INSTITUTIONS**

*Legal Provisions framed under the POCSO Act, 2012:*

Section 5(f) states, “*whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution*” is said to commit aggravated penetrative sexual assault.

Section 21(2)-Punishment for failure to report or record a case

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 (I) 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.

Sub-section (I) of section 19-Reporting of offences

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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.

Educational institutions have a positive role to play in the effective implementation of the Act, 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 against children by providing active support to reported cases through individual and group counselling and services for rehabilitation of abused children.

- **ROLE OF NGOS/YOUTH CLUBS/YOUTH GROUPS:**

Where the Non-Governmental Organization (NGO)/any other person found fit by the CWC concludes, following his/her interaction with the child and other affected persons that the child needs to be removed from the physical custody of his/her parents/guardian/care giver, s/he should make a recommendation to the CWC to this effect.

Upon receiving the report of the 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. In making this determination, the CWC shall take into account any preference or opinion expressed by the child on the matter, together with all relevant factors that may have a bearing on the best interests of the child, having regard to the considerations referred to in Rule 4(5) of POCSO Rules, 2012. However, the CWC shall as far as possible avoid repeatedly questioning or interviewing the child.

*Code of Conduct for Non- Governmental Organization (NGO)/any other person found fit by the CWC*

The primary responsibility of the Non-Governmental Organization (NGO)/any other person found fit by the CWC is to protect the child and the child's interests during contact with the criminal justice system and to promote the well-being of the child. In general, the child's interests are the paramount consideration, but the Non-Governmental Organization's (NGO)/any other person's (found fit by the CWC) responsibility to the larger society or in the case of specific legal obligations may on limited occasions take precedence over the loyalty owed to the child, and the child should be so advised.

For instance, where a worker in an NGO comes to know that a child who has come to him/her has been sexually abused, s/he is required by the POCSO Act, 2012 to report this to the police, even in a case where the child expresses his/her reluctance in doing so. In such cases, the child and his/her family should be counselled and made to understand the obligation to report.

- i. Non-Governmental Organization (NGO)/any other person found fit by the CWC should provide their services to the child only in the context of a professional relationship based, when appropriate, on valid informed consent. Where the social worker is being appointed through the CWC, the appointment should be made, as far as possible with the involvement of the child.
- ii. Social workers/ Non-Governmental Organization (NGO)/any other person found fit by the CWC should use clear and understandable language to inform the child

- of the purpose of their services, risks related to their services, reasonable alternatives, the child's right to refuse or withdraw consent, and the stage up to which s/he will be available to support the child. The child should also be given the opportunity to ask questions and clarify doubts.
- iii. In cases where the child is not literate or has difficulty in understanding the Social worker/ Non-Governmental Organization (NGO)/any other person found fit by the CWC, such person should take steps and seek assistance to ensure the child's comprehension. This may include providing the child with a detailed verbal explanation or arranging for a qualified interpreter or translator whenever possible.
  - iv. Social workers/Non-Governmental Organization (NGO)/any other person found fit by the CWC should provide services and represent themselves as competent only within the boundaries of their education, training, certification, consultation received, supervised experience, or other relevant professional experience.
  - v. Social workers/Non-Governmental Organization (NGO)/any other person found fit by the CWC should be alert to and avoid conflicts of interest that interfere with the exercise of professional discretion and impartial judgment. A conflict of interest occurs when a social worker's services or relationship with the child is compromised, or might be compromised, because of decisions or actions in relation to another child, colleague, him or herself, or some other third party. Potential or actual conflicts of interest are very complex situations for social workers, or for any professional for that matter. Conflicts of interest can occur in many different contexts. For example, when a social worker is appointed by the CWC, in the case of a child has a family relationship with someone in the child's family; there could be a conflict of interest. In such cases, the social worker should inform the child and the CWC should take reasonable steps to resolve the issue in a manner that makes the child's interests primary and protects the child's interests to the greatest extent possible. In some cases, protecting the child's interests may require termination of the professional relationship with proper referral of the child to another Social Worker.
  - vi. Social workers/ Non-Governmental Organization (NGO)/any other person found fit by the CWC should not take unfair advantage of any professional relationship or exploit it to further their personal, religious, political, or business interests.
  - vii. When Social workers/ Non-Governmental Organization (NGO)/any other person found fit by the CWC provide services to two or more people who have a relationship with each other (for example, couples, family members), social workers should clarify with all parties the nature of social worker's professional obligations to the various individuals who are receiving services. Social workers who anticipate a conflict of interest among the individuals receiving services or who anticipate having to perform in potentially conflicting roles should clarify their role with the parties involved and take appropriate action to minimize any conflict of interest.
  - viii. Social workers/ Non-Governmental Organization (NGO)/any other person found fit by the CWC should respect the child's right to privacy. Social workers and support persons should not solicit private information from the child unless it is essential to providing services in the best interest of the child.

- ix. Social workers/ Non-Governmental Organization (NGO)/any other person found fit by the CWC should protect the confidentiality of all information obtained in the course of professional service, except in the discharge of their professional duties. Social workers may disclose confidential information when appropriate with valid consent from the child or a person legally authorized to consent on behalf of the child and whose interests are not in conflict with that of the child. However, in any case, social workers should inform the child, to the extent possible, about the disclosure of confidential information and its potential consequences.
- x. Social workers/ Non-Governmental Organization (NGO)/any other person found fit by the CWC should not discuss confidential information in any setting unless privacy can be ensured.
- xi. As provided in Section 23 (2) of POCSO Act, 2012, Social workers/ Non-Governmental Organization (NGO)/any other person found fit by the CWC should not disclose the identity of the child when responding to or interacting with the media unless permitted by the Special Court in the best interest of children with reasons recorded in writing.
- xii. Social workers/ Non-Governmental Organization (NGO)/any other person found fit by the CWC should under no circumstances engage in sexual activities or sexual contact with the child and/ or his/her relatives, whether such contact is consensual or forced.
- xiii. Further, they should not sexually harass the child. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favours, and other verbal or physical conduct of a sexual nature.
- xiv. Social workers/ Non-Governmental Organization (NGO)/any other person found fit by the CWC should not use derogatory language in their written or verbal communications to or about the child. Social workers should use accurate and respectful language in all communications to and about the child.
- xv. In the event that services are interrupted by factors such as unavailability due to other commitments, relocation, illness, disability or death, the CWC should appoint another suitable Social workers/ Non-Governmental Organization (NGO)/any other person found fit by the CWC as soon as possible.

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 against children by providing active support to reported cases through individual and group counselling and services for rehabilitation of abused children.

In addition to these support functions, an NGO can also play a vital role in identifying child sexual abuse concerns. A number of NGOs work with children closely, and are aware of the particular problems and behaviour of each child. The NGO worker is in a position to keep a watch on these children, and to look out for children who are at risk of sexual abuse as well as for signs of sexual abuse even before the child himself may

disclose it. In this way, an NGO worker can contribute to the detection of sexual abuse and to the initiation of remedial measures, including judicial processes, in respect of the sexual abuse.

NGOs are the primary channel for awareness-generation and proactive monitoring of government policies and action. They can contribute to the objectives of the POCSO Act, 2012 by providing technical support to children's institutions in developing Child Protection Policies addressing issues of recruitment, monitoring, complaints mechanism, disciplinary proceedings, and police reporting within their own organisational or institutional setting, and training their staff in this regard. They can also train CWC, lawyers, doctors and other professionals who come in contact with children about the POCSO Act, 2012 and in communicating with children. In addition to this, they can set up education and training programmes for children and youth. They can hold consultations with children and youth to understand their views and perspectives on the issue of child sexual abuse and provide them with opportunities and ways to put recommendations forward as well as opportunities to get involved in implementation.

In addition to this, NGOs can monitor media coverage and ensure sensitive handling of the issue. They can also develop and disseminate position papers and other academic and awareness materials. They can create alliances with other NGOs, business groups, private organisations and the local, national and regional media networks, share best practices, submit articles, involve the press in relevant events and lobby with the media to raise awareness with the general public.

NGOs can thus play a vital role in the implementation of the provisions of the POCSO Act, 2012 and in general in combating the problem of child sexual abuse.

- **ROLE OF ELECTED REPRESENTATIVES OF LOCAL SELF GOVERNMENT**

Elected representatives of Local Self Government 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 against children by arranging provision of active support to reported cases through individual and group counselling and services for rehabilitation of abused children.

In addition to these support functions, elected representatives of Local Self Government can also play a vital role in identifying child sexual abuse concerns. The elected representatives are aware of the problems faced by the children in their locality. The elected representative must look out for children who are at risk of sexual abuse as well as for signs of sexual abuse. They can contribute to the detection of sexual abuse and to the initiation of remedial measures, including judicial processes, in respect of the sexual abuse.

Elected representatives of Local Self Government are the primary channel for awareness-generation and proactive monitoring of government policies and action.

They can contribute to the objectives of the POCSO Act, 2012 by providing technical support to children's institutions in developing Child Protection Policies, addressing issues of recruitment, monitoring, complaints mechanism, disciplinary proceedings, and police reporting within their own institutional setting. They can also make necessary arrangements to train CWC, lawyers, doctors and other professionals who come in contact with children about the POCSO Act, 2012 and in communicating with children. In addition to this, they can set up education and training programmes for children and youth. They can hold consultations with children and youth to understand their views and perspectives on the issue of child sexual abuse and provide them with opportunities and ways to put recommendations forward as well as opportunities to get involved in implementation.

In addition to this, the elected representatives of Local Self Government can regularly monitor media coverage and ensure sensitive handling of the issue. They can also make necessary arrangements for NGOs to develop and disseminate position papers and other academic and awareness materials on the issue concerned. They can create alliances between NGOs, business groups, private organisations and the local, national and regional media networks, share best practices, involve the press in relevant events and lobby with the media to raise awareness with the general public.

The elected representatives of Local Self Government can thus play a vital role in the implementation of the provisions of the POCSO Act, 2012 and in general in combating the problem of child sexual abuse.

## **Technical Session IV: Impact of Trauma, Abuse and Threat on child victim / witness**

### **Learning Objective**

- To develop an insight into the situation of sexual abuse, trauma and the various threats consequently faced by children
- To sensitize the participants about gravity of the issue

### **Methodology**

Presentation, lecture and discussion

### **Material Required**

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

### **Duration**

1 hour 15 minutes

### **Outcome**

Participants will develop sensitivity and an understanding of the impact of sexual abuse and the resultant trauma on the children

### **Content**

- Trauma faced by children as a result of sexual abuse
- Effect of threat and trauma among the victims
- Threats faced by victims of child abuse
- Interventions required for bringing the victims back to normal life

### **Tips for Resource Persons**

- This session is very important to make the participants understand the trauma and distress the child goes through after sexual abuse, helping them understand the impact of it.
- The facilitator must address the pressing issues/questions that comes up during the session
- Makes the session as interactive as possible by inviting the participants to share their own observations and experiences on child's abuse and trauma.
- As the session is largely theoretically based it is important to clarify concepts of development and tasks to be accomplished at each stage very clearly.

## **Reference Material for Technical Session IV**

### **CONTENTS**

#### **Trauma faced by children as a result of sexual abuse**

Trauma responses in children – preschoolers, school age children and teenagers

#### **Effect of abuse and trauma among the victims**

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

#### **Interventions required for bringing the victims back to normal life**

- Interventions for child sexual abuse
- Preventing child sexual abuse

## **Trauma faced by children as a result of sexual abuse**

### **Trauma responses in children**

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

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

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

- They may become anxious and clingy, not wanting to separate from their parents at day care or the baby-sitters house.
- They may seem to take a backward step in development, sucking their thumbs, wetting their beds, refusing to go to sleep, or waking at night when they passed those stages long ago.
- They may become aggressive in their play with other children, with their parents, or with their own toys.
- They may play the same game over and over, like piling blocks and knocking them down, dropping toys behind furniture and retrieving them, or crashing the same two cars over and over again.
- They may express 'magical' ideas about what happened to them which alters their behaviour. ("Bad things happen if I get too happy")
- Though they say they are having fun in an activity, they may look sullen, angry, and intense in a way that to an adult doesn't look like they are having fun.

### **Signs of Trauma Responses in School Age Children**

- They may revert to developmentally earlier coping mechanisms, such as an ego-centred view (i.e. thinking that someone died because they had bad thoughts about the person).
- They may compensate for feeling helpless during the crisis of the abuse by blaming themselves for what happened. Thinking that they caused the event gives children a sense of power and control while helplessness painfully reminds them of being young and totally dependent.

- Their lack of control over the abuse may make them feel that their future is unsure, which can lead some children to act recklessly.
- They may experience a significant change in school performance. It's not uncommon for children to have great difficulty concentrating and performing in school following trauma. On the other hand, they may become intensely focused on schoolwork to the exclusion of other activities in an effort to cope.
- They may test rules about bedtime, homework, or chores. School age children believe in rules. When something bad happens even if they obeyed the rules they become oppositional and testy.
- They may have interruptions in their friendships.
- They may experience sleep disturbances, nightmares and difficulty in falling asleep.
- They may engage in reckless play. Where the preschool child will crash their truck a hundred times, the school age child might physically engage in dangerous games as a way of exhibiting a sense of control that was lost during the abuse.

### **Signs of Trauma Responses in Teenagers (13 -18)**

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

## Effect of abuse and trauma among the victims

### Can children recover from sexual abuse?

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

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

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

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

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

### Effects of child abuse and neglect

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

- **Lack of trust and relationship difficulties.** If you can't trust your parents, who can you, trust? Abuse by a primary caregiver damages the most fundamental relationship as a child—that you will safely, reliably get your physical and emotional needs met by the person who is responsible for your care. Without this base, it is very difficult to learn to trust people or know who is trustworthy. This can lead to difficulty maintaining relationships due to fear of being controlled or

abused. It can also lead to unhealthy relationships because the adult doesn't know what a good relationship is.

- **Core feelings of being “worthless” or “damaged.”** If you've been told over and over again as a child that you are stupid or no good, it is very difficult to overcome these core feelings. You may experience them as reality. Adults may not strive for more education, or settle for a job that may not pay enough, because they don't believe they can do it or are worth more. Sexual abuse survivors, with the stigma and shame surrounding the abuse, often especially struggle with a feeling of being damaged.
- **Trouble regulating emotions.** Abused children cannot express emotions safely. As a result, the emotions get stuffed down, coming out in unexpected ways. Adult survivors of child abuse can struggle with unexplained anxiety, depression, or anger. They may turn to alcohol or drugs to numb out the painful feelings.

### **Effects of Child Sexual Abuse**

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

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

### **Health and Behavioural Problems Resulting from Sexual Abuse**

- Sexually abused children who do not disclose or who do and are not believed are at greater risk than the general population for psychological, emotional, social, and physical problems that last well into adulthood.

- Victims of child sexual abuse often report symptoms of Post-Traumatic Stress Disorder. They suffer more sadness and more school problems than non-victims.
- Victims of child sexual abuse are more likely to experience major depressive disorder as adults.
- Young girls who are sexually abused are more likely to develop eating disorders as adolescents.

### **Drug and Alcohol Problems**

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

### **Teenage Pregnancy and Promiscuity**

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

### **Crime**

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

### **The Effects of Child Sexual Abuse are Severe and Far Reaching**

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

- Mental health conditions such as depression, anxiety, post-traumatic stress disorder (PTSD), insomnia, and lack of trust in others are reported more often by people who have experienced child sexual abuse.

- Physical health conditions such as HIV or other STDs, unintended pregnancy, alcohol or other drug abuse, hypertension, and obesity are all reported with greater frequency among people who have experienced child sexual abuse.
- Many survivors of sexual abuse overcome adverse health conditions, and can prove especially resilient when provided with therapy and other supports that empower them to take control over their lives and relationships.

## **Some More Specific Behaviours of Children Following Sexual Assault**

### ***Wetting/soiling***

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

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

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

### ***Nightmares***

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

### ***Persistent Pains***

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

### ***Clingyness***

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

### ***Aggression***

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

Aggression also stems from fear and a need to protect themselves from further hurt. This can be evident in boys who may believe they were weak because they did not fight off the offender. Sometimes they can make themselves feel more powerful by hurting other children or animals.

Being aggressive can also cause a child to punish themselves and confirm their low self esteem because they have no friends and are always in trouble.

## ***Sexualised Behaviour***

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

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

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

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

## **Triggers & Recovery**

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

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

The behaviours that children exhibit after sexual assault do tend to pass in time as children regain a sense of safety and self-control. When the feelings that drive the behaviour are explored, they become less powerful and the behaviour becomes more manageable. Establishing a link between the feeling and the behaviour is important as it gives you an understanding of what is happening.

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

### **Indicators and Effects**

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

### **Physical Indicators**

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

### **Behavioural Indicators**

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

- Learning problems, inexplicable fall in academic grades, poor memory and concentration
- Reluctance to participate in physical or recreational activities
- Regression to younger behaviour, such as thumb-sucking, acting like a baby, bedwetting and/or speech difficulties
- Tendency to cling or need constant reassurance

- Sudden accumulation of money or gifts
- Complaining of headaches, stomach pains or nausea without a physiological basis
- Fatigue and sleeping difficulties
- Poor self-care/personal hygiene
- Depression
- Social withdrawal (such as poor or deteriorating relationships with adults and peers)
- Developing fears, phobias and anxieties (A fear of a specific place related to abuse, a particular adult, refusing to change into sports/swimming clothes)
- Wearing of provocative clothing, or layers of clothes to hide injuries and/or to appear unattractive
- Sexual knowledge, behavior, or use of language not appropriate to age level
- Sexual inference in children's recreational activities such as drawing, playing, singing etc.
- Sexually abusive behavior towards other children, particularly younger or more vulnerable than themselves
- Age inappropriate sexual behavior
- Child running away from home/school
- Self-injurious behavior, like alcohol or drug abuse, body-mutilation, getting in trouble with law, suicide attempts

## **Interventions required for bringing the victims back to normal life**

### ***What Can You Do?***

**Protect your children.** Teach your children what appropriate sexual behavior is and when to say “no” if someone tries to touch sexual parts of their bodies or touch them in any way that makes them feel uncomfortable. Also, observe your children when they interact with others to see if they are hesitant or particularly uncomfortable around certain adults. It is critical to provide adequate supervision for your children and only leave them in the care of individuals whom you deem safe.

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

**Teach others about child abuse.** Help make others aware of sexual abuse by arranging for knowledgeable guest speakers to present to your organizations or groups. Encourage your local school board to establish programs to educate both teachers and students about the problem.

**Report, report, report.** If you suspect sexual abuse and believe a child to be in imminent danger, report it to the local child protective services agency (often called “social services” or “human services”) in your county or state. Professionals who work with children are required by law to report reasonable suspicion of abuse or neglect. Furthermore, in 20 states, citizens who suspect abuse or neglect are required to report it. “Reasonable suspicion” based on objective evidence, which could be firsthand observation or statements made by a parent or child, is all that is needed to report. Remember that you may be the only person in a position to help a child who is being sexually abused.

## **Preventing Child Sexual Abuse**

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

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

## **Study on Child Abuse: India 2007, MWCD, GOI**

This study, which is the largest of its kind undertaken anywhere in the world, covered 13 states with a sample size of 12447 children, 2324 young adults and 2449 stakeholders. The study looked at different forms of child abuse: Physical Abuse, Sexual Abuse and Emotional Abuse and Girl Child Neglect in five different evidence groups, namely, children in a family environment, children in school, children at work, children on the street and children in institutions.

### Specific objectives of study

- To assess the magnitude and forms of child abuse in India;
- To study the profile of the abused children and the social and economic circumstances leading to their abuse;
- To facilitate analysis of the existing legal framework to deal with the problem of child abuse in the country; and
- To recommend strategies and programme interventions for preventing and addressing issues of child abuse

### Child abuse across globe

The UN Secretary General's Study on Violence against Children has given the following overview of the situation of abuse and violence against children across the globe.

- WHO estimates that almost 53,000 child deaths in 2002 were due to child homicide.
- In the Global School-Based Student Health Survey carried out in a wide range of developing countries, between 20% and 65% of school going children reported having been verbally or physically bullied in school in the previous 30 days. Similar rates of bullying have been found in industrialized countries.
- An estimated 150 million girls and 73 million boys under 18 have experienced forced sexual intercourse or other forms of sexual violence involving physical contact.
- UNICEF estimates that in sub-Saharan Africa, Egypt and Sudan, 3 million girls and women are subjected to FGM every year.
- ILO estimates that 218 million children were involved in child labour in 2004, of which 126 million were engaged in hazardous work. Estimates from 2000 suggest that 5.7 million were in forced or bonded labour, 1.8 million in prostitution and pornography and 1.2 million were victims of trafficking.
- Only 2.4% of the world's children are legally protected from corporal punishment in all settings.

### Child abuse in Asia

Apart from physical abuse, sexual abuse, emotional and psychological abuse, abandonment and, increasingly, problems of street children, in Asia where population density is high, the issues of child labour and child sexual exploitation are also high. Political instability and other internal disturbances, including conditions of insurgency in

many countries in Asia are also creating major problems, with increasing number of child soldiers, refugee children, trafficked children and children on the streets.

### Major Findings (India)

It has very clearly emerged that across different kinds of abuse, it is young children, in the 5-12 year group, who are most at risk of abuse and exploitation.

### Physical Abuse

- Two out of every three children were physically abused.
- Out of 69% children physically abused in 13 sample states, 54.68% were boys.
- Over 50% children in all the 13 sample states were being subjected to one or the other form of physical abuse.
- Out of those children physically abused in family situations, 88.6% were physically abused by parents.
- 65% of school going children reported facing corporal punishment i.e. two out of three children were victims of corporal punishment.
- 62% of the corporal punishment was in government and municipal school.
- The State of Andhra Pradesh, Assam, Bihar and Delhi have almost consistently reported higher rates of abuse in all forms as compared to other states.
- Most children did not report the matter to anyone.
- 50.2% children worked seven days a week.

### Sexual Abuse

- 53.22% children reported having faced one or more forms of sexual abuse.
- Andhra Pradesh, Assam, Bihar and Delhi reported the highest percentage of sexual abuse among both boys and girls.
- 21.90% child respondents reported facing severe forms of sexual abuse and 50.76% other forms of sexual abuse.
- Out of the child respondents, 5.69% reported being sexually assaulted.
- Children in Assam, Andhra Pradesh, Bihar and Delhi reported the highest incidence of sexual assault.
- Children on street, children at work and children in institutional care reported the highest incidence of sexual assault.
- 50% abuses are persons known to the child or in a position of trust and responsibility.
- Most children did not report the matter to anyone.

### Emotional Abuse and Girl Child Neglect

- Every second child reported facing emotional abuse.
- Equal percentage of both girls and boys reported facing emotional abuse.
- In 83% of the cases parents were the abusers.
- 48.4% of girls wished they were boys.

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

### **Learning Objectives:**

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

**Methodology:** Presentation, lecture and discussion

### **Material Required:**

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

**Duration:** 2 hours 15 minutes

### **Instructions:**

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

### **Tips for the Facilitators/Resource Persons:**

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

## **Reference Material for Technical Session V**

### **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><b>Section 3</b>  <b>Penetrative Sexual Assault</b>            Inserting body part or object in a child, or making a child does this with another.</p>	<p><b>Section 4</b>            Not less than seven years of imprisonment which may extend to imprisonment for life, and fine</p>
2	<p><b>Section 5</b>  <b>Aggravated Penetrative Sexual Assault</b></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><b>Section 6</b>            Not less than ten years of imprisonment which may extend to imprisonment for life, and fine</p>

3	<p><b>Section 7</b>  <b>Sexual Assault</b>  With sexual intent touching the private parts of a child</p>	<p><b>Section 8</b>  Not less than three years of imprisonment which may extend to five years, and fine</p>
4	<p><b>Section 9</b>  <b>Aggravated Sexual Assault</b></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><b>Section 10</b>  Not less than five years of imprisonment which may extend to seven years, and fine (Section 10)</p>
5	<p><b>Section 11</b>  Sexual Harassment of the Child  With sexual intent:</p> <ul style="list-style-type: none"> <li>• showing any object/body part, or</li> <li>• making any gesture aimed at a child</li> <li>• making a child exhibit her body</li> <li>• enticing or threatening to use a child for pornography</li> </ul>	<p><b>Section 12</b>  Up to three years of imprisonment and fine</p>
6	<p><b>Section 13</b>  Use of Child for Pornographic Purposes</p>	<p><b>Section 14 (1)</b>  Imprisonment up to five years and fine and in the event of subsequent conviction, up to seven years and fine</p>
7	<p><b>Section 14 (2)</b>  Penetrative sexual assault by directly participating in pornographic acts</p>	<p><b>Section 14 (2)</b>  Not less than ten years of imprisonment, which may extend to imprisonment for life, and fine</p>
8	<p><b>Section 14 (3)</b>  Aggravated penetrative sexual assault by directly participating in pornographic acts</p>	<p><b>Section 14 (3)</b>  Rigorous imprisonment for life and fine</p>
9	<p><b>Section 14 (4)</b>  Sexual assault by directly participating in pornographic acts</p>	<p><b>Section 14 (4)</b>  Not less than six years of imprisonment which may extend to eight years, and fine</p>
10	<p><b>Section 14 (5)</b>  Aggravated sexual assault by directly participating in pornographic acts</p>	<p><b>Section 14 (5)</b>  Not less than eight years of imprisonment which may extend to ten years, and fine</p>
11	<p><b>Section 15</b>  Storage of pornographic material involving a child for commercial purposes</p>	<p><b>Section 15</b>  Three years of imprisonment and / or fine</p>

12	<p><b>Section 21</b> 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><b>Section 21</b> (i) Imprisonment of either description which may extend to six months or with fine or with both (ii) Any person, being in charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub section (1) of section 19 in respect of a subordinate under his control shall be punished with imprisonment for a term which may extend to one year and with fine.</p>
13	<p><b>Section 22</b> (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><b>Section 22</b> (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 VI: Role of Media Professionals in Implementation of POCSO Act and Rules, 2012**

### **Learning Objective**

- To develop an understanding of role of Media Professionals in POCSO Act & Rules, 2012
- To sensitize the participants on the procedures laid down in the Act

### **Methodology**

- Presentation, lecture and discussion

### **Material Required**

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

### **Duration**

2 hours

### **Outcome**

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

### **Content**

- Creating awareness on child sexual abuse among masses
- 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
- Generating public awareness of the provisions of this Act and child sexual abuse are given wide publicity through media through different forms of media

### **Tips for 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 shall mean a person who has 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 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:

- i) That the interview is in the child's best interest.
  - ii) That the interview does not aggravate the child's situation further.
  - iii) That the manner and content of the interview doesn't affect/interfere with the child's right to privacy.
  - iv) 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.
  - v) That while interviewing a child, his/her consent may be obtained, depending upon his/her age and maturity.
  - vi) Frequent interviewing of a child must be avoided.
  - vii) The child's refusal to be interviewed must be honoured.
  - viii) Before interviewing the child he/she must be duly informed about the purpose and manner of the interview.
  - ix) 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 related to reporting/broadcasting/publication of news/programs/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 VII: Panel Discussion on Interface of Media Professionals with other stakeholders/ Open House Discussion**

### **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**

Panel/ Open House

**Duration:** 2 hours

### **Outcome**

- Participants will be acquainted with remedial measures for the problems faced by them in implementation of the Act.

### **Content**

- Challenges for effective implementation and monitoring of POCSO Act / Rules, 2012 – coordination, support, compensation, legal aid to victims, etc
- Sharing of case examples / studies on violence against children and related strategies
- Importance of advocacy - addressing societal attitudes and responses to gender issues and crimes against children, etc.
- Role and responsibilities of various stakeholders in implementation of POCSO Act / Rules, 2012

### **Tips for 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

### **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.

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

### **Case Example 1**

**Child A** - AGE 14 | Paravoor, Kerala

**Occurred** 2010 | **Convicted** in 2012

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

### **Case Example 2**

**Child B** - AGE 13 | Delhi

**Occurred** 2012 | Accused out on bail

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

### **Case Example 3**

**Child C** - AGE 3 | Bhopal, Madhya Pradesh

**Occurred** 2012 | **Convicted** in 2013

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

### **Case Example 4**

**Child D** - AGE 7 | Mumbai, Maharashtra

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

He was raped regularly between the age of 7 and 18 by his uncle. His uncle became more sadistic as time went by, opening him up with tongs (*Chimata*) when he was not receptive, poking him with needles, inserting foreign objects into his anus. When he told his mother that he was bleeding, she dismissed it, saying he had been eating too many mangoes.

## **Case Example 5**

**Child E** - AGE 8 | Bhopal, Madhya Pradesh

**Occurred** 2010 | **Convicted** in 2010

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

## **Case Example 6**

**Child F** – AGE 14 | Maliwada, Maharashtra

**Occurred** 2006 | **Convicted** in 2010

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

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

### **What is advocacy?**

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

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

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

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

Advocacy is a process of supporting and enabling people to:

- Express their views and concerns.
- Access information and services.
- Defend and promote their rights and responsibilities.
- Explore choices and options

### **Purpose/Importance of Advocacy**

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

### **Issues for Advocacy**

- Enhancing Gender Equity, Equality and Empowerment of Women
- Promoting Reproductive Health and Rights
- Population and Development Linkages
- Mobilizing and Monitoring Resources
- Violence against women
- Early marriage of girls
- Gender disparities in education
- Male responsibility
- Gender disaggregated data

- Unequal social and political participation
- Female economic empowerment
- The reproductive health approach
- Reproductive rights
- Maternal and newborn care
- STDs and HIV/AIDS
- Adolescent reproductive health
- RH in conflict situations
- Reorienting national population policies
- Strengthening national data systems
- Integrating population factors into development planning process
- Addressing needs of special population
- Achieving basic social services for all
- Ensuring government commitment
- Eliciting donor support
- Fostering community participation
- Encouraging private sector participation

### **Major areas of advocacy work**

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

### **Stakeholders of Advocacy**

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

## **Who is an advocate?**

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

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

## **What the role means**

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

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

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

## **What is advocacy in child care?**

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

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

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

## Why do children need advocacy?

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

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

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

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

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

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

Children, who claimed that they were abused, assaulted, raped and imprisoned, were disbelieved: the systems did not permit them to speak and be heard. Institutions refused to accept that their staff could act so disgracefully. Police gave priority to "operational requirements", were unduly deferent to religious bodies and respectable men, and

education and child protection systems were "slack". Children did not know and could not claim their rights, even their right to bodily integrity. They lacked institutional or any advocacy. That is the problem. Our social and legal systems do not legitimate child advocacy.

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

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

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

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

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

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

Child Advocacy protects the rights of children, which are considered to include the provision of safety, wellbeing, food, water, and shelter; furthermore, these rights

express that children are entitled to the participation in community-based programs and the receipt of education.

### **The Goals of child Advocacy**

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

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

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

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

### **The Importance of Child Advocacy Centers**

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

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

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

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

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

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

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

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

## **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 and 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 & that hospital; or

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

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

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

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

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

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

(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause(l) of section 2 of the Mental Health Act, 1987 or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or

(ii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or

(k) whoever, taking advantage of a child's mental or physical disability, commits sexual assault on the child; or

(l) whoever commits sexual assault on the child more than once or repeatedly; or

(m) whoever commits sexual assault on a child below twelve years; or

(n) whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or household with the child, commits sexual assault on such child; or

(o) whoever, being in the ownership or management or staff, of any institution providing services to the child, commits sexual assault on the child in such institution; or

(p) whoever, being in a position of trust or authority of a child, commits sexual assault on the child in an institution or home of the child or anywhere else; or

(q) whoever commits sexual assault on a child knowing the child is pregnant; or

(r) whoever commits sexual assault on a child and attempts to murder the child; or

(s) whoever commits sexual assault on a child in the course of communal or sectarian violence; or

(t) whoever commits sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or

(u) whoever commits sexual assault on a child and makes the child to strip or parade naked in public,  
is said to commit aggravated sexual assault.

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

### ***E.-Sexual Harassment And Punishment Therefor***

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

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

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

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

## **CHAPTER III**

### **USING CHILD FOR PORNOGRAPHIC PURPOSES AND PUNISHMENT THEREFOR**

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

- (a) representation of the sexual organs of a child;
  - (b) usage of a child engaged in real or simulated sexual acts (with or without penetration);
  - (c) the indecent or obscene representation of a child,
- shall be guilty of the offence of using a child for pornographic purposes.

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

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

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

(3) If the person using the child for pornographic purposes commits an offence referred to in section 5, by directly participating in pornographic acts, he shall be punished with rigorous imprisonment for life and shall also be liable to fine.

(4) If the person using the child for pornographic purposes commits an offence referred to in section 7, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than six years but which may extend to eight years, and shall also be liable to fine.

(5) If the person using the child for pornographic purposes commits an offence referred to in section 9, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than eight years but which may extend to ten years, and shall also be liable to fine.

15. Punishment for storage of pornographic material involving child.—Any person, who stores, for commercial purposes any pornographic material in any form involving a child shall be punished with imprisonment of either description which may extend to three years or with fine or with both.

#### **CHAPTER IV**

#### **ABETMENT OF AND ATTEMPT TO COMMIT AN OFFENCE**

16. Abetment of an offence. — A person abets an offence, who—  
*First.*—Instigates any person to do that offence; or  
*Secondly.*—Engages with one or more other person or persons in any conspiracy for the doing of that offence, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that offence; or

*Thirdly.*—Intentionally aids, by any act or illegal omission, the doing of that offence.

*Explanation I.*—A person who, by willful misrepresentation, or by willful concealment of a material fact, which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure a thing to be done, is said to instigate the doing of that offence.

*Explanation II.*—Whoever, either prior to or at the time of commission of an act, does any thing in order to facilitate the commission of that act, and there by facilitates the commission thereof, is said to aid the doing of that act.

*Explanation III.*—Whoever employ, harbours, receives or transports a child, by means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position, vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of any offence under this Act, is said to aid the doing of that act.

17. Punishment for abetment.—Whoever abets any offence under this Act, if the act abetted is committed in consequence of the abetment, shall be punished with punishment provided for that offence.

*Explanation II.*—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy or with the aid, which constitutes the abetment.

18. Punishment for attempt to commit an offence.—Whoever attempts to commit any offence punishable under this Act or to cause such an offence to be committed, and in such attempt, does any act towards the commission of the offence, shall be punished with imprisonment of any description provided for the offence, for: a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest terms imprisonment provided for that offence or with time or with both.

## **CHAPTER V PROCEDURE FOR REPORTING OF CASES**

19. Reporting of offences.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to,—

- (a) the Special Juvenile Police Unit, or
- (b) the local police.

(2) Every report given under sub-section (1) shall be—

- (a) ascribed an entry number and recorded in writing;
- (b) be read over to the informant;
- (c) shall be entered in a book to be kept by the Police Unit.

(3) Where the report under sub-section (1) is given by a child, the same shall be recorded under sub-section (2) in a simple language so that the child understands contents being recorded.

(4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having such

qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same.

(5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection (including admitting the child into shelter home or to the nearest hospital) within twenty-four hours of the report, as may be prescribed.

(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.

(7) No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub-section (1).

20. Obligation of media, studio and photographic facilities to report cases.—Any personnel of the media or hotel or lodge or hospital or club or studio or photographic facilities, by whatever name called, irrespective of the number of persons employed therein, shall, on coming across any material or object which is sexually exploitative of the child (including pornographic, sexually-related or making obscene representation of a child or children) through the use of any medium, shall provide such information to the Special Juvenile Police Unit, or to the local police, as the case may be.

21. Punishment for failure to report or record a case.—(1) Any person, who fails to report the commission of an offence under sub-section (1) of section 19 or section 20 or who fails to record such offence under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

(2) Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.

(3) The provisions of sub-section (1) shall not apply to a child under this Act.

22. Punishment for false complaint or false information.—(1) Any person, who makes false complaint or provides false information against any person, in respect of an offence committed under sections 3,5,7 and section 9, solely with the intention to humiliate, extort or threaten or defame him, shall be punished with imprisonment for a term which may extend to six months or with fine or with both.

(2) Where a false complaint has been made or false information has been provided by a child, no punishment shall be imposed on such child.

(3) Whoever, not being a child, makes a false complaint or provides false information against a child, knowing it to be false, thereby victimizing such child in any of the offences under this Act, shall be punished with imprisonment which may extend to one year or with fine or with both.

23. Procedure for media.—(1) No person shall make any report or present comments on any child form of media or studio or photographic facilities without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy.

(2) No reports in any media shall disclose, the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child:

Provided that for reasons to be recorded in writing, the Special Court, competent to try the case under the Act, may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

(3) The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omissions of his employee.

(4) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be liable to be punished with imprisonment of either description for a period which shall not be less than six months but which may extend to one year or with fine or with both.

## **CHAPTER VI**

### **PROCEDURES FOR RECORDING STATEMENT OF THE CHILD**

24. Recording of statement of a child.—(1) The statement of the child shall be recorded at the residence of the child or at a place where he usually resides or at the place of his choice and as far as practicable by a woman police officer not below the rank of sub-inspector.

(2) The police officer while recording the statement of the child shall not be in uniform.

(3) The police officer making the investigation, shall while examining the child, ensure that at no point of time the child come in the contact in any way with the accused.

(4) No child shall be detained in the police station in the night for any reason.

(5) The police officer shall ensure that the identity of the child is protected from the public media, unless otherwise directed by the Special Court in the interest of the child.

25. Recording of statement of a child by Magistrate.—(1) If the statement of the child is being recorded under section 164 of the Code of Criminal Procedure, 1973 (2 of 1974) (herein referred to as the Code), the Magistrate recording such statements shall, notwithstanding anything contained therein, record the statement as spoken by the child:

Provided that the provisions contained in the first proviso to sub-section (1) of section 164 of the Code shall, so far it permits the presence of the advocate of the accused shall not apply in this case.

(2) The Magistrates shall provide to the child and his parents or his representative, a copy of the document specified under section 207 of the Code, upon the final report being filed by the police under section 173 of that Code.

26. Additional provisions regarding statement to be recorded.—(1) The Magistrate or the police officer, as the case may be, shall record the statement as spoken by the child in the presence of the parents of the child or any other person in whom the child has trust or confidence.

(2) Wherever necessary, the Magistrate or the police officer, as the case may be, may take the assistance of a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, while recording the statement of the child.

(3) The Magistrate or the police officer, as the case may be, may, in the case of a child having a mental or physical disability, seek the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed, to record the statement of the child.

(4) Wherever possible, the Magistrate or the police officer, as the case may be, shall ensure that the statement of the child is also recorded by audio-video electronic means.

27. Medical examination of a child.—(1)The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a First information Report or complaint has not been registered for the offences under this Act, be conducted in accordance with section 164A of the Code of Criminal Procedure, 1973

(2) In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.

(3) The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.

(4) Where, in case the parent of the child or other person referred to in sub-section (3) cannot be present, for any reason, during the medical examination of the child, the medical examination shall be conducted in the presence of a woman nominated by the head of the medical institution.

## **CHAPTER VII SPECIAL COURTS**

28. Designation of Special Courts.—(1) For the purposes of providing a speedy trial, the State Government shall in Consultation with the Chief Justice of the High Court, by notification in the Official Gazette, Designate for each district, a Court of Session to be a Special Court to try the offence under the Act:

Provided that if a Court of Session is notified as a children's court under the Commissions for Protection of Child Rights Act, 2005 or a Special Court designated for similar purposes under any other law for the time being in force, then, such court shall be deemed to be a Special Court under this section.

(2) While trying an offence under this Act, a Special Court shall also try an offence [other than the offence referred to in sub-section (1)] ,with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

(3) The Special Court constituted under this Act, notwithstanding anything in the Information Technology Act, 2000, shall have jurisdiction to try offences under section 67B of that Act in so far as it relates to publication or transmission of sexually explicit

material depicting children in any act, or conductor manner or facilitates abuse of children online.

29. Presumption as to certain offences. —Where a person is prosecuted for committing or abetting or attempting to commit any offence under section 3,5,7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be ,unless the contrary is proved.

30. Presumption of culpable mental state.—(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

*Explanation.*—In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

31. Application of Code of Criminal Procedure, 1973 to proceedings before a Special Court.—Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.

32. Special Public Prosecutors.—(1) The State Government shall, by notification in the Official Gazette, appoint a Special Public Prosecutor for every Special Court for conducting cases only under the provisions of this Act.

(2) A person shall be eligible to be appointed as a Special Public Prosecutor under sub- section (1) only if he had been in practice for not less than seven years as an advocate.

(3) Every person appointed as a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 (2 of 1974) and provision of that Code shall have effect accordingly.

## **CHAPTER VIII**

### **PROCEDURE AND POWERS OF SPECIAL COURTS AND RECORDING OF EVIDENCE**

33. Procedure and powers of Special Court.—(1) A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.

(2) The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-

examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.

(3) The Special Court may, if it considers necessary, permit frequent breaks for the child during the trial.

(4) The Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court.

(5) The Special Court shall ensure that the child is not called repeatedly to testify in the court.

(6) The Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial.

(7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial:

Provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

*Explanation.*—For the purposes of this sub-section, the identity of the child shall include the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed.

(8) In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.

(9) Subject to the provisions of this Act, a Special Court shall, for the purpose of the trial of any offence under this Act, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session, and as far as may be, in accordance with the procedure specified in the Code of Criminal Procedure, 1973 (2 of 1974) for trial before a Court of Session.

34. Procedure in case of commission of offence by child and determination of age by Special Court.—(1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000).

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.

(3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section(2) was not the correct age of that person.

35. Period for recording of evidence of child and disposal of case.—(1) The evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court.

(2) The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.

36. Child not to see accused at the time of testifying.—(1) The Special Court shall ensure that the child is not exposed in any way to the accused at the time of recording of the evidence, while at the same time ensuring that the accused is in a position to hear the statement of the child and communicate with his advocate.

(2) For the purposes of sub-section (1), the Special Court may record the statement of a child through video conferencing or by utilizing single visibility mirrors or curtains or any other device.

37. Trials to be conducted in camera.—The Special Court shall try cases in *camera* and in the presence of the parents of the child or any other person in whom the child has trust or confidence:

Provided that where the Special Court is of the opinion that the child needs to be examined at a place other than the court, it shall proceed to issue a commission in accordance with the provisions of section 284 of the Code of Criminal Procedure, 1973 (2 of 1974).

38. Assistance of an interpreter or expert while recording evidence of child.—(1) Wherever necessary, the Court may take the assistance of a translator or interpreter having such qualifications, experience and on payment of such fees as may be prescribed, while recording the evidence of the child.

(2) If a child has a mental or physical disability, the Special Court may take the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed to record the evidence of the child.

## **CHAPTER IX MISCELLANEOUS**

39. Guidelines for child to take assistance of experts, etc.—Subject to such rules as may be made in this behalf, the State Government shall prepare guidelines for use of non-governmental organisation, professionals and experts or persons having knowledge of psychology, social work, physical health, mental health and child development to be associated with the pre-trial and trial stage to assist the child.

40. Right of child to take assistance of legal practitioner.—Subject to the provision to section 301 of the Code of Criminal Procedure, 1973 (2 of 1974) the family or the guardian of the child shall be entitled to the assistance of a legal counsel of their choice for any offence under this Act:

Provided that if the family or the guardian of the child are unable to afford a legal counsel, the Legal Services Authority shall provide a lawyer to them.

41. Provisions of sections 3 to 13 not to apply in certain cases.—The provisions of sections 3 to 13 (both inclusive) shall not apply in case of medical examination or medical treatment of a child when such medical examination or medical treatment is undertaken with the consent of his parents or guardian.

<sup>1</sup>[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].

<sup>2</sup>[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 (I) 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, 2012<sup>1</sup>**

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**